

1421338 (Refugee) [2016] AATA 4501 (3 October 2016)

**DECISION RECORD**

**DIVISION:** Migration & Refugee Division  
**CASE NUMBER:** 1421338  
**COUNTRY OF REFERENCE:** Pakistan  
**MEMBER:** Nicola Findson  
**DATE:** 3 October 2016  
**PLACE OF DECISION:** Perth  
**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection visa.

STATEMENT MADE ON 03 OCTOBER 2016 AT 1:06PM

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 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 visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Pakistan, applied for the visa [in] February 2014, and the delegate refused to grant the visa [in] December 2014.

### **CLAIMS AND EVIDENCE**

#### **Background**

3. The Tribunal has before it the Department's file [number] and the Tribunal's file relating to the applicant's protection visa application. The Tribunal has also had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
4. In his written application for a protection visa, the applicant states that he is a citizen of the Islamic Republic of Pakistan having been born in Peshawar, KPK, in [year]. He is a Pashto Sunni Islam. He speaks, reads and writes English, Urdu and Pashto. He is tertiary educated, holding a [Qualification] from [his university]. He worked for a business set up by his father and [Relative A] - [business name] - as a [position] from 2006 until prior to coming to Australia. He arrived in Australia as the holder of a student visa [in] April 2010.
5. The applicant states he seeks protection in Australia based on fear of harm at the hands of the Taliban. He states that his family is aligned with the Awami National Party (ANP), which is opposed to the Taliban's beliefs and activities. Further, he states that in 2013, he returned to Pakistan to visit his mother, who was unwell. When he arrived he was met with the news that his [Relative A] had been kidnapped by the Taliban about one month earlier. The applicant states that he, along with his father, was involved in the local Jirga's efforts to secure the release of his [Relative A]. After this, while the applicant was still in Pakistan, he states that there was a thwarted attempt by the Taliban to kidnap him. He states he has also received letters from the Taliban demanding that he join their cause or face consequences.

#### **Delegate Decision**

6. The delegate refused the application as he was not satisfied that the applicant had a well-founded fear of persecution for a Refugee Convention reason or a real risk of being subject to significant harm if he returned to Pakistan. The delegate was of the view that the applicant and his claims were not credible. He noted that prior misrepresentations on the applicant's visa applications – including his marital status and the date he was married, as well as omissions of other close family members – brought into question the credibility of the applicant. He had reservations about the provenance of newspaper articles that accompanied the applicant's protection visa application. He also considered that the applicant's account of his attempted kidnapping by the Taliban was implausible.

#### **Application for review**

7. The applicant applied to the Refugee Review Tribunal on 7 October 2014 for a review of the delegate's decision. A copy of the delegate's decision accompanied the application for review.

8. The *Tribunals Amalgamation Act (Cth) 2015* took effect on 1 July 2015. Transitional provisions of that Act had the effect that an application for review to the Refugee Review tribunal (now abolished) is taken to be an application to the Administrative Appeals Tribunal.

#### ***Submissions to the Tribunal***

9. The applicant provided a statement to the Tribunal prior to his hearing.
10. The applicant provided an explanation as to why not all of his family's details were included by him on a previous student visa application. He said that he had given all of the necessary and relevant details to an agent, but the agent had omitted to include all of this information when completing the application.
11. The applicant elaborated on the constitution of the Jirga that was put together to negotiate with the Taliban to secure his [Relative A's] release after he had been kidnapped. He also elaborated on why it is that the Taliban were interested in targeting him after his [Relative A] had been freed. He explained that he had argued with a [Leader] of the Taliban during a Jirga meeting. He also stated that he would be considered valuable to the Taliban because of his time abroad. He clarified that his family did not complain to the police after the attempted kidnap on him.
12. The applicant elaborated on his involvement in the ANP. He confirmed that his family had always supported the party and that he had worked hard for his local MP – [Mr A] - during the 2008 election campaign. He set out that after a series of attacks on workers and politicians in the ANP, including a bomb blast that killed his MP, he became disillusioned with what was happening in his home country and decided to apply to come to Australia to study in the hope that things would improve while he was out of the country.
13. The applicant addressed the delegate's concerns about the veracity of the newspaper articles he had provided. The applicant indicated that they were genuine and that he would have provided original, full publications if he had in fact paid for them.
14. The applicant described that his family had received letters from the Taliban that made it clear that they were interested in him and that his life was under threat.

#### ***Evidence given at the Tribunal hearing***

15. The applicant appeared before the Tribunal on 13 January 2016, to give evidence and present arguments. The Tribunal also received oral evidence from [Elder A], an elder of the Jirga from the applicant's home area. The Tribunal hearing was conducted with the assistance of an interpreter in the Pashto and English languages.
16. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.
17. The applicant provided background about his family, education and employment history. He confirmed that his parents and [number] siblings remain living in Peshawar, Pakistan. The applicant is [family position] in his family. He said his [specific sibling] is "mentally disturbed" and not capable of working. The applicant's father invests in different companies, generally in conjunction with the applicant's [Relative A], [named].
18. The applicant is married. His wife, whom he wed in 2003 – [named] - lives with the applicant's parents in Peshawar.
19. The applicant told the Tribunal that he does not have any family members in Australia.

