

1203475 [2013] RRTA 493 (25 July 2013)

DECISION RECORD

RRT CASE NUMBER: 1203475

DIAC REFERENCE(S): CLF2011/211242

COUNTRY OF REFERENCE: Pakistan

TRIBUNAL MEMBER: Anthony Krohn

DATE: 25 July 2013

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy section 36(2)(a) of the *Migration Act 1958*, as each of the applicants is a non-citizen in Australia in respect of whom the Tribunal is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol.

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

SUMMARY

1. The applicants, husband and wife, claim protection in Australia as nationals of Pakistan who fear persecution by Lashkar-e-Jhangvi and other Sunni extremists in their country, because the applicants are Shia Muslims, because the first applicant is a teacher – indeed, a teacher of girls - and a volunteer at a Shia mosque where she frustrated an attack by Lashkar-e-Jhangvi, and because the second applicant is active in the practice of his Shia faith, contrary to the policies and wishes of Lashkar-e-Jhangvi and other Sunni extremists.
 - ❖ have well founded fear of persecution for reason of religion, membership of a particular social group or groups, and political opinion, if they return to their home area in Pakistan;
 - ❖ cannot reasonably and safely relocate to another part of Pakistan where they would be safe from persecution;
 - ❖ do not have a right to enter and reside in a third country.
2. The applicants therefore meet a criterion for the grant of a protection visa (“**the visa**”).

CLAIMS AND EVIDENCE

3. The Tribunal has before it and has considered the material in its own file in this matter, and in the file of the department of the Minister for Immigration and Citizenship (“**the Minister**”) relating to the applicants. The Tribunal also has had regard to other material available to it from a range of sources relating to the situation in Pakistan.
4. The applicants were represented in relation to the application for the visa and the application to the Tribunal by their registered migration agent (“**the agent**”).
5. The following is a summary of the applicants’ claims and the evidence before the Tribunal.

The applicants - Reasons for claiming protection

The first applicant

6. The first applicant made the following claims in her application for the visa. (Minister's department's file, folios 34 - 28.)
7. She is a member of a particular Shia sect (that she named). (Minister's department's file, folio 34.)
8. She is a qualified teacher who has taught for several years as a teacher of [an] educational programme (which she specified) and then for a further few years at a [school] (which she named). She gave the dates of her employment. (Minister's department's file, folios 34-33.)

Voluntary work at mosque - incident in 2010

9. She spent some time also as a volunteer assistant for the security of women at a mosque in Karachi. On one occasion 2010, when she was on duty at the mosque, she was grabbed and dragged away by someone who tried to push past her, but she was saved by the guards.

Telephone threats

10. After this incident at the mosque, the first applicant began to receive "blank calls", which at first she took lightly as a prank. They continued and she was receiving these calls once or twice a day. (Minister's department's file, folio 33.)
11. A couple of months after the incident at the mosque, the first applicant received a telephone call from a person who said "we are from Lashkar-e-Jhangvi" She thought this was a joke and hung up, but immediately there was another call and this time the caller said "if you hang [up] again we'll kill you". The caller said "I'm jihadi from Lashkar-e-Jhangvi and you are responsible for the failure of our mission at [Name] Mosque and now you are going to die." The first applicant tried to say that she was not there, but the caller knew her name, address and place of work. (Minister's department's file, folios 33-32.)
12. The first applicant told her parents about the threat. She and they were scared. Her father took action to protect her by driving her to her work. He also sought help from some contacts with the police. (Minister's department's file, folio 32.)

Attack in the street in 2010 – first applicant leaves voluntary work at mosque – attempts to report attack to the police

13. A couple of weeks after the threat by telephone, the first applicant was walking home with a friend when two people came towards her, their faces covered, yelling that they were from Lashkar-e-Jhangvi. They hit her with something very hard and she fell. They told her "leave security at [the mosque] and teaching as you are a girl stay at home. This is your last warning if you do not do as we tell you next time you will be killed". (Minister's department's file, folio 32.)
14. The first applicant's friend took her to a clinic, and then to a particular police station (which she named), but the police did not file any complaint. They did not listen and said that the first applicant and her friend were lying. (Minister's department's file, folio 31.)
15. After this attack, the first applicant was afraid and left her security work at the mosque, but she continued teaching, using school transport which picked her up from home and took her directly to the school. This was a suggestion by her father. (Minister's department's file, folio 31.)
16. Although she took precautions, the first applicant remained afraid and unable to relax. A doctor prescribed medication for her. (Minister's department's file, folio 31.)
17. The day after the attack, the first applicant went with her father to the police station. The police demanded money from her father in order to submit a report; her father refused. The police are corrupt and the first applicant does not trust them. The police did not help Shia people. (Minister's department's file, folio 31.)

18. After this first attack, the first applicant left her volunteer work at the mosque, she stopped receiving threatening calls. (Minister's department's file, folio 30.)

Marriage of the applicants

19. A short time later, the two families of the applicants met to confirm that the applicants would marry. After this, the first applicant in Pakistan was in contact with her husband to be, who was in Australia. The second applicant then went back to Pakistan where the applicants were married. After the marriage, the first applicant moved to the house of her husband's family in Karachi. (Minister's department's file, folio 30.)
20. The first applicant discussed the incidents (of the threats and the attack) with her husband. He said that as she had left her security job she had no problems now. He then returned to Australia. (Minister's department's file, folio 30.)
21. The first applicant became bored at home and spoke about this to her husband. He said she should do some volunteer work to keep her occupied, but not the security work she had previously been doing at the mosque. He said she should do only voluntary work inside the mosque. (Minister's department's file, folio 30.)

More voluntary work at the mosque – more threats

22. About the end of 2010, the first applicant again started doing some volunteer work. There were no problems for some months until, on the date the first applicant gave, she received a call from the same group and they said "you started your volunteer job again now you and your family are going to die". (Minister's department's file, folio 29.)

Attack with knife

23. A few days after this call, when the first applicant was returning from shopping with her sister-in-law, somebody grabbed her around the neck as she was entering her apartment building and tried to kill her with a knife. This person also attacked the first applicant's sister-in-law. The attackers left when a van of the Pakistan Rangers¹ passed by. The first applicant lost consciousness. Her sister-in-law took her into the house.
24. A few hours later, the first applicant got a call telling her "You were lucky this time but we'll kill you. The applicants discussed this attack by telephone. The second applicant said that his wife should apply for a visa to come to Australia. She did so. While she waited for the visa, she moved to another part of Karachi (which she named). (Minister's department's file, folio 29.)

The first applicant's fear

25. The first applicant said in the application for the visa that she fears to return to Pakistan because the Lashkar-e-Jhangvi and their supporters will kill her. They believe that to kill Shias is a way to enter paradise. (Minister's department's file, folio 28.)

