

1112213 [2013] RRTA 439 (1 July 2013)

DECISION RECORD

RRT CASE NUMBER: 1112213

DIAC REFERENCE(S): CLF2007/191607 CLF2008/153880
CLF2008/6039 CLF2010/142845
CLF2010/55195 CLF2011/83704

COUNTRY OF REFERENCE: Pakistan

TRIBUNAL MEMBER: Amanda MacDonald

DATE: 1 July 2013

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

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 dependent.

STATEMENT OF DECISION AND REASONS

What is the history of the application?

1. The applicant was born in [year deleted] in Karachi, Pakistan. He belongs to the Pashtun ethnic group and to the Afridi tribal group. He is a Sunni Muslim. He has a [qualification and university deleted].
2. The applicant arrived in Australia [in] April 2006 on a Subclass 573 visa. A further student visa application was refused as he failed to make it within 28 days of when his last student visa he held expired [in] September 2007. He unsuccessfully appealed to the Migration Review Tribunal, although it referred the matter to the Minister for consideration on the basis of misinformation the applicant said he received. [In] July 2009, the Minister decided not to intervene.
3. The applicant applied to the Department for a Protection (Class XA) visa [in] October 2010, claiming a fear of persecution on the basis of his political opinion because of his membership of the Awami National Party (ANP).
4. The applicant claimed that his community had been persecuted by the Muttahida Qaumi Movement (MQM) and that members of ANP had been killed by this group, who is a terrorist group working inside the government. His brother, [name deleted], was also a member of the ANP and was kidnapped by the MQM terrorists, tortured and then released with threats of more torture if he continued to campaign for ANP. The incident was reported to the police but no action was taken.
5. The applicant claimed that the MQM had been targeting people of the Pashtun ethnic group who were easily recognised by their features and language. He stated that he feared he would be targeted by the MQM terrorists as he belonged to the Pashtun ethnic group and was also a member of ANP. His [business] in Karachi was damaged by the MQM and that he was forced to pay extortion money to MQM members to operate his business until he left Pakistan. His family's [business] in Karachi was also targeted on a number of occasions. The applicant stated that the Pashtuns boycotted an election held in Karachi in 2010. The MQM party who were in government captured the polling stations and killed two dozen ANP workers mainly of Pashtun background. He further stated that 81 people were killed at the hands of MQM in October 2010 due to their refusal to pay extortion money at the Sher Shah Scrape Market.
6. The applicant stated that letters from the [senior official] of the ANP indicate he was an active member in the party and would be killed if he returned to Pakistan. He had received reports that the MQM party were looking for him and wanted to kill him. He was informed by his parents and the rest of the family that unknown people had come to his house to look for him several times. The [senior official] of ANP was aware of the threats against him.
7. He claimed that the Pakistan authorities were unable to save him as they could not save the Punjab Governor Silliman and the Minister of the Central Government from the Taliban extremists in Islamabad in December 2000 and March 2011, respectively. He stated that his brother was kidnapped by MQM members [in] December 2004, and escaped after being assaulted, stabbed and burned [in] December 2005. He stated that his brother was

attacked again in March 2008 and fled from Pakistan and was granted a protection visa in Australia.

8. The delegate refused to grant the visa [in] October 2011, finding that the applicant could safely relocate to another part of Pakistan. The delegate accepted that the security situation for Pashtuns and supporters of the ANP was such that there would be a real chance the applicant would be persecuted if he returned to Karachi. The delegate also found that state protection would not be available to the applicant in Karachi.

9. The applicant applied to the Tribunal for review and the matter was reconstituted to the current presiding member when the previous member became unavailable to finalise the review. The applicant appeared before the Tribunal [in] April 2013 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's psychologist, [name deleted]. The Tribunal hearing was conducted with the assistance of an interpreter in the Pashto and English languages. The Tribunal allowed the applicant's representative additional time to submit additional material.

What is the relevant law?

10. 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.

11. 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 Refugee as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

12. The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country: *Randhawa v MILGEO* (1994) 52 FCR 437 per Black CJ at 440-1. Depending upon the circumstances of the particular case, it may be reasonable for a person to relocate in the country of nationality to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution. Thus, a person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of 'practicable', to expect him or her to seek refuge in another part of the same country. What is 'reasonable' in this sense must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country. However, whether relocation is reasonable is not to be judged by considering whether the quality of life in the place of relocation meets the basic norms of civil, political and socio-economic rights. The Convention is concerned with persecution in the defined sense, and not with living conditions in a broader sense: *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51, per Gummow, Hayne & Crennan JJ, Callinan J agreeing.