20. The applicant told the Tribunal that he maintains contact with his family in Peshawar, by telephone, on a regular basis.
21. The applicant confirmed that in Pakistan he completed his secondary schooling and then went on to study further. He graduated with a [Qualification] in 2007. During his studies, in about 2005, the applicant commenced working at a business jointly owned by his father and [named Relative A] – [business name] – [a service] business. He worked in [a section]. Another two of his [relatives] and [number] other employees also worked for the company.
22. The applicant first arrived in Australia [in] April 2010, on a student visa and enrolled in a [Course]. After completing this course, the applicant applied for a further student visa, which was refused.
23. While he was awaiting the outcome of a review of the decision to refuse him a subsequent student visa, the applicant returned to Pakistan on three occasions. He told the Tribunal that on these occasions his mother was unwell and the applicant also wanted to see his wife. When he returned to Australia, he was unable to work, but he had savings and the support of his father in Pakistan.
24. When asked what his plans were when he arrived in Australia, the applicant told the Tribunal that the situation in Pakistan was not good, so he thought that he should travel and study. He said that it was always his intention though to return to Pakistan.
25. The applicant told the Tribunal that he fears returning to Pakistan because his home area is generally severe. He said he fears that he would be targeted by the Taliban if he returned there. He told the Tribunal that he was directly at risk of serious harm because of an argument he had with a [Leader] of the local Taliban ([named]) during Jirga negotiations to release his [Relative A] who had been kidnapped for ransom by the Taliban. He said that the [Leader] took their argument personally and wanted to take revenge against him. He also said his profile as someone who is a member of the ANP puts him at risk of harm.
26. The applicant told the Tribunal that in October 2013, he returned to Pakistan after receiving a telephone call from his father asking him to return to Pakistan because his mother's health was deteriorating. When he returned home the applicant learned that his [Relative A] – [named] - had been kidnapped by the Taliban about a month earlier. He said that kidnappings for ransom occur frequently in Peshawar. He said Taliban sympathisers report on people who have money and those people are targeted by the Taliban. The applicant said that his family had asked the police for help when his [Relative A] was taken. However, the attempts by the police to save his [Relative A] had been futile. He said that although the police had traced telephone calls and identified who had taken his [Relative A], which included one of the police constables who turned out to be a Taliban sympathiser as well as a man from the tribal area close by, they did not do anything more.
27. The applicant told the Tribunal that that in his culture Jirga works to resolve disputes in the regions, successfully and peacefully. He explained that the Taliban listen to the Jirga, not the authorities. So, the applicant said he suggested to his father that they should convene a Jirga to try and recover his [Relative A]. The applicant said he approached friends from university, who lived in Tribal area close to him, and asked them to help him make a Jirga.
28. The applicant told the Tribunal that about 10 people were involved in the Jirga and it convened to discuss his [Relative A's] release outside his home town, in an area called [name]. During the negotiations, the applicant said that the [Leader] of the Taliban was talking in a disgraceful manner to his father, and so he challenged him. He said he did this because if you are of Pashtun ethnicity, there are no negotiations on disrespect. The applicant said that the [Leader] asked who he was and why he was brought along and then

insisted he leave. The applicant told the Tribunal that he is certain he was targeted by the Taliban afterwards because of this argument during the Jirga.

29. The applicant told the Tribunal that his [Relative A] was eventually freed by the Taliban as a result of the Jirga negotiations, and after a ransom was paid.
30. As to the attempted kidnap on the applicant, the Tribunal was told that about 2 weeks after his [Relative A] had been released by the Taliban he left his house early in the morning to go to the office of [their business name]. The applicant said that his father's car was unavailable to him that day, so he intended taking a taxi. He said that as he walked towards the "*Chauk*" (taxi/bus stand), which was a short distance from his house, 2 men approached him and said to him "*don't say anything and stop*". He said they also grabbed his shoulder and hit him in the back with what he believes was a gun. The applicant told the Tribunal that he realised that these men were trying to kidnap him, so he raised his voice to alert bystanders to what was happening. He said that when he shouted, and when others came to his aid, the men ran to a nearby car, which had other men in it, and they fired a gun shot in to the air. The applicant told the Tribunal that the men who approached him would not have known he would be going to work in a taxi that day, so they must have been observing him for a while.
31. The applicant told the Tribunal that he had been concerned that he would be targeted by sympathisers of the Taliban because of his argument with the [Leader] during the Jirga negotiations in respect of his [Relative A]. He said he became even more fearful after his neighbour – [named] - was kidnapped, mistakenly, about a week before the attempt to kidnap him. The applicant told the Tribunal that his father received a call from the Taliban saying that they had taken me. However, when the applicant's father said that they had the wrong person, the neighbour was released.
32. The applicant told the Tribunal that after consulting his father, he did not see any point in going to the police about the attempt to kidnap him. However, his family was so worried about their safety after what had happened to the applicant as well as his [Relative A] that they felt they had no choice but to appeal to the government authorities for protection. They did this by arranging for an article to be published in the newspaper about the attempted kidnapping on the applicant. The applicant said that he made arrangements to return to Australia as soon as he could after the attempted kidnapping on him.
33. The applicant told the Tribunal that he has had threats made against him since he returned to Australia. He said that there have been 4 or 5 threat letters sent to his family stating that he is wanted by the Taliban and which he could provide to the Tribunal. He said that the Taliban are a big organisation with a big intelligence network and that they can easily find out about your affairs and keep you in their records. He told the Tribunal that if he was to return to Pakistan, the sympathisers would alert the Taliban and he would be killed.
34. The applicant told the Tribunal that his father has lost all his business; his mother is sick; and his future is in the dark. He said that his family's movements are very restricted. He said that they do not go out much and do their normal activities. He said that his parents have been asked by others from their home area about his whereabouts and when he will return to Pakistan.
35. The Tribunal asked the applicant why his family waited until he had returned to Pakistan to inform him about his [Relative A's] kidnapping. The applicant replied that he was not told immediately because his family did not want me to worry him while he was away from home. The applicant said that he returned home because mother was ill and that he was pleased he did so, because he was able to help his [Relative A]. The applicant said that there was no direct threat on his life at the time he returned to Pakistan.