¹ The Pakistan Rangers are a paramilitary force.

The second applicant

26. The second applicant did not elaborate any claims of his own in the application for the visas. (Minister's department's file, folios 41-35.)

Interview with the delegate

27. The delegate interviewed the first applicant in connection with the application for the visas. The agent was present at the interview and made submissions in support of the application. At the interview, the first applicant repeated her claims in the application for the visa and also made the following additional points. (Minister's department's file, folios 126-119.)
28. The first applicant is from the province of Sindh in the south of Pakistan. She speaks Urdu and English. She gave details of the family, and her father's occupation. She gave details of volunteer work that she had done as a member of the Shia community over a number of years. (Minister's department's file, folio 125.)
29. The first applicant has no family or friends outside Karachi. (Minister's department's file, folio 124.)
30. The situation in Karachi is very horrifying and life-threatening. Shias are targets for killings. There is no guarantee of safety there. The first applicant fears being killed by Lashkar-e-Jhangvi. (Minister's department's file, folio 124.)
31. The first applicant's security duties at the mosque included physically checking women by running her hands over them at a checkpoint. She used to be the once or twice a week. (Minister's department's file, folio 124.)
32. No part of Pakistan is safe, as there are attacks everywhere in the country. (Minister's department's file, folio 123.)
33. The first applicant was threatened because she was a Shia teacher and a female teacher. (Minister's department's file, folio 123.)
34. The first applicant believes that women should be educated and have equal rights in society. (Minister's department's file, folio 121.)
35. The agent submitted at the interview that there are attacks by Sunni extremists across Pakistan, and that Pakistan is a failed State. (Minister's department's file, folio 120.)

Documents in support of the applications

36. The applicants submitted various documents in support of the application for the visas, including:
 - ❖ extract of birth certificate; (Minister's departments file, folio 60.)
 - ❖ certificates of education; (Minister's departments file, folios 75-61.)
 - ❖ references / certificates from schools where the first applicant taught; (Minister's departments file, folios 78, 59.)

- ❖ affidavit by the first applicant's father, concerning the attack on his daughter at the mosque, and on the way home in 2010, and also mentioning his unsuccessful attempts to report this to the police, telephone threats, and the attack on his daughter in 2011. (Minister's departments file, folios 77-76.)
- ❖ the applicants' marriage certificate; (Minister's departments file, folio 79.)
- ❖ various news reports, and other documents relating to the situation in Pakistan, including an Australian government briefing on Lashkar-e-Jhangvi; (Minister's departments file, folios 164-127, 92-80.)
- ❖ medical certificate relating to the first applicant; (Minister's departments file, between folios 94 & 93.)
- ❖ certificate of the first applicant's volunteer work at the mosque, and of her being attacked in July 2010 when a person tried to force entry. (Minister's departments file, folios 95-94.)

The delegate's reasons for refusing to grant the visa

37. A delegate ("**the delegate**") of the Minister for Immigration and Citizenship ("**the Minister**") refused to grant the visa to the applicants, and notified the applicants of this decision. (Minister's department's file, folios 188-171.)
38. The delegate found that "Pakistani women with liberal views on women's rights in Pakistan does not constitute a particular social group, because it does not have a common attribute or characteristic and may be argued to be constituted only by a shared fear of persecution. (Minister's department's file, folio 178.)
39. The delegate accepted that the first applicant had a subjective fear of harm as a Shia (Minister's department's file, folio 175), but had serious concerns about the credibility of the first applicant arising from inconsistencies the delegate perceived concerning periods of employment, leave and resignation.
40. The delegate noted that with the first applicant's application for the visitor's visa which enabled her to enter Australia, she had submitted a letter in June 2011 from the principal of the school where she was teaching, saying that she had been given two months' leave to run from the grant of her visa, but with her application for the protection visa the first applicant had submitted a letter from the same school saying that she was working there until the month after the grant of the visitor's visa. At the interview with the delegate the first applicant had said that she had resigned when she told the principal of her intention to travel for three months to Australia and the principal, a Sunni, had then said that she could not take the leave. Although the first applicant regarded this as an instance of discrimination against her, the letter from the school submitted with her application for the protection visa referred to her as "hardworking, dedicated and honest". (Minister's department's file, folios 174, 78.)
41. The delegate did not accept that the first applicant was attacked in 2010 or 2011, nor that the threats she received were of a serious nature, as she continued her teaching and returned to her voluntary work at the mosque. (Minister's department's file, folio 174.)

42. The delegate was concerned that the first applicant did not apply for the protection visa until four months after she arrived in Australia, and one month after her visitor's visa had expired. (Minister's department's file, folio 173.)
43. The delegate found also that there were regular acts of violence and suicide attacks against Shias, but did not accept that there was more than a remote chance the first applicant would be targeted for harm for reasons of religion. (Minister's department's file, folios 175-174.)

Additional material before the Tribunal

Further written submission and evidence

44. At the hearing of this matter by the Tribunal, the second applicant submitted a statement in support of the application to the Tribunal. (Tribunal's file, folios 157, copy at folios 96-95.)

The second applicant's claims

45. In his written statement, the second applicant gave details of his and his father's devout practice of the Shia faith. His father is a leader and organizer in their community in Karachi of their particular sect of Shia Islam. (Tribunal's file, folios 96-95.)
46. The second applicant said that his brother had been attacked in a cemetery in Pakistan. The second applicant was fearful of returning to Pakistan. Other members of his extended family "have also been persecuted because of their religious faith." (Tribunal's file, folio 95.)
47. The second applicant fears that he will be targeted as he fully supports his wife in her teaching and in her voluntary work in the mosque. (Tribunal's file, folio 95.)
48. When he was in Pakistan, the second applicant took part in public religious celebrations, for example by distributing food and water to participants in religious processions. He donates money to a religious group in Pakistan. (Tribunal's file, folios 95-94.)
49. The second applicant returned only briefly to Pakistan for his marriage. This was his only brief trip to Pakistan in five years. (Tribunal's file, folio 95.)

Documents in support of the applications

50. The applicants submitted various documents in support of the application to the Tribunal, including:
 - ❖ a psychologist's report, giving the opinion that the first applicant has symptoms consistent with Post Traumatic Stress Disorder; (Tribunal's file, folios 160-159, copy at folios 100-97.)
 - ❖ various news reports; (Tribunal's file, folios 128-101.)
 - ❖ copies of photographs; (Tribunal's file, folios 136-129.)
51. The psychologist's report relevantly said in part:

"These events [threats and attacks] have appeared to significantly affect [the first applicant's] mental health in that she demonstrates anxiety symptoms consistent with PTSD as well as depressive symptoms....