13. 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 – to the extent that they are relevant to the decision under consideration.

What is the issue?

14. The issue in this case is whether the applicant is a person in respect of whom Australia has protection obligations under the ‘refugee’ criterion, in particular whether the applicant has a well-founded fear of being persecuted if he were to return to Karachi and, if so, whether it is reasonable, in the sense of practicable, for him to relocate to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution.

Is the applicant a credible witness?

15. Having carefully considered the evidence before it, the Tribunal finds the applicant to have been a credible witness, and accepts the claims he has made with respect to his background and what he says has happened to him and his family in the past in Pakistan. His evidence to the Department has been detailed and consistent. He has produced a wealth of corroborative evidence, in particular his ANP party membership, letters about his and his family’s involvement with the ANP and documents relating to his brother’s kidnapping. The Tribunal accepts that the applicant and his family have been targeted by the MQM in Pakistan as claimed for reason of their Pashtun ethnicity and for their support and involvement with the ANP. The Tribunal is of the view that the delay in making the protection visa application was due to the problems he experienced with his student visa. The delay in these circumstances is not inconsistent with the applicant’s claimed fear of harm.

Does the applicant have a well-founded fear of persecution?

16. Overall, the Tribunal is of the view that the past treatment of the applicant and his family by the MQM amounts to serious harm for the purposes of s.91R(1)(b) of the Act. The Tribunal is satisfied that political opinion was the essential and significant reasons for the harm suffered as required by s.91R(1)(a).
17. Reports indicate that ANP members are targeted for violence in Karachi, primarily as a result of the political and ethnic/sectarian conflict between the ANP and the MQM.¹ These attacks do not appear to be limited to high profile members². It seems, as detailed in the delegate’s decision, that in Karachi violent conflict between ANP and MQM activists has claimed the lives of a large number of ANP and MQM activists.^{3 4 5 6}

¹ Sayah, R. 2011, ‘In Pakistan’s bloodiest city, violence has little to do with militants’, *CNN*, 23 July <http://articles.cnn.com/2011-07-23/world/pakistan.karachi.violence_1_muttahida-qaumi-movement-awami-national-party-mqm?_s=PM:WORLD> Accessed 20 July 2012; Hashim, Asad 2012, ‘Karachi: Pakistan’s bleeding heart’ 2012, *Al Jazeera*, 19 June <<http://www.aljazeera.com/indepth/features/2012/06/2012677393243533.html>> Accessed 6 August 2012; Vira, V. & Cordesman, A.H. 2011, *Pakistan: Violence Vs. Stability*, Center for Strategic & International Studies, 5 May, p.116 http://csis.org/files/publication/110504_stabilizing_pakistan.pdf – Accessed 21 July 2011; Khan, T. 2011, ‘Letter From Karachi: The Violent Fallout of Pakistan’s Urban Bridge’, *Foreign Affairs*, 6 January <http://www.foreignaffairs.com/node/67173> – Accessed 11 January 2011; Rashid, A. 2010, ‘The Anarchic Republic of Pakistan’, *The National Interest*, 24 August <http://nationalinterest.org/article/anarchic-republic-pakistan-3917?page=show> – Accessed 7 January 2011

² Human Rights Watch 2012, *World Report 2012: Pakistan*, 23 January

³ UK Home Office 2009, *Country of Origin Information Report: Pakistan*, 16 April, Section 20.06

⁴ Muller, T.C. et al, 2011, *Political Handbook of the World – Pakistan*, CQ Press, Washington, DC

18. Having considered the available country information together with the analysis in the delegate's decision of the security situation for Pashtuns and supporters of the ANP in Karachi, the Tribunal is satisfied that if the applicant were to return to Karachi and continue his activities at the same level as he has done so in the past, there is a real chance that he would face significant harassment or serious physical harm at the hands of the MQM. The Tribunal is satisfied that such treatment would amount to serious harm for the purposes of s.91R(1)(b) of the Act. The Tribunal is satisfied that the harm the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves selective harassment for a Convention reason.