36. As to the delegate's comments about the implausibility of this attempted kidnapping, the applicant responded that there are many thwarted kidnappings in his home region. The applicant said it was good luck that he was not kidnapped that day. He said that if people had not stepped up and come to his aid, there is a good chance he would have been taken by the Taliban.
37. The Tribunal discussed with the applicant country information indicating that the manufacture and use of fraudulent documents, including newspaper articles, is prevalent in Pakistan. The applicant maintained that the documents that he had provided are not fraudulent. He said that in Pakistan, if you lodge a police report, the police will appeal for help in the newspapers. He clarified that it was the police who arranged for a newspaper article to be published about his [Relative A's] kidnapping, because his family had lodged a complaint. The applicant told the Tribunal that if he had paid for the newspaper article to be published, he would have provided the original publication, in its entirety.
38. The Tribunal asked the applicant what action his family had taken in relation to the threats from the Taliban. The applicant replied that because they are of Pashtun ethnicity, his family are unable to move from their home area. He said Pashtuns that relocate are considered to be sympathisers of the Taliban. Further, if they moved to other cities in Pakistan, they would be easily recognisable and discriminated against. He said that as Pashtuns, they have each other where they live and it is better to stay their own community.
39. The applicant told the Tribunal that he had had an association with the ANP for nearly 20 years. The applicant said that the ANP's ideologies are based on Pashtun ethnicity and that his family – particularly his father and grandfather - had always supported the party.
40. The applicant told the Tribunal that he was encouraged to become more closely involved with the party while he was at university. The applicant said that in 2008, he worked as a youth campaigner in his designated area, for his local MP, [Mr A]. He said that he, along with about 20 other young people, was responsible for arranging party gatherings and public demonstrations, which mostly took place on weekends. The applicant said [Mr A] was killed in a bomb blast in 2009.
41. When asked how his political involvement would impact on his claims, particularly given that the applicant had kept away from politics since [Mr A] was killed, the applicant said that his family link with the ANP would make him more of a target to the Taliban.
42. Asked if he wanted to make any further comment about the delegate's decision, the applicant said that he thought some of his evidence to the delegate was not explained or communicated effectively by him in English. He said that while there seemed to be misconceptions between him and delegate, his claims were genuine and if he was to return to Pakistan he would be targeted by the Taliban and harmed.
43. The Tribunal invited that applicant to comment on the question of him relocating to another part of Pakistan. The applicant responded that he would face lots of problems if he relocated to another part of Pakistan – he would be easily recognisable as a Pashtun and discriminated against on that basis and he would not be able to study, find a job, or rent accommodation. When it was put to the applicant that country information indicates that there are a number of areas within Pakistan which remain free from militant or politically motivated violence; that there are Pashtun communities in Karachi, Islamabad, Lahore and other urban areas; and therefore, it seems that it would be possible for him to relocate, the applicant replied that in addition to the social problems he would face, it would be easy for the Taliban to track him down wherever he went.

*Evidence of [Elder A]*

44. The Tribunal received evidence by telephone from [Elder A], who the applicant said is a respected elder of his community and who was part of the Jirga who secured the release of his [Relative A]. [Elder A] lives in Peshawar, Pakistan. [Elder A] confirmed that the applicant's [Relative A] was kidnapped by the Taliban and held for a month and a Jirga was convened, which managed to secure his release. The Tribunal was told that the Taliban's demands in relation to the applicant's [Relative A] were broad and different arguments arose about what they were demanding as well as the applicant's family having difficult political views. He said it was a very tense situation. [Elder A] confirmed that the applicant was a part of the Jirga. He confirmed that he witnessed an argument between the applicant and a Taliban [Leader]. He told the Tribunal that after the argument, he feared the applicant would also be kidnapped because the Taliban are very powerful people.
45. [Elder A] also told the Tribunal that not only is the situation in Peshawar very volatile and unsafe, but given that the applicant has received threat letters, he is a target of the Taliban. He said that if someone is of interest to the Taliban, it is very difficult to escape them because they have very good networks. [Elder A] told the Tribunal that the situation is very bad even for himself. He said he is living between houses, in hiding, to try to avoid the Taliban. He said it is difficult to stay safe in Peshawar. He said he fears that if the applicant returns, he will be targeted by the Taliban and killed or harmed.

**Post hearing submission**

46. After the hearing, the applicant provided the Tribunal with copies of two, translated letters of threat dated [in] May 2015 and [in] September 2015, sent by the Taliban to the applicant's family. The first letter warns the applicant that "*This is a threatening warning from the Taliban Movement of Pakistan... that there was a high authority council discussion regarding you, therefore you are advised to fulfil and implement immediately this decision of the council, otherwise your fate is in our hand*". The second letter is directed to the applicant as well as the applicant's father and his [Relative A] and warns "*This is the final threatening warning from us ... to take the oath of allegiance to the Taliban movement; to cooperate with the Taliban against infidels; and to participate in fighting with the Taliban, otherwise his fate will be in their hands*".
47. The applicant also provided the Tribunal with newspaper articles relating to the current situation in the KPK region of Pakistan.

**Country Information**

48. In relation to the Tehrik-e-Taliban Pakistan (TTP), the TTP is the largest Taliban organisation in the FATA, with reported figures on the number of groups organised under the TTP banner ranging from 13 to 40.<sup>1</sup> The TTP is also very active in KPK.
49. On the question of state protection, the Department of Foreign Affairs and Trade Country Information Report – Pakistan – 15 January 2016 (DFAT Report) states:

Pakistan's Army and paramilitary forces regularly conduct counter-insurgency operations in the FATA and remote parts of Khyber Pakhtunkhwa to increase government control in these

<sup>1</sup> For 13 see: Bajoria, J 2011, 'Pakistan's New Generation of Terrorists', *Council on Foreign Relations*, 9 December <<http://www.cfr.org/pakistan/pakistans-new-generation-terrorists/p15422#>>; for 40 groups, which may include groups allied but not under the TTP banner, see: Qazi, S H 2011, 'Rebels of the frontier: origins, organisation, and recruitment of the Pakistani Taliban', *Small Wars and Insurgencies*, Vol. 22 no.4, 574-602 pp.581, 597 no.29, and: Roggio, B 2012, 'Al Qaeda brokers new anti-US Taliban alliance in Pakistan and Afghanistan', *The Long War Journal*, 3 January <[http://www.longwarjournal.org/archives/2012/01/al\\_qaeda\\_brokers\\_new.php](http://www.longwarjournal.org/archives/2012/01/al_qaeda_brokers_new.php)>

areas. According to International Crisis Group (ICG), 49,000 people were arrested on terrorism-related charges between the commencement of the National Action Plan (NAP) in December 2014 and May 2015. Despite the relatively high number of arrests, however, successful prosecutions of those responsible for politically-motivated or sectarian violence are rare. This is because of the ineffectiveness of police investigations, as well as the debilitating effect of threats to judges and witnesses, who are not protected by witness protection programs.

...

5.7 Although there are variations in the effectiveness of individual police forces in Pakistan, their capacity to maintain law and order is generally limited by a lack of resources; poor training; insufficient and outmoded equipment; and manipulation by superiors, political actors and the judiciary. Common perceptions of police corruption undermine public confidence in the country's police forces.

50. The UK Home Office current Pakistan report states:

Are those at risk able to internally relocate within Pakistan?

1.2.4 Relocation to another area of Pakistan may be viable depending on the nature of the threat from non state agents and individual circumstances of the person.