It is my opinion that [the first applicant] requires time and ongoing counselling to work toward recovering from her past trauma in Pakistan and to manage the resulting depressive and anxiety symptoms. Her symptoms are consistent with someone who has experienced trauma such as she has disclosed to me. If she were to return to Pakistan it is likely the symptoms would be exacerbated to an unmanageable level by constant fear of her [child]'s life, her own life, and her husband's life. The likelihood of [the first applicant] being able to access suitable mental health care to manage the symptoms, should she returned to Pakistan is poor.

It is my view [the first applicant] would not be fit to work should she return home and her and her family would be at extreme risk of persecution anywhere in Pakistan given she is a Shi'a Muslim who is promoting the education of females and women in the workforce.

...

Furthermore, due to the extreme nature of [the first applicant's] experiences of trauma in Pakistan, her ongoing depressive and anxiety symptoms that she presents with, I have genuine concerns that [the first applicant] may seek to harm herself if deported due to the strong fears she has for her immediate safety should she return to Pakistan.

(Tribunal's file, folios 98-97.)

The hearing by the Tribunal

52. The applicants appeared before the Tribunal² to give evidence³ and present arguments. Their evidence was detailed, precise, and consistent with the evidence previously given by them.

The evidence of the first applicant

53. The first applicant gave the dates of her employment as a teacher.
54. The first applicant gave evidence of the incident the mosque, of threatening calls, of the threatening call and subsequent attack by Lashkar-e-Jhangvi in 2010, of her voluntary work at the mosque, her desisting from that work and her resumption of it, followed by further threatening calls and attack on her in 2011.
55. The first applicant said that if she returned to Pakistan she would want to teach and to resume her voluntary work at the mosque.

The evidence of the second applicant

56. The second applicant gave detailed evidence concerning his practice of his Shia faith, his work as a volunteer (involved with a group of scouts) at the mosque, his cooperation with his father's work in the Shia community, his father's role as a teacher of the Shia faith, his

² At the request of the applicant, the hearing was postponed from the date initially set by the Tribunal.

³ At the hearing, the applicants submitted some of the documentary evidence listed above.

relationship with the first applicant, consistent with the evidence previously given, as set out above.

57. The second applicant said he had no family outside Karachi.
58. The agent submitted that there was no protection for Shias in Pakistan. He submitted that the applicants could not in their circumstances relocate as they would be without the support of their family and therefore isolated.

Other material relating to Pakistan

59. The Tribunal has available to it a wealth of reports from government and non government sources relating to the situation of Pakistan in general and Shias, and professional Shias, in particular.
60. These reports concur in giving a picture of widespread sectarian violence in Pakistan, and in saying that the government is largely unable, or perhaps unwilling, to protect religious minorities including Shias, and that violence by extremist Sunni militants, including Lashkar-e-Jhangvi, is widespread across the country. It is evident also, from any reports, that extremist Sunni militants including Lashkar-e-Jhangvi direct their attacks not only at Shias and Shia places of worship or religious celebrations in general but also against education Shias, Shia members of the learned professions, especially teachers, female teachers and teachers of women and girls.⁴

Lashkar-e-Jhangvi (LeJ)

61. In a report dated 9 May 2012, *Central Asia Online* reported that sectarian killings and violence had risen in Pakistan in 2012 “as the Tehreek-e-Taliban Pakistan (TTP)-backed militant outfits Lashkar-e-Jhangvi (LeJ) and Jundallah have intensified their “jihad” against a rival religious faction, Shias” Statistics compiled by the South Asia Terrorism Portal indicate that “about 164 people were killed in sectarian attacks” in Pakistan in the period between January and April 2012. During the same period in 2011, 86 people had been killed in sectarian attacks⁵
62. A report from the *BBC Monitoring Service*, published on 16 May 2012, stated that “[a]t least 29 Hazaras were killed in April [2012] alone” in Balochistan, and noted that “the radical Sunni group Lashkar-i-Jhangvi has openly warned members of the community to leave the country.”⁶

Teachers

63. In its *Pakistan Security Report* for 2011, the Pakistan Institute for Peace Studies stated that “Balochistan...remained a hotbed of sectarian-related terrorist incidents, politically motivated target killings, and attacks on teachers...”⁷

⁴ See, e.g., the summaries and extracts of reports at folios 178-168 of the Tribunal’s file.

⁵ Mahmood, J. 2012, ‘TTP-backed militants trigger sectarianism’, *Central Asia Online*, 9 May, copy at folios 180-179 of the Tribunal’s file.

⁶ ‘Q&A: Pakistan’s Hazara Shi’i community facing rising sectarian attacks’ 2012, *BBC Monitoring Service*, 16 May, copy at folios 183-181 of the Tribunal’s file.

⁷ Pakistan Institute for Peace Studies 2011, *Pakistan Security Report 2011*

64. Human Rights Watch issued a report on the targeting of teachers and schools in Balochistan in December 2010:⁸

Teachers, professors, and school administrators have found their lives increasingly under threat in Pakistan's western province of Balochistan. Between January 2008 and October 2010, suspected militant groups targeted and killed at least 22 teachers and other education personnel in the province. Militants have also threatened, bombed, or otherwise attacked schools, resulting in injuries, deaths, property damage, and curtailed education for Balochistan's children and youth. In 2009, government schools were open for only 120 days, compared with around 220 days in the rest of Pakistan.

...

... Education falls in the crosshairs of three distinct violent conflicts in Balochistan. The first is a nationalist conflict, ... While individuals from all professions have been the victims of ... "targeted killings," teachers and students constitute a significant proportion of victims because militant groups view schools and educational personnel, particularly ethnic Punjabis, as representatives of the Pakistani state and symbols of perceived Punjabi military oppression of the province.

....

The second distinct conflict is a sectarian one, in which militant Sunni Muslim groups have attacked members of the Shia community...

The third conflict involves armed Islamist groups attacking those who act contrary to their interpretation of Islam. Armed Islamist militants have increasingly committed violence in opposition to the content and manner of local education, particularly that of girls and young women. There have also been several reported instances of demands that schools stop teaching girls and boys together, and that students and teachers adopt more local and conservative dress.

... Among those targeted and killed by militants have been at least 22 teachers and other education personnel.

Women

65. The *Asian Human Rights Commission* reported in 2011 that although women in Pakistan face 'brutal treatment, including sexual violence by family members, strangers or state agents, honor killings, domestic abuse and torture' and women may be 'burnt, raped and murdered', '[g]enerally the culprits go unpunished because of discriminatory laws, the incompetence, corruption, and sexual biases [...] throughout the judicial system'⁹

66. In January 2012 *Human Rights Watch* reported that in major cities, "intimidation of, and threats to, women and girls by religious extremists increased" in 2011.¹⁰ Mistreatment

⁸ See a more extended extract of this report at folios 184-185 of the Tribunal's file.