Is state protection available to him?

19. The Tribunal is of the view that the applicant's claim that he would not be able to access state protection in Karachi accords with the available country information as detailed in the delegate's decision. The Tribunal is therefore not satisfied that the applicant will be able to access state protection in Karachi if he were to return there in the reasonable foreseeable future.

Can the applicant relocate to another part of Pakistan?

20. As put to the applicant at hearing, the Tribunal is of the view that it would be possible for a person with the applicant's profile and involvement with the ANP to safely relocate somewhere else in Pakistan, such as Lahore. According to the Find.Pk website, there are thought to be over one million ethnic Pashtuns in Lahore, or approximately 15 percent of the population.⁷ The ANP has a Punjab branch⁸ and photos posted on the ANP website indicate that the party has held both peace rallies and a Bacha Khan conference in Lahore. No sources indicate that either of these events were targeted by violent extremists.⁹ The Tribunal notes that neither the Human Rights Commission of Pakistan, nor the South Asian Terrorism Portal report that ANP activists or advocates of Bacha Khan were targeted by any political or religious organisation in Punjab.^{10 11} In the Tribunal's view, there is no evidence that the conflict that characterises the relationship between the ANP and the MQM in Karachi is replicated in Lahore or Rawalpindi. The Tribunal is not satisfied that the evidence the applicant has submitted establishes that a person with his profile and involvement with the ANP would be unable to safely relocate to somewhere like Lahore.

⁵ 'Karachi: Report says 1,100 killed in first half of 2011' 2011, *BBC News*, 5 July <<http://www.bbc.co.uk/news/world-south-asia-14032082>> Accessed 27 July 2011

⁶ 'Pakistan city of Karachi hit by factional 'bloodbath'' 2011, *BBC News*, 25 July <<http://www.bbc.co.uk/news/world-south-asia-14274981>> Accessed 27 July 2011

⁷ Find.Pk website n.d., *Lahore* <<http://www.findpk.com/cities/html/lahore.html>> Accessed 1 July 2013

⁸ Awami National Party (ANP) 2012, *ANP Punjab – 2011*, 9 March <http://awaminationalparty.org/news/index.php?option=com_content&task=view&id=648&Itemid=1> Accessed 17 April 2012

⁹ Awami National Party (ANP) n.d., *Daily Pictures* <http://awaminationalparty.org/news/index.php?option=com_ponygallery&func=viewcategory&catid=1&startpage=11&Itemid=92> Accessed 17 April 2012; Awami National Party (ANP) n.d., *Daily Pictures* <http://awaminationalparty.org/news/index.php?option=com_ponygallery&func=viewcategory&catid=1&startpage=11&Itemid=92> Accessed 17 April 2012

¹⁰ Human Rights Commission of Pakistan, *State of Human Rights in 2012*, HRC website, March <<http://www.hrcp-web.org/pdf/AR2012/Complete.pdf>> Accessed 1 July 2013

¹¹ South Asian Terrorism Portal, *Punjab Assessment – 2013*, <<http://www.satp.org/satporgtp/countries/pakistan/punjab/2013.htm>> Accessed 1 July 2013

21. However, the Tribunal is of the view that considering the applicant's circumstances, it is not reasonable, in the sense of being practicable, for him to relocate elsewhere in Pakistan. He has been diagnosed with depression and PTSD. In Australia, he lives with and is supported by two of his brothers, one of whom has been granted a protection visa. He would not be in a position to have family support if he were to live elsewhere in Pakistan. Although, the applicant's psychologist told the Tribunal that his symptoms would subside if granted a protection visa and able to live in Australia, she has indicated that if he were to return to Pakistan, he would continue to be under stress and his symptoms would remain. She has described that the applicant's despair has led him to suicidal ideation. In these circumstances the Tribunal finds that it would not be reasonable, in the sense of being practicable for the applicant to relocate elsewhere in Pakistan.

CONCLUSION

22. Having carefully considered the applicant's claims, the Tribunal finds that the applicant has a well-founded fear of persecution for the Convention reason of his imputed political opinion if he returns to Pakistan, now or in the reasonably foreseeable future.
23. For the reasons given above, the Tribunal is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

DECISION

24. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

Amanda MacDonald
Deputy Principal Member