1.2.5 Pakistan's total land area is 770,875 sq km with an estimated population of 196,174,380. The law provides for freedom of movement within the country, but due to violence in some areas, it is restricted in practice.<sup>2</sup>

51. The most recent DFAT Report also states the following in relation to the TTP:

2.32 The most potent militant group in Pakistan remains the TTP – a loose network of Sunni militant groups which have splintered since the commencement of Operation *Zarb-e-Azb*. Although they are ideologically aligned, the TTP maintains an identity distinct from the Afghan Taliban, which is widely accepted to have an operational base in Quetta, the capital of Balochistan province.

2.33 The TTP has carried out a number of high profile attacks against government security forces, political rivals, civilian infrastructure, and non-Sunni minorities throughout Pakistan. This includes direct attacks using small arms, suicide bombings, car bombs and improvised explosive devices (IEDs), as well as complex attacks using a combination of these tactics. For example, the TTP has claimed responsibility for attacks against the Pakistan military's General Headquarters in Rawalpindi in 2010; a naval station in Karachi in 2011; Karachi Airport in June 2014; a military-run public school in Peshawar in December 2014; and an Air Force base camp in Peshawar in September 2015. According to the South Asian Terrorism Portal (SATP), there were 3,682 fatalities from terrorist-related violence in 2015. This included 940 civilians; 339 security forces personnel; and 2,403 insurgents.

52. The same report contains the following information on internal relocation and on the options for relocation:

5.15 Section 15 of the Constitution guarantees the right to freedom of movement in Pakistan. The country's last census in 1998 underlined the high level of internal migration: almost three million internal migrants moved between provinces, and many more relocated within provinces. The majority of these migrants cited marriage and family reasons for relocating, while others moved because of business and employment opportunities. Almost 17 per cent of those who migrated to different provinces cited 'other' reasons for their decision to relocate.

5.16 Military operations have forced many families to relocate, particularly those in the FATA and parts of Khyber Pakhtunkhwa. Although some Temporary Displaced Persons (TDPs) have relocated temporarily to tented villages, many have resettled with migrant communities or relatives in large urban centres such as Peshawar, Rawalpindi and Karachi. As of

<sup>2</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/361124/Pakistan\\_CIG\\_2014\\_10\\_06.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/361124/Pakistan_CIG_2014_10_06.pdf)



September 2014, there were over 1.3 million UNHCR-registered TDPs in Pakistan due to internal conflict and natural disasters. According to the UN Office for the Coordination of Humanitarian Affairs, over 113,311 families returned to the FATA – including North and South Waziristan and Khyber Agencies – from March-September 2015. Returns to Kurram and Orakzai Agencies recommenced on 1 October 2015, with 3,041 families returning to Kurram and 710 families to Orakzai from October-November 2015.

....

5.18 Because of Pakistan's size and diversity, there are viable relocation options for members of most ethnic and religious minorities: internal relocation offers a degree of anonymity and the opportunity for victims to seek refuge from non-state instigated discrimination or violence. Many large urban centres such as Karachi, Lahore and Islamabad are home to mixed ethnic and religious communities and offer a greater degree of anonymity and better opportunities for employment, access to services and state protection than rural or smaller urban areas.

5.19 The population of Lahore grew from 6.3 million people in 1998 to almost 10 million people in 2014. Compared to many other cities in Pakistan, Lahore remains relatively ethnically homogenous and is majority Punjabi. However, the city's demographics continue to change with ongoing internal migration processes. Approximately one million Pashtuns have migrated to Lahore since the 1980s, for example. The security situation in Lahore remains better than many other places in Pakistan, with lower levels of generalised and sectarian violence than many other major population centres. The Pashtun community in Lahore has told DFAT its members feel safe and do not feel threatened by sectarian violence. Shias in Lahore have similarly told DFAT the security situation has improved because of Operation *Zarb-e-Azb*.

5.20 The population of Islamabad grew from around 800,000 at the time of the 1998 census to almost two million in 2011. Founded in the 1960s, Islamabad has a relatively high population of internal migrants, many from conflict-affected areas in FATA, Khyber Pakhtunkhwa and Balochistan. There are numerous police checkpoints along highways leading into Islamabad, and at major intersections and prominent buildings within the capital. These provide a strong deterrent to militant groups planning attacks in the capital by increasing the risk of detection. Paramilitary Rangers also continue to patrol streets throughout Islamabad, having been deployed throughout the city in April 2014.

5.21 Transportation costs and the higher costs of living in larger cities can operate as a barrier to internal relocation, although they can be offset by higher wages typically received in these locations. However, there are a range of accommodation options in cities like Karachi, Lahore and Islamabad and no evidence to indicate any accommodation shortages.

53. In relation to the targeting of members of the Awami National Party, research reveals that The Awami National Party (ANP) suffered more attacks than any other political party in 2013, with, according to the Pakistan Institute for Peace Studies (PIPS), 43 separate terrorist incidents being recorded in Sindh, Khyber Pakhtunkhwa (KPK), Balochistan, and the Federally Administered Tribal Areas (FATA). PIPS did not record any terrorist incidents involving the ANP in Punjab.<sup>3</sup> The areas in KPK in which terrorist incidents are reported to have occurred are Charsadda, Mardan, Lakki Marwat, Swabi, Peshawar, Swat, Kohat, Nowshera, and Buner.<sup>4</sup>
54. The DFAT Report states the steady migration of Pashtuns from Khyber Pakhtunkhwa and the FATA to Karachi has directly contributed to violence between the armed wings of major political parties, including the Mohajir-based Muttahida Qaumi Movement (MQM), the Sindhi-based Pakistan Peoples' Party (PPP), and the Pashtun-based Awami National Party (ANP), as well as the TTP. In Balochistan, separatist groups such as the Baloch Liberation Army

<sup>3</sup> Pakistan Institute for Peace Studies 2014, *Pakistan Security Report*, January, pp.30-31 <CIS27132>

<sup>4</sup> Pakistan Institute for Peace Studies 2014, *Pakistan Security Report*, January, p.30 <CIS27132>

(BLA) have targeted and killed ethnic Punjabi settlers and others as part of their campaign for independence.