⁹ Asian Human Rights Commission 2011, *Pakistan: The State of Human Rights in 2011*, p.77, <<http://www.humanrights.asia/resources/hrreport/2011/AHRC-SPR-008-2011/view/>> Accessed 2 May 2012, copy at folios 187-186 of the Tribunal's file.

¹⁰ Human Rights Watch (HRW) 2012, *World Report 2012: Pakistan*, 23 January, < <http://www.hrw.org/world-report-2012/world-report-2012-pakistan> > Accessed 24 April 2012, copy at folios 190-188 of the Tribunal's file.

of women, including rape, ‘remains a serious problem’ in Pakistan.¹¹ *Amnesty International* stated in their 2011 Annual Report on Pakistan that violence against women was ‘committed with impunity’ as ‘police were reluctant to register and investigate complaints’¹²

67. In its report published in April 2011 on *Human Rights Practices in Pakistan*, the US State Department referred to widespread corruption, in particular in the lower levels of the police force, which went virtually unchecked:

Corruption was widespread within the government and lower levels of the police forces, and the government made few attempts to combat the problem. Rape, domestic violence, sexual harassment, honor crimes, abuse, and discrimination against women remained serious problems.¹³

Security in Karachi

68. In its *Country Reports on Human Rights Practices* for 2011¹⁴, the U.S. State Department said in part:

... the Supreme Court heard a case on its own motion regarding Karachi violence from August 26 to October 6. On October 6, the Supreme Court issued its decree against Sindh provincial authorities for failing to address a breakdown of law and order in Karachi.

Mental health and treatment for mental illness in Pakistan

69. An article in the *Eastern Mediterranean Health Journal*¹⁵ considers the treatment of common mental illnesses in Karachi. The abstract of the paper relevantly says in part:

*“ This study assessed the knowledge and management of common psychiatric disorders by general practitioners (GPs) in Karachi, Pakistan. Structured interviews were carried out in 2009 with 360 GPs selected by cluster random sampling. **Patients with psychiatric disorders were estimated to be up to 10% of the daily caseload according to 71.8% of doctors. Two-thirds of GPs were unaware of the ICD-10 diagnostic criteria for depression and anxiety disorders. Benzodiazepines were the most recognized category of medication (75.3%) and were the most commonly used medication for all mental health conditions. Fewer GPs were familiar with selective serotonin reuptake inhibitors (35.1%) or tricyclic antidepressants (20.2%). Lack of time and patients’ financial constraints were reported to be barriers to care. Most GPs (69.2%) had not received any recent medical education about mental health problems. Gaps in GPs’ knowledge about the management of mental disorders have implications for the rational use of psychotropic medications in primary care.**”* (Emphasis added.)

¹¹ Ibid.

¹² Amnesty International 2011, *Amnesty International Annual Report Pakistan 2011*, 13 May, CISNET Pakistan CX264932 .

¹³ US Department of State 2011, *2010 Human Rights Report: Pakistan*, 8 April, Initial Section , <<http://www.state.gov/j/drl/rls/hrrpt/2010/sca/154485.htm> > Accessed 30 April 2012 .

¹⁴ <http://www.state.gov/j/drl/rls/hrrpt/2011/humanrightsreport/index.htm#wrapper>, accessed 24 July 2013

¹⁵ H.A. Naqvi,1 S. Sabzwari,2 S. Hussain,1 M. Islam 2 and M. Zaman 3 “General practitioners’ awareness and management of common psychiatric disorders: a community-based survey from Karachi, Pakistan”, in *Eastern Mediterranean Health Journal*, (Volume 18, no. 5, 2012). Paper accessed by the Tribunal on 24 July 2012 at www.emro.who.int/emhj/v18/05/18_5_2012_0446_0453.pdf

70. The World Health Organization, Regional Office for the Eastern Mediterranean, in a report titled “*Mental health in the Eastern Mediterranean Region - Reaching the unreached*”¹⁶ relevantly says in part:

(p. 209) Overview

Pakistan comprises four provinces: Baluchistan, North-west Frontier Province, Punjab and Sind, in addition to the federally administered tribal areas and federal capital territory of Islamabad. It is bordered by China, Afghanistan, Islamic Republic of Iran and India, having a population of 151.8 million

(p. 210) Mental health ...

*There are two centres at Lahore and Karachi for training of clinical psychologists, and they train about 20 clinical psychologists every year. **Currently about 400 clinical psychologists are available in the country.***

(p. 211) Psychiatric nursing is being offered as a separate subject at all the nursing institutions in the country, ... A two-year postgraduate diploma for psychiatric nursing has been initiated in nurses training colleges in the country, and so far 52 psychiatric nurses have qualified. In addition, 287 nurses have been trained at the Institute of Psychiatry, Rawalpindi, in community psychiatric nursing.

There is no provision for training of psychiatric social workers at the university departments. Thirty social welfare officers have received training at the Institute of Psychiatry, Rawalpindi, as part of the human resources development initiative.

*Epidemiological studies carried out in Pakistan have shown that **10%– 66% of the general population suffers from mild to moderate psychiatric illnesses in addition to the 0.1% suffering from severe mental illnesses ...***

....

*In the light of the above facts it is evident that **it will not be possible in the foreseeable future to realize the objective of the national programme of mental health if reliance is placed exclusively on specialized human resources. ...***

(p. 217) Mental health resources...

(p. 218) Mental health facilities

***Mental health is a part of the primary health care system. Actual treatment of severe mental disorders is available at the primary level.** The programme has initially started in Punjab, the largest province, in 1985 and is being extended to others over the years. There are many residential and day-care facilities, especially for people with learning disabilities providing social, vocational and educational activities.*

***Regular training of primary care professionals is carried out in the field of mental health.** Training programmes have started in the province of Punjab as a part of in-service training for primary care personnel. Till now, approximately 2000 primary care physicians and 42 000 primary care workers have been trained....*

(p. 219) There are community care facilities for patients with mental disorders.....

Psychiatric beds and professionals

Total psychiatric beds per 10 000 population 0.24

Psychiatric beds in mental hospitals per 10 000 population 0.06

¹⁶ “*Mental health in the Eastern Mediterranean Region - Reaching the unreached*” (WHO Regional Publications, Eastern Mediterranean Series 29), dated 2006, accessed by the Tribunal at www.emro.who.int/dsaf/dsa702.pdf on 24 July 2012.