55. The DFAT Report for Pakistan also states the following in relation to the ANP:

Awami National Party (ANP)

3.39 The ANP is a Pashtun nationalist and secular party. Headquartered in Peshawar, the party's power bases are in Khyber Pakhtunkhwa and Balochistan. The ANP formed in 1986 as a successor to the National Awami Party (NAP, a conglomerate of several left-leaning Baloch and Pashtun political groups in Balochistan and Khyber Pakhtunkhwa). The ANP served in several national and provincial coalition governments in the 1990s. Between 2008 and 2013, the ANP governed Khyber Pakhtunkhwa province and formed part of the Federal coalition. DFAT understands that following its loss in the 2013 elections, the ANP's central committee purged its membership lists to remove non-genuine members.

3.40 Like other parties, the ANP acts as a belligerent in, but is also a victim of, politically-motivated violence in Karachi and elsewhere. TTP militants have attacked ANP members because of the ANP's support for counter-insurgency operations in FATA and Khyber Pakhtunkhwa. This violence is decreasing, however, with only two militant attacks on ANP members from January-October 2015: on 2 July, an ANP leader was killed in a gun attack in Charsadda district; and on 5 September, an ANP district councillor was killed in an improvised explosive device attack in Hangu district.

3.41 DFAT assesses that ANP members are subject to a low and declining level of militant violence in Khyber Pakhtunkhwa and Karachi. Although these attacks primarily target high-level leaders, low-level party members have also been subjected to violence.

## RELEVANT LAW

56. The criteria for a protection visa are set out in s.36 of the Act and 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 of the same class.

### Refugee criterion

57. 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).
58. 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.

59. 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.

60. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
61. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). Examples of 'serious harm' are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
62. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
63. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
64. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
65. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
66. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

#### **Complementary protection criterion**

67. 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').

68. '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.
69. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

### **Section 499 Ministerial Direction**

70. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

### **Credibility**

71. The Tribunal accepts that the mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is "well-founded" or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that he or she satisfies all of the required statutory elements. Section 5AAA of the Act provides it is the responsibility of the non-citizen to specify all particulars of his or her claim to be a person in respect of whom Australia has protection obligations, and to provide sufficient evidence to establish the claim. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the Tribunal to establish the relevant facts. A decision-maker is not required to make the applicant's case for him or her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEE* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70.)
72. In determining whether an applicant is entitled to protection in Australia, the Tribunal must first make findings of fact on the applicant's claims. This may involve an assessment of the applicant's credibility and, in doing so, the Tribunal is aware of the need and importance of being sensitive to the difficulties asylum seekers often face. Accordingly, the Tribunal notes that the benefit of the doubt should be given to asylum seekers who are generally credible, but unable to substantiate all of their claims.
73. The Tribunal is not required to accept uncritically any or all allegations made by an applicant. In addition, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been established. Nor is the Tribunal obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant's country of nationality (See *Randhawa v MILGEE* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347

at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547). On the other hand, if the Tribunal makes an adverse finding in relation to a material claim made by an applicant, but is unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true (See *MIMA v Rajalingam* (1999) 93 FCR 220).

### **CONSIDERATION OF CLAIMS AND EVIDENCE**

74. The issue in this case is whether the applicant satisfies the criteria prescribed in s.36(2)(a) or in s.36(2)(aa) of the Act for the grant of a Protection visa. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

#### **Country of reference and third country protection**

75. By reference to the delegate's decision, the Tribunal finds the applicant provided the Department a certified copy of his passport which confirms that he is a national of the Islamic Republic of Pakistan. The delegate noted there are no unresolved issues regarding the applicant's identity. Based on this evidence, the Tribunal accepts the applicant is a national of Pakistan. It therefore finds the country of reference for the purposes of s.36(2)(a), and the 'receiving country' for the purpose of s.36(2)(aa) is Pakistan.
76. There is no evidence before the Tribunal to suggest the applicant has a right to enter and reside, whether temporarily or permanently, in any other third country. The applicant is therefore not excluded from Australia's protection by the operation of s.36(3) of the Act.

#### **Assessment of refugee protection claims**

77. The applicant's protection claims are detailed in the Tribunal's summary of his written claims and its summary of his sworn oral evidence set out above. In brief, he claims faces serious harm, including physical assault and murder, at the hands of the Pakistani Taliban and its agents by virtue of his involvement in the Jirga convened to negotiate the release of his [Relative A] who had been kidnapped by the Taliban, and in particular, his argument with a Taliban [Leader] during the negotiation process. He claims that he also faces a real chance of serious harm from members of the Pakistani Taliban for reasons of his political activities with Awami National Party (ANP) and for spending time in a Western country, and that he would be therefore imputed with a political opinion as being anti-Taliban.
78. The Tribunal found the applicant's sworn oral evidence in respect of his claimed activities was given in a generally consistent and clear manner. It found his claims are also generally consistent with country information about the targeting that may be directed at active members of the Peace Committees, and at active members of the ANP, in the KPK area. The Tribunal accepts that the applicant, alongside his father, was involved in a Jirga convened to negotiate with the local Taliban in an attempt to release his [Relative A], who had been kidnapped for ransom. The Tribunal accepts that the applicant had an argument with the Taliban [Leader] during this negotiation process. The Tribunal accepts that the applicant and his family have had a long history of supporting the ANP, and, that in 2008 the applicant worked for his local MP alongside others as a youth campaigner, arranging party gatherings and public demonstrations. The Tribunal accepts that the applicant received threatening correspondence from the local Taliban due to his activities with the Jirga, or related to his activities with the ANP, or both. The Tribunal is prepared to accept that there was an attempt by the local Taliban to kidnap the applicant. The Tribunal also accepts that the applicant would be considered valuable to the local Taliban because of his time abroad.