<i>Psychiatric beds in general hospitals per 10 000 population</i>	0.148
<i>Psychiatric beds in other settings per 10 000 population</i>	0.02
<i>Number of psychiatrists per 100 000 population</i>	0.2
<i>Number of neurosurgeons per 100 000 population</i>	0.2
<i>Number of psychiatric nurses per 100 000 population</i>	0.08
<i>Number of neurologists per 100 000 population</i>	0.14
<i>Number of psychologists per 100 000 population</i>	0.2
(p. 220)	
<i>Number of social workers per 100 000 population</i>	0.4

*There are about 2000 other mental health personnel. There are four mental health hospitals in the country....*¹⁷

FINDINGS AND REASONS

Section 499 Ministerial Direction

71. The Tribunal is required, by Direction No. 56, made by the Minister under section 499 of the Migration Act 1958 (“**the Act**”), to take account of policy guidelines prepared by the Minister’s department, namely *PAM3 Refugee and humanitarian - Complementary Protection Guidelines* and *PAM3 Refugee and humanitarian - Refugee Law Guidelines* – to the extent that they are relevant. The Tribunal has done so.

Criteria for a protection visa

72. Under section 65(1) of the Act, a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied.
73. The criteria for a protection visa are set out in section 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 section 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 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**”), or on other ‘complementary protection’ grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under section 36(2) and that person holds a protection visa.

Protection under the Refugees Convention – section 36(2)(a)

74. Section 36(2)(a) of the Act 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 Convention.

¹⁷ Ibid., pp. 209-220.

Definition of ‘refugee’

75. 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.

Credibility

76. The Tribunal finds that the evidence of the applicants, oral and written, was detailed, precise, and highly consistent – internally, with the evidence of each other, and with the evidence from independent sources concerning the situation in Pakistan.

Documents from the first applicant’s school

77. The Tribunal accepts the evidence of the first applicant about her employment and her application for leave, her being granted two months’ leave but being refused a later request for three months’ leave. The Tribunal notes the applicant’s evidence that she believed this was discrimination against her as a Shia by the Sunni principal of the school, but makes no finding whether this was so. The Tribunal accepts that whether with good grace or good will or not, employers may refuse to grant additional leave and yet be willing to give a brief reference of good character. The Tribunal does not find that the documents submitted by the applicant are contradictory, nor that they raise any problem with the applicant’s credibility.
78. The Tribunal does not find that the timing of the application for the protection visas - four months after the first applicant arrived in Australia, and one month after her visitor’s visa had expired – is a significant delay nor that it undermines the credibility of the applicants.
79. The Tribunal finds that the applicants are truthful, intelligent and reliable witnesses and accepts their evidence as an accurate account of the things known to them. It accepts that they are genuinely fearful of persecution if they return to Pakistan.

Nationality

80. The applicants claim to be citizens of Pakistan and of no other country. There is no evidence to the contrary.
81. The Tribunal notes that the applicants entered Australia travelling on Pakistani passports in their own names. (Minister's department’s file, folios 40, 25, Minister’s department’s records, extracts at folios 167-165 of the Tribunal’s file.)
82. The Tribunal finds by reference to the applicants’ evidence and claims about citizenship, and by reference to the evidence of their holding Pakistani passports, that the applicants are citizens of Pakistan and of no other country.

No right to enter and reside in a third country - no bar under section 36(3)

83. The Tribunal finds by reference to the applicants' evidence, their claims in the application for the visa, and to other evidence before it, that the applicants have claimed to have no right to enter and reside in any other country than their country of nationality, and that there is no evidence to the contrary.
84. The Tribunal finds, by reference to the findings set out above, that the applicants do not have a right to enter and reside in any other country than their country of nationality, and that therefore they are not barred by section 36 (3) of the Act from being persons in respect of whom Australia has protection obligations.

Applicant outside country of nationality

85. The Tribunal finds by reference to the material before it including the applicants' own evidence and the records of the Minister's department that the applicants are outside their country of nationality. (Minister's department's movement records, an extract of which appears at folios 167-165 of the Tribunal's file.)

The applicants' claims to fear persecution

86. The Tribunal finds, by reference to the material before it, including the evidence and submissions by and on behalf of the applicants, that they have claimed to fear harm in the form of being kidnapped or killed by members of Lashkar-e-Jhangvi or other Sunni extremists.

Serious harm – Section 91R(1)(b)

87. The Tribunal finds that the applicants' fear of harm is a fear of serious harm of kinds which fall within the meaning of section 91R(2) (a), (b) or (c) of the Act, and, therefore, within the meaning of section 91R(1)(b) of the Act.
88. It follows from this finding that section 91R(1)(a) of the Act does not operate to prevent Article 1A(2) of the Convention, which defines a refugee in terms of fear of persecution, from applying to the persecution that the applicants fear.

Does the applicant fear persecution for a reason under the Convention? – Would a reason or reasons under the Convention be the essential and significant reason for the harm the applicant fears? - Section 91R(1)(a)

89. The Tribunal finds, by reference to all the material before it, that the applicants claim to fear harm, or the evidence before the Tribunal raises question whether they fear harm, for the following reasons.
90. The Tribunal finds, by reference to all the material before it, that the first applicant fears persecution for reason of:
 - ❖ religion (as a Shia);
 - ❖ membership of particular social groups (as a Shia professional, a Shia teacher, a woman teacher, a woman working outside her home, and as a volunteer at her Shia mosque);

- ❖ imputed political opinion (as opposed to the Lashkar-e-Jhangvi and Sunni extremists).

(Minister's department's file, folios 34-28.)

91. The Tribunal finds, by reference to all the material before it, that the second applicant fears persecution for reason of:

- ❖ religion (as a Shia);
- ❖ membership of a particular social group (as a member of his wife's family);
- ❖ imputed political opinion (as opposed to the Lashkar-e-Jhangvi and Sunni extremists).

(Evidence of the second applicant at the hearing.)

Would the persecution feared by the applicants involve systematic and discriminatory conduct? – Section 91R(1)(c)

92. The Tribunal has found, by reference to the material before it, that the harm the applicants fear would be directed against them for reason of religion, membership of a particular social group or groups, or political opinion. The Tribunal therefore finds that the harm they fear would involve systematic and discriminatory conduct and therefore meets the requirements of section 91R(1)(c) of the Act.

Conclusion – the applicant's claims satisfy section 91R(1)

93. The Tribunal's findings set out above in relation to section 91R(1)(a), (b) and (c) mean that the applicants' claims satisfy the requirements of section 91R(1) of the Act.