79. Having regard to all of the evidence, and to relevant country information, the Tribunal finds that the reason for the threats, and the reason for the kidnap attempt on the applicant, is based on his imputed anti-Taliban political opinion for reasons of his involvement in, and argument with a Taliban [Leader] during, a Jirga, or for his actual political opinion, that is, as a supporter of the ANP, or for both reasons.
80. In considering whether the level of risk rises to the level of being a well-founded fear, the Tribunal considered the test for determining well-founded fear was enunciated by the High Court in *Chan v MIEA*.<sup>5</sup> The Court held that 'well-founded fear' involves both a subjective and objective element. The Tribunal is satisfied, by reference to all the evidence, that the applicant holds a subjective fear of serious harm.
81. In considering whether the fear is well founded, a fear of being persecuted is well-founded if there is a 'real chance' of being persecuted.<sup>6</sup> A 'real chance' is a substantial chance, as distinct from a remote or far-fetched possibility; however, it may be well below a 50 per cent chance. According to Mason CJ in *Chan v MIEA*, the expression 'a real chance':

... clearly conveys the notion of a substantial, as distinct from a remote chance, of persecution occurring. ... If an applicant establishes that there is a real chance of persecution, then his fear, assuming that he has such a fear, is well-founded, notwithstanding that there is less than a fifty per cent chance of persecution occurring. This interpretation fulfils the objects of the Convention in securing recognition of refugee status for those persons who have a legitimate or justified fear of persecution on political grounds if they are returned to their country of origin.<sup>7</sup>

In the same case Dawson J stated:

... a fear can be well-founded without any certainty, or even probability, that it will be realized. ... A real chance is one that is not remote, regardless of whether it is less or more than 50 per cent.<sup>8</sup>

82. Having regard to the above test, and having regard to the evidence of the applicant, which the Tribunal accepts, and having regard to all of the relevant country information, the Tribunal finds the applicant does face a real chance of serious harm in the form of physical assault or murder by elements of the Taliban, now or in the reasonably foreseeable future, if he returns to the Peshawar area, and indeed to the KPK generally.
83. Having regard to the country information cited above on state protection and on the limited effectiveness of the police in the KPK, the Tribunal is not satisfied the applicant is able to avail himself of police protection at the level that would be expected in accordance with international standards in the KPK. The Tribunal must therefore now consider whether it is reasonable and effective for the applicant to relocate to some other place in Pakistan where there would not be an appreciable risk of the harm he faces in Peshawar, KPK.

### Relocation

84. Having found that there is a real chance the applicant will face serious harm upon his return to Peshawar, KPK, his home region, the Tribunal must also consider whether there is a real chance that the applicant will suffer serious harm if he relocates to another area of Pakistan, such as Karachi, Islamabad or Lahore. As the relevant law provides, the Tribunal must determine if there is an "appreciable risk of the occurrence of the feared persecution"

<sup>5</sup> (1989) 169 CLR 379 at 396.

<sup>6</sup> *Chan v MIEA* (1989) 169 CLR 379 per Mason CJ at 389, Toohey J at 406-7, Dawson J at 396-8, McHugh J at 428-9.

<sup>7</sup> (1989) 169 CLR 379 at 389.

<sup>8</sup> *Chan v MIEA* (1989) 169 CLR 379 at 397-398.

throughout Pakistan, and, if not, whether it would be “reasonable”, in the sense of “practicable”, to expect the applicant to seek refuge in another part of the same country. What is “reasonable” in this sense depends on the particular circumstances of the applicant and the impact on him of relocation.

85. The UNHCR Internal Flight Guidelines at paras 29 and 30 states:

If the situation is such that the claimant will be unable to earn a living or to access accommodation, or where medical care cannot be provided or is clearly inadequate, the area may not be a reasonable alternative. It would be unreasonable, including from a human rights perspective, to expect a person to relocate to face economic destitution or existence below at least an adequate level of subsistence. At the other end of the spectrum, a simple lowering of living standards or worsening of economic status may not be sufficient to reject a proposed area as unreasonable. Conditions in the area must be such that a relatively normal life can be led in the context of the country concerned. If, for instance, an individual would be without family links and unable to benefit from an informal social safety net, relocation may not be reasonable, unless the person would otherwise be able to sustain a relatively normal life at more than just a minimum subsistence level.

30. If the person would be denied access to land, resources and protection in the proposed area because he or she does not belong to the dominant clan, tribe, ethnic, religious and/or cultural group, relocation there would not be reasonable. For example, in many parts of Africa, Asia and elsewhere, common ethnic, tribal, religious and/or cultural factors enable access to land, resources and protection. In such situations, it would not be reasonable to expect someone who does not belong to the dominant group, to take up residence there. A person should also not be required to relocate to areas, such as the slums of an urban area where they would be required to live in conditions of severe hardship.

86. The Tribunal is satisfied that the applicant, as a citizen of Pakistan, has the right to relocate within Pakistan and that there is freedom of movement of Pakistani citizens throughout the country. The DFAT Report (15 January 2016) indicates that many persons formerly displaced from parts of the KPK due to past conflict have since been resettled in KPK or successfully relocated to other parts of Pakistan, and identifies that options are available for most ethnic and religious groups to relocate to large, urban centres, that are home to mixed populations with access to services and employment opportunities.

87. The Tribunal notes that it is not required to identify any particular location within Pakistan where the applicant could relocate to.

88. The applicant claims he would not be safe from the Taliban anywhere in Pakistan as the Taliban have a network throughout the country and would search for him, to harm him, throughout Pakistan. The Tribunal accepts that country information indicates that the security situation varies greatly within different parts of Pakistan and there are a number of areas within the country which remain relatively free from the threat of militant, sectarian and politically motivated violence, particularly outside of FATA, KPK and Balochistan.

89. The Tribunal notes that the DFAT Report indicates that the Taliban is a loose network of Sunni militant groups, and whilst they have attacked targets throughout Pakistan, these attacks were against security forces and institutions, political rivals, civilian infrastructure and non-Sunni minorities. The Tribunal accepts that the country information suggests the Taliban is a network of militant organisations which did not have the level of cohesion and integration to target locally known activists outside of their home regions, or that there was a Taliban wide 'hit list'. The Tribunal notes that there is a significant population of Pashtuns in Lahore, that state protection is more available, and Taliban or other militant Sunni activities are less prevalent in Lahore. The Tribunal notes that country information indicates that the Taliban were most active in KPK and the FATA; that urban areas in other parts of Pakistan saw relatively few attacks; and that the attacks that did occur were targeted against military or other authorities or minorities. The Tribunal is satisfied that the applicant would not be characterised in any of these categories.