Assessment of the claims for protection

1. Situation in Pakistan

94. In making the following observations and findings concerning the situation in Pakistan in general and the situation of the applicants in particular, the Tribunal refers not only to the evidence of the applicants but also to the additional information available to it, both the information submitted by the applicants and also the information from various sources independent of the applicants, concerning the situation in Pakistan.¹⁸

The government of Pakistan and its control of the country

95. The Tribunal finds by reference to the ample material before it that the government of Pakistan has not had stable control of the whole of the country, and that at times it has not only lost control of large areas of the North West to the Taliban or their allies, but has both openly acknowledged this loss of control by urging the local populations either to evacuate or to make an accommodation with the Taliban and has also, at least at times, on the part of

¹⁸ The material at Tribunal's file, folios 190-168 is a representative selection of ample material all tending to give the same picture of the situation in Pakistan.

some of its members, tended to be allied with the Taliban because of a sympathy with their promotion of the Sunni school of Islam.¹⁹

Persecution of Shias

96. The Tribunal finds, by reference to the ample material before it, that various Sunni extremist groups including Lashkar-e-Jhangvi have made many violent - and frequently lethal - attacks against Shia Muslims across Pakistan, including Peshawar, Lahore, Islamabad – Rawalpindi, and Karachi, and that there have been particular targets of attack amongst leading, professional or well educated Shias.²⁰ The Tribunal finds that there is a pattern of targeted attacks against Shias, directed at them at their mosques or religious celebrations (including processions) and also at their places of work if they are members of the professions.
97. The Tribunal finds, by reference to the ample material before it, that various Sunni extremist groups including Lashkar-e-Jhangvi are deeply opposed to the education of girls and to women working outside the home, especially as members of the learned professions.

Mental health and psychiatric resources in Pakistan

98. The Tribunal finds, by reference to the material before it, including the report quoted above “*Mental health in the Eastern Mediterranean Region - Reaching the unreached*”²¹ that there is very limited and inadequate access to professional psychiatric and clinical psychological assistance in Pakistan.

Prospects for change

99. The Tribunal finds that there is little likelihood of an imminent and lasting change from the current situation of widespread sectarian violence against Shias, teachers of girls, and Shia men and women in professional life, or of any change from the current substantial degree of inability or unwillingness of the authorities to control sectarian violence against Shias,

2. The applicants’ profile

100. The Tribunal accepts as truthful and reliable the applicants’ evidence about themselves and their history.

Shias – active involvement in the practice of the Shia faith

101. The Tribunal finds by reference to the material before it, including the applicants’ evidence, that they are both Shia Muslims of a particular sect.
102. The Tribunal finds by reference to the material before it, including the applicants’ evidence, that the first applicant has done sustained and systematic voluntary work within

¹⁹ See, for example, reports of internal displacement of over a million persons from FATA in *Country Reports on Human Rights Practices for 2011*, published in 2012, the United States’ State Department’s report for Pakistan; evidence of failure by Pakistani authorities to control violent attacks on Shias across Pakistan, in a report dated 21 September 2011 by Amnesty International.

²⁰ See e.g. the reports mentioned at folios 183-168 of the Tribunal’s file, many of which relate to attacks against Shias across Pakistan.

²¹ WHO Regional Publications, Eastern Mediterranean Series 29, dated 2006, quoted at para. 71 above.

her Shia mosque, including, during the first period of this voluntary work, being on duty at a security checkpoint, checking people as they came into the mosque.

103. The Tribunal finds by reference to the evidence of the applicants that in 2010, that the first applicant was instrumental in preventing a person from passing checkpoint in her mosque, that she was grabbed by this person, and that she was rescued by the guards of the mosque.
104. The Tribunal accepts the second applicant's evidence that both his father and he were involved in various activities in their Shia community and mosque, including the activities of the second applicant in helping to distribute food and drink to participants in public Shia celebrations.
105. The Tribunal finds, by reference to the evidence of the applicants, that both are seriously committed to their Shia faith.

The first applicant – a female teacher of girls

106. The Tribunal finds by reference to the material before it, including the applicants' evidence, as did the delegate, that the first applicant is qualified as a teacher in Pakistan and has worked as a teacher in schools she claimed, and that in her work as a teacher she taught according to a [programme] of education and that she taught girls.

The first applicant – threats and attacks

107. The Tribunal finds, by reference to the evidence of the applicants, that the first applicant was threatened with death, and also attacked and injured, by Lashkar-e-Jhangvi in 2010 because of her work as a security volunteer at her Shia mosque, and particularly because she was involved in an incident where she prevented a person from passing a checkpoint at the mosque, and also because of her work as a teacher. The Tribunal finds, by reference to the evidence of the first applicant, that because of the threats, she ceased for a time to do her voluntary work at the mosque, and she made more secure arrangements for travelling to her work as a teacher.
108. The Tribunal finds, by reference to the evidence of the applicants, that the first applicant was married to the second applicant who returned briefly to Pakistan for the purpose, and that after her marriage she resumed voluntary work at her loss, although not work on security checkpoint. The Tribunal finds, by reference to the evidence of the applicants, that in 2011, a few months after the first applicant resumed work at the mosque, claim, she was again threatened and attacked by Lashkar-e-Jhangvi.

The first applicant – commitment to teaching

109. The Tribunal finds, by reference to the evidence of the applicants, that the first applicant is committed to her vocation as a teacher and to the education of girls, shown by the fact that when she was threatened by Lashkar-e-Jhangvi in 2010, she gave up her work as a security volunteer at her mosque, but continued to teach, and indeed, continued to teach until just before she left Pakistan.

The first applicant – mental health

110. The Tribunal finds, by reference to the evidence of the applicants, and the report of the psychologist, that the first applicant has Post Traumatic Stress Disorder and accepts the following points in the professional opinion of the psychologist:

...[the first applicant] requires time and ongoing counselling to work toward recovering from her past trauma in Pakistan and to manage the resulting depressive and anxiety symptoms. Her symptoms are consistent with someone who has experienced trauma such as she has disclosed to me. If she were to return to Pakistan it is likely the symptoms would be exacerbated to an unmanageable level by constant fear of her [child]'s life, her own life, and her husband's life. The likelihood of [is the first applicant] being able to access suitable mental health care to manage the symptoms, should she returned to Pakistan is poor.

...[the first applicant] would not be fit to work should she return home

Furthermore, due to the extreme nature of [the first applicant's] experiences of trauma in Pakistan, her ongoing depressive and anxiety symptoms that she presents with, I have genuine concerns that [the first applicant] may seek to harm herself if deported due to the strong fears she has for her immediate safety should she return to Pakistan.

(Tribunal's file, folios 98-97.)

The applicants – no friends or family outside Karachi

111. The Tribunal finds, by reference to the evidence of the applicants, that they do not have friends or family outside Karachi.

Member of a particular social group

112. The applicants' claims raise question of whether certain groups exist as particular social groups within the meaning of the Convention and whether the applicants belong to them.
113. In *Applicant S v MIMA* (2004) 217 CLR 387, at [36], Gleeson CJ, Gummow and Kirby JJ. set out the criteria for a particular social group:

... **First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large.** Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group".²²

²² **Emphasis** added Justice McHugh in *Applicant S v MIMA* (2004) 217 CLR 387 (at [69]) said similarly:

“To qualify as a particular social group, it is enough that objectively there is an identifiable group of persons with a social presence in a country, set apart from other members of that society, and united by a common characteristic, attribute, activity, belief, interest, goal, aim or principle.”

114. *Applicant S* also establishes that there is no requirement of a recognition or perception *within the relevant society* that a collection of individuals is a group that is set apart from the rest of the community.²³

Shia members of professions, Shia teachers, women teachers, women working outside the home, volunteers at Shia mosques

115. The Tribunal is satisfied, by reference to the material before it relating to Shias in Pakistan, Shia professionals and to women, that Shia members of professions, Shia teachers, women teachers, women working outside the home, and volunteers at Shia mosques are groups each of which is distinct from Pakistani society at large, that each of these groups shares the common characteristics or attributes expressed in the names of the groups, and that this is therefore sufficient to constitute them as a particular social group within the meaning of the Convention. (See *Applicant S*, cited above.)
116. The Tribunal's finding that two of these groups - women teachers, and women working outside the home - share a common attribute, and are distinct from society at large, sufficiently to establish them as a particular social group in Pakistan, is especially reinforced because of the ample evidence about the patriarchal structure of Pakistani society and the separate roles, status, familial connection and education of girls and women in Pakistani society, for example the universal relation of a woman to her husband or her father in official documents, while a man is related primarily as the son of his father. (See, for example, the first applicant's statement and her other certificates and documents which refer to her as the daughter of her father, or as the wife of the second applicant. Minister's department's file, folios 70, 65, 59, 34)

These particular social groups are not constituted by the attacks upon them

117. In making these findings that Shia members of professions, Shia teachers, women teachers, women working outside the home, and volunteers at Shia mosques are particular social groups, the Tribunal is aware of many reports of attacks targeted at well educated Shias in Pakistan, and members of various professions, including the teaching profession and at women teachers and women working outside their homes.
118. The Tribunal finds, by reference to the evidence before it, including the evidence of attacks on Shia members of professions, Shia teachers, women teachers and women working outside the home, that the groups of Shia members of professions, Shia teachers, women teachers, women working outside the home, and volunteers at Shia mosques have shared characteristics which distinguish them from society at large in Pakistan, and also a visibility and recognition. The Tribunal finds also that their shared characteristics, as well as their visibility and recognition, are prior to and independent of the attacks made on these groups; they are not constituted by the attacks.²⁴ Rather, their very educational qualifications and occupations mark them out as groups within Pakistani society. They are

²³ This overrules a previous line of authority, deriving from *MIMA v Zamora* (1998) 85 FCR 458.

²⁴ They therefore meet the requirement of Applicant S that "the characteristic or attribute common to all members of the group cannot be the shared fear of persecution." See also *Chen Shi Hai v Minister for Immigration and Multicultural Affairs* (2000) 201 CLR 293, where the High Court allowed that "Black Children" in the People's Republic of China, born in breach of the "one child policy", could exist as a particular social group; although persecuted, the group existed prior to, and was not constituted by the persecution. See also *Applicant A v. Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225.

attacked because they already exist and, being visible in Pakistani society, are an affront and an obstacle to the various groups of Sunni militants. They therefore capable of forming a particular social group within the meaning of the Convention, and are therefore allowed as particular social groups, consistently with the High Court's judgement in *Applicant S*, quoted above.

Conclusion

119. The Tribunal finds therefore, by reference to all the material before it, that the groups of Shia members of professions, Shia teachers, women teachers, women working outside the home, and volunteers at Shia mosques, not being constituted by their fear of harm, but by their characteristics and attributes, each exist as a particular social group in Pakistan within the meaning of the Convention.

The family of the first applicant

120. It is well established that a family is capable of constituting a particular social group within the meaning of the Convention. The universal use of familial relationships on official documents in Pakistan, as, for example, in the educational, employment and marriage documents of the applicants, is a sufficient basis for the Tribunal to find that in Pakistan families in general, and the first applicant's family in particular, constitute particular social groups.

What if the applicants return to their home area of their country of nationality?

121. The Tribunal finds that if the applicants return to their home area in Karachi, they will continue to practise their Shia faith, and it will be evident that they are Shias, at least by their attendance and practice of their faith at Shia mosques and in public Shia celebrations.

122. The Tribunal finds that if the applicants return to their home area in Karachi, the first applicant will resume teaching, and that there is a real chance that she will resume the teaching of girls.

123. The Tribunal finds that if the applicants return to their home area in Karachi, the first applicant will resume voluntary work at her mosque, unless she is deterred by fear of harm to herself or her child by by Lashkar-e-Jhangvi or similarly militant Sunni extremists. This would be a denial of the religious freedom which the Convention exists to protect.

124. The Tribunal finds that if the applicants return to their home area in Karachi, the second applicant will resume open and external work in support of public celebrations of the Shia faith.

125. The Tribunal finds that if the applicants return to their home area in Karachi, it will be evident that they are married to each other.

126. The Tribunal finds that if the applicants return to their home area in Karachi, they have a real chance of suffering serious harm in the form of serious assault, abduction, torture or death, by Lashkar-e-Jhangvi or similarly militant Sunni extremists in the reasonably foreseeable future, because of the cumulative effect of following factors:

- ❖ their Shia faith, expressed by the first applicant's past and future voluntary work, and the second applicant's past and future open practice and support of religious celebrations;
- ❖ the first applicant's work as a female Shia teacher of girls;
- ❖ the first applicant's profile as a person who has previously been threatened and a target of attack by Lashkar-e-Jhangvi.

Conclusion - Real chance the applicants will suffer persecution in their home area

127. It therefore follows and the Tribunal finds that if the applicants return to their home area of their country of nationality in the foreseeable future, each of them has well founded fear of persecution by Lashkar-e-Jhangvi or similar militant Sunni extremists as follows.

128. The Tribunal finds that the first applicant fears persecution for reason of:

- ❖ religion (as a Shia);
- ❖ membership of particular social groups (as a Shia professional, a Shia teacher, a woman teacher, a woman working outside her home, and as a volunteer at her Shia mosque);
- ❖ imputed political opinion (as opposed to the Lashkar-e-Jhangvi and Sunni extremists).