90. Having regard to all of the evidence, the Tribunal considers the DFAT country information is reliable and current where it reports that internal relocation offers a degree of anonymity and the opportunity for victims to seek refuge from non-state instigated discrimination or violence. The Tribunal considered the DFAT reports that many large urban centres such as Karachi, Lahore and Islamabad are home to mixed ethnic and religious communities and offer a greater degree of anonymity and better opportunities for employment, access to services and state protection than rural or smaller urban areas.
91. The Tribunal considered the applicant's circumstances. It accepts that the applicant faces a real chance of serious harm arising from his involvement in a Jirga, and in particular because of an argument with a Taliban [Leader] during the negotiation process, and as a supporter of the ANP, and because he has lived abroad, in his home region of Peshawar, KPK. However, the Tribunal does not accept that the real chance or real risk exists across Pakistan generally. Based on the evidence before it, the Tribunal does not accept that the applicant or his family have such distinction in the Jirga that the Taliban would seek to harm him by pursuing him in other locations within Pakistan. Nor does the Tribunal find that there is a real chance the Taliban would pursue the applicant outside of his general home area, or KPK, for reasons of his or his family's association and activities with the ANP. On the evidence before it, the Tribunal assesses the applicant's activities to be largely confined to the local level, and not extending beyond the KPK, and not at a high profile level.
92. The Tribunal assesses that the country information in relation to Jirga or Peace Committees demonstrates that acts of violence against Peace Committee members are limited to the locations that they operate, in the KPK region. The Tribunal has not identified information about Peace Committee members being targeted outside the location of the operating Peace Committee, or the KPK generally. The Tribunal has not identified information that demonstrates that Peace Committee activists have been targeted for harm in locations such as Lahore or Islamabad.
93. The applicant has claimed that he would be targeted across Pakistan because of his actual and imputed political opinion against the Taliban. The Tribunal considers that the majority of Pakistan's population would not support the Taliban or their beliefs or activities. The Tribunal considered country information indicates the majority in Pakistan is against the Taliban and their violent activities. It is generally accepted that the present government of Pakistan opposes the Taliban and has mounted significant operations against their activities in the western regions of Pakistan. The Tribunal therefore considers that the actual and imputed political opinion is the dominant opinion in the broader population in Pakistan. Therefore, the Tribunal does not accept that the applicant would be required to suppress his past and his anti-Taliban beliefs to avoid persecution.
94. The Tribunal accepts that the applicant would be seen by the Taliban to be against them, and his actual activities with the Jirga and ANP, provides demonstration of this. However, the Tribunal does not accept that the Taliban would seek to harm the applicant because of his actual and imputed anti-Taliban political opinion across all parts of Pakistan. The Tribunal has not accepted that the Taliban would target him because of his activities in the Jirga and ANP, manifestations of his actual political opinion, in all of Pakistan. The Tribunal does not accept that the applicant has a profile outside his home area that would cause him to be a target for Taliban operating outside his home area. The Tribunal does not accept that the Taliban would devote resources, even if they had such resources and coordination which as a loose network the Tribunal does not accept they have, to trace the applicant to one of the large urban cities suggested by the DFAT country information as being relatively safe.
95. The Tribunal considered the applicant's Pashtun ethnicity in Pakistan, and whether he would be harmed because of this ethnic background. The applicant's appearance, accent and ID card may identify him as a Pashtun. The Tribunal notes that there are sizeable populations



of Pashtuns in Pakistan outside of KPK and FATA, including in locations such as Karachi, Islamabad and Lahore. DFAT identified that there is a population of around 1 million Pashtuns in Lahore.

96. DFAT have commented that Pashtuns are well represented at all levels of society in Pakistan and that they have historically dominated employment in the transport sector and are well represented in security forces. A large number of Pashtuns work in merchant trades though they also occupy less desirable jobs. Pashtun migrants comprise approximately 70% of local business owners in Lahore. DFAT have commented that there are anecdotal reports of some Pashtun migrants experiencing difficulties obtaining identity cards and that the broader Pashtun community in Lahore has reported harassment from local police authorities at checkpoints, in the Pashtun-dominated Shalom Market and in Pashtun settlements. The harassment has increased since the implementation of the National Action Plan to counter terrorism in December 2014. There is also ethnic Punjabi resentment about the pecuniary success of Pashtun migrants in Lahore and the fact that Punjab is hosting an unprecedented number of displaced persons. DFAT state they are not aware of any of these problems occurring in Islamabad or Rawalpindi. The Tribunal does not however, consider any of these problems constitute either serious harm or significant harm or that they provide the basis for finding that the applicant's chance or risk of serious harm or significant harm is more than remote.
97. The Tribunal notes that there is some concern that the Pashtun population in Pakistan supports the Taliban and other insurgent groups. There is information that the authorities have harassed some Pashtuns in locations outside KPK and FATA. The city of Karachi is also identified as a location where there is violence against Pashtuns, though this often also relates to political conflicts of popular Pashtun parties such as the PPP and ANP, opposed by the MQM. In other locations in Pakistan, reports of violence against Pashtuns are limited and isolated. The Tribunal does not accept that the country information demonstrates that Pashtuns are being targeted, although there are some rare instances. The Tribunal considered that country information does not demonstrate that the chance or risk of being harmed as a Pashtun in locations such as Islamabad, Rawalpindi or Lahore is any more than a remote chance, and not one that could be determined to be a real chance or real risk of occurring. After considering all the evidence and based on the country information, the Tribunal does not accept that there is a real chance or real risk the applicant faces harm because of his Pashtun ethnicity.
98. The Tribunal has had regard to the advice of the DFAT to the effect that people who have spent time in western countries are not at any increased risk in Pakistan because of the time they have spent in western countries and that it has no evidence that individuals will be subject to discrimination or violence as a result of having spent time in western countries. On the basis of this information, the Tribunal does not accept that there is a real chance or real risk the applicant faces harm because of the time he has spent in Australia.
99. Based on all the evidence and country information, the Tribunal does not accept that the applicant has a real chance of serious harm or a real risk of significant harm, in all of Pakistan, because of his activities with a Jirga, or because of his or his family's past activities and support for the ANP, in Peshawar, KPK. Nor does it find the applicant faces a real chance or a real risk of serious or significant harm throughout Pakistan for reasons of his actual and imputed anti-Taliban political opinion, either individually or cumulatively.
100. The Tribunal considers that the applicant's past political activism with the ANP and his past activity with the Jirga demonstrates that it is plausible that he would seek to involve himself in various activities in other locations in Pakistan. However, the Jirga system appears to be a practice that exists in the Swat area and KPK more generally but is not found elsewhere in

Pakistan. The Tribunal therefore finds that there is not a real chance of the applicant facing serious harm or a real risk of significant harm for this reason.

101. The Tribunal accepts as plausible that the applicant may involve himself in ANP activities on return to Pakistan. The ANP exists across Pakistan, including in Karachi, Islamabad and Lahore. The Tribunal accepts that while there have been some killing of members of the ANP in Karachi recently, at the same time the ANP had an active branch in Lahore. Based on country information, such as that in the DFAT country reports, the Tribunal considers that the applicant would be able to participate in the ANP should he choose to do so. The Tribunal has not identified information that ANP members in Lahore are being harmed. The Tribunal finds the applicant does not have a real chance of serious harm or a real risk of significant harm for this reason.
102. The Tribunal considered the applicant's individual circumstances, including his involvement with the Jirga in his home area, his ANP activities and his profile, his perceived anti-Taliban opinion, his Pashtun ethnicity, and his time abroad. It considered these factors individually and cumulatively and after considering the relevant country information, including the relocation options discussed in the DFAT report, concludes that there is not an appreciable risk of the applicant being seriously harmed now or in the reasonably foreseeable future if he relocates to one of the areas identified in the country information. Further, the Tribunal considers that the applicant may, if he so wishes, continue to pursue his interest and participation with the ANP in one of the larger urban cities outside of the Peshawar, KPK area.
103. Based on the evidence before it, the Tribunal does not accept that the applicant has a real chance of serious harm or a real risk of significant harm due to Taliban activity across Pakistan. The Tribunal does not find that the applicant, as someone who was involved in a Jirga and ANP in the KPK region, and having an anti-Taliban opinion, and having spent time abroad, would be of interest to the Taliban or any other insurgent group in other locations within Pakistan. The Tribunal does not accept that the Taliban would seek to harm the applicant in locations outside of KPK more generally. The Tribunal considers that there are locations within Pakistan where the applicant, as an ANP member and supporter, and as someone who does not support the Taliban, individually and cumulatively, can relocate to where he does not face a real chance of serious harm, or a real risk of significant harm.
104. Having determined that the applicant does not face a real chance of serious harm or a real risk of significant harm outside of his home region, the Tribunal must then consider the reasonableness, in the sense of "practicable", depending upon the particular circumstances of the applicant and the impact upon that person of relocation within his country of the relocation.
105. Having regard to the applicant's particular circumstances, it finds that he would be able to find work of some kind in Pakistan if he were to relocate to a large urban centre. It finds the applicant is Tertiary educated and has prior work experience in [occupation] as well as recent work experience in Australia. It finds he is familiar with relevant languages, including Urdu and English. It finds he has experience both in Pakistan and in Australia in finding employment and accommodation. The Tribunal does not accept the country information before it suggests the applicant will be denied employment of some kind, or that he will not be able to secure some form of work in a reasonable period or that he will not be able to find some form of accommodation within a reasonable period.
106. In considering the reasonableness of relocation, the Tribunal considered the applicant's claim of fearing harm elsewhere in Pakistan. It also considered his fear of harm outside of his local area on the basis of his association and relative profile with the ANP, together with his Pashtun ethnicity and the level of generalised violence. The Tribunal finds that these

factors do not give rise to any unreasonableness or practical realities such that he would not be able to relocate, or that relocation in all his circumstance would be unduly harsh or otherwise unreasonable.

107. The Tribunal is satisfied that the applicant's wife would be able to join him wherever he relocated to in Pakistan. The Tribunal has found the applicant does possess the skills and experience to find employment and accommodation in another part of Pakistan, and accordingly he would be able to support his wife if she relocated to be with him.
108. The Tribunal has considered the totality of the applicant's circumstances as a Pashtun from Peshawar, KPK who has been targeted for harm by the Taliban for his actual and imputed political opinion, his and his family's connection with the ANP and Jirga activities in Peshawar, KPK. It also considered that the applicant has left Pakistan and then sought asylum and will be returning as a failed asylum seeker, having spent time in Australia, a Western Country. After considering all of the evidence, and after considering the cumulative effect of the circumstances, the Tribunal is satisfied, that in all the circumstances he would reasonably be expected to face in the place of relocation, and the impact on the applicant of being sent to the place of relocation, that it is reasonable for the applicant to relocate to an urban area outside his home area.
109. For these reasons, the Tribunal finds that there is not a real chance that the applicant will be persecuted for reasons of his political opinion, imputed or otherwise, or for any other Convention reason, either individually or cumulatively, now or in the reasonably foreseeable future, in another part of Pakistan, outside his home area. Accordingly, the Tribunal finds that the applicant does not have a well-founded fear of persecution if he returns to Pakistan now or in the reasonably foreseeable future.
110. For this reason and for the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention.

#### **Complementary protection**

111. In considering whether the applicant meets the complementary protection criterion under s.36(2)(aa), 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 his receiving country, there is a real risk that he will suffer significant harm.
112. Whilst the Tribunal accepts that the applicant may face a real risk of significant harm if he is removed from Australia and returns to his home area of Peshawar in KPK, for the reasons set out in detail above, the Tribunal has found that relocation to another part of Pakistan is both safe and reasonable in all the circumstances of the applicant. The Tribunal has found that it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that he will suffer significant harm. Subsection 36(2B)(a) therefore provides that in such circumstances it is taken that there is not a real risk that the applicant will suffer significant harm if he is removed to the relevant receiving country.
113. Under s.36(2B)(c) of the Act there is taken not to be a real risk that an applicant will suffer significant harm if the Tribunal is satisfied that the real risk is one faced by the population generally and is not faced by the applicant personally. The Tribunal accepts that there is a level of generalised violence in Karachi, Lahore or in Islamabad although it is sporadic and not common. The Tribunal considers that the risk of the applicant being harmed in this violence is one faced by the population generally, and not faced by the applicant personally. The Tribunal does not accept that the applicant faces a real risk of harm for this reason.

114. The Tribunal therefore finds that there is not a real risk the applicant will suffer significant harm for any other reason as a necessary and foreseeable consequence of his removal from Australia to the receiving country of Pakistan.

### **CONCLUSION**

115. For the reasons given above, 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).
116. 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).
117. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

### **DECISION**

118. The Tribunal affirms the decision not to grant the applicant a Protection visa.

Nicola Findson  
Member