129. The Tribunal finds, by reference to all the material before it, that the second applicant fears persecution for reason of:

- ❖ religion (as a Shia);
- ❖ membership of a particular social group (as a volunteer at his Shia mosque, and as a member of his wife's family);
- ❖ imputed political opinion (as opposed to the Lashkar-e-Jhangvi and Sunni extremists).

Could the applicants reasonably relocate and live safely in another part of their country?

130. The Tribunal has found that the applicants have a real chance of suffering persecution if they return to the area where they lived before they left their country of nationality.

131. Depending upon the circumstances of the particular case, it may be reasonable for a person to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution. The principles discussed by the court in *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437, per Black CJ at 440-1, require the Tribunal to determine whether he or she can, reasonably in all the circumstances, live safely and free from a risk of such harm by resettling and living in another part of his country.

132. In determining this question, the Tribunal has been mindful of the judgement in *MZYLH v Minister for Immigration & Anor* [2011] FMCA 888 (17 November 2011), where the court was dealing with a case where there was evidence that the applicant was a person who was suffering from severe depression and severe post-traumatic stress disorder. The court said at [137]-[138]:

137. The Tribunal is required to consider the practical realities facing a person in determining whether it is reasonable to expect them to relocate. Those practical realities are not limited to matters related to persecution for a Convention reason:

○ *A well founded fear of persecution for a Convention reason having been shown, a refugee does not also have to show a Convention reason behind every difficulty or danger which makes some suggestion of relocation unreasonable.[146]*

138. The issue is not whether the Applicant might be denied treatment for his mental illness for a Convention reason but whether he could relocate within Pakistan and maintain himself given the state of his health. As Branson J said in NAIZ, the approach set down in Randhawa requires the Tribunal to consider the practical realities facing the Applicant to consider how, in a practical sense, he could reasonably be expected to relocate.[147]

(Emphasis added.)

Could the applicants safely and reasonably relocate?

133. Any consideration of projected resettlement of the applicants is concerned with their particular circumstances. The Tribunal finds that the applicants are married, with a young child, that they are both committed to active practice and support of their Shia faith, and that the first applicant is committed to the vocation and the cause of the education of girls.

134. The Tribunal finds, by reference to the applicants' evidence, the evidence of mental health resources in Pakistan, and the report of the psychologist that the first applicant suffers from a range of symptoms consistent with Post Traumatic Stress Disorder, that there is some risk of her harming herself if she is returned to Pakistan, that she needs professional help for her mental health and that she is very unlikely to be able to get this if she relocates to a new place in Pakistan outside Karachi.

Relocation not a means to safety

135. The Tribunal finds that there is a real chance that in the reasonably foreseeable future, wherever in Pakistan they may go, their conduct as Shias and the conduct of the first applicant as committed to the education of girls, will bring adverse attention from Sunni militants. In this event, the Tribunal finds, by reference to all the information before it concerning the situation in Pakistan, that there is a real chance that the authorities will be unwilling or unable to protect the applicants, as indeed they have been unwilling or unable to protect Shias, professional Shias, and teachers of girls, in so many instances in recent years in places all across the country.

136. It follows from these findings, and the Tribunal finds, that the applicants cannot relocate in a part of their country of nationality where they would not have a real chance of persecution for a reason under the Convention.

Relocation not reasonable

137. The Tribunal finds that the applicants have a young child, and that they have no friends or family outside Karachi who could help them to relocate or help to provide some continuity, help and practical or moral support if they were to relocate. The Tribunal finds, by reference to the evidence of instability and danger in Pakistan, and the evidence of the prominence of family relationships in that country, that in any relocation in Pakistan it would be necessary for a family of parents and young child to have help with social integration by the support of friends and family
138. The Tribunal has found (at paragraph 135, above) that the first applicant suffers from a range of symptoms consistent with Post Traumatic Stress Disorder, that there is some risk of her harming herself if she is returned to Pakistan, that she needs professional help for her mental health and that she is very unlikely to be able to get this if she relocates to a new place in Pakistan outside Karachi.
139. It follows from these findings, and the Tribunal finds, that the applicants cannot reasonably relocate in a part of their country of nationality where they would have neither familial support nor professional mental health services readily available. They cannot therefore reasonably relocate outside their home area of Karachi.

Conclusion

140. It follows from the findings set out above, and the Tribunal finds, that the applicants have a well founded fear of persecution in relation to their country of nationality as a whole.

State protection

141. The Tribunal finds, by reference to the ample material available, that the government and authorities of the applicants' country of nationality are not able and willing to provide the level of protection which its citizens are entitled to expect according to international standards. (See *Minister for Immigration and Multicultural Affairs v Respondents S152/2003* [2004] HCA 18; (2004) 222 CLR 1 at [27]- [29].)
142. The Tribunal finds, by reference to the reports from the various sources mentioned above, that there is a high level of violence against Shias, against Shia professionals, Shia teachers, women teachers, women working outside the home, Shias prominent at their mosques or places or times of religious celebration and against people perceived by Lashkar-e-Jhangvi as its opponents, across the whole of Pakistan. As the U.S. State Department has noted, even the Supreme Court of Pakistan, acting on its own motion, has been critical of the failure of the authorities of state to give protection to its citizens.²⁵
143. The Tribunal concludes from these circumstances that the applicants' unwillingness to rely on the protection from the authorities of their country of nationality is therefore justified for the purposes of Article 1A(2) of the Convention.

²⁵ In its *Country Reports on Human Rights Practices for 2011*, published in 2012, extract at folio 133 of the Tribunal's file.

CONCLUSIONS

Well founded fear of persecution for reasons under the Convention

In the applicants' home area

144. The Tribunal finds, by reference to the applicants' evidence and the other material concerning the situation in the applicants' country of nationality, that in their home area of their country of nationality the applicants have well founded fear of persecution for reason of religion (as Shias), membership of a particular social group or groups (Shia professionals, Shia teachers, women teachers, women working outside the home, volunteers at Shia mosques, the first applicant's family) and political opinion (as opposed to the Lashkar-e-Jhangvi and other Sunni extremists, inferred from the factors set out above in these reasons).

Not reasonable to relocate

145. The Tribunal also finds that it is not reasonable (or indeed possible), in all the applicants' circumstances, for them to relocate to a part of their country where they would not have well founded fear of persecution.

146. The Tribunal therefore finds that the applicants have well founded fear of persecution for a reason or reasons under the Convention in relation to their country as a whole.

147. The Tribunal is therefore satisfied that each of the applicants is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore each applicant satisfies the criterion set out in section 36(2)(a) for a protection visa.

DECISION

148. The Tribunal remits the matter for reconsideration with the direction that that the applicants satisfy section 36(2)(a) of the *Migration Act 1958*, as each of the applicants is a non-citizen in Australia in respect of whom the Tribunal is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol.

Anthony Krohn,

Member