

1300860 [2013] RRTA 722 (4 October 2013)

DECISION RECORD

RRT CASE NUMBER: 1300860
DIAC REFERENCE(S): CLF2012/99084
COUNTRY OF REFERENCE: Pakistan
TRIBUNAL MEMBER: Roger Fordham
DATE: 4 October 2013
PLACE OF DECISION: Adelaide

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

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Pakistan, applied to the Department of Immigration for the visa [in] May 2012 and the delegate refused to grant the visa [in] December 2012.
3. The applicant appeared before the Tribunal on 31 July 2013 to give evidence and present arguments.
4. The applicant was represented in relation to the review by his registered migration agent.

CONSIDERATION OF CLAIMS AND EVIDENCE

5. 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.
6. 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).
7. 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').
8. 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.
9. The applicant is [a] Pakistani national, born in Karachi.
10. He first arrived in Australia on a Pakistani passport with a student visa.

11. In 2008 he travelled to Pakistan in February and remained there for a month, returning in March.
12. He again travelled to Pakistan at the end of 2008 and returned [in] February 2009, having spent approximately [a few weeks] in the country.
13. On a third visit he left [in] February 2010, returning [in] March 2010.
14. He sought further stay as a student in August 2010 and this was granted and the visa was valid to [a date in] August 2011. However, when he failed to meet the requirements of the visa that visa was cancelled in March 2011 and an application for review of the decision to cancel was affirmed by the MRT.
15. In April 2012 the applicant lodged an application for Ministerial intervention which was “not considered” and in June 2011 he was granted a bridging visa valid to December. He was later granted nine further BVEs before lodging his Protection Visa application in May 2012.
16. The issue in this case is that the applicant claims to fear harm for reasons of his membership of a branch of the MQM, his status as a Muhajir (descendant from India) and his Behari background in Pakistan.
17. In his application for a protection visa the applicant states that he had left his country, Pakistan in 2007 for further education wanting a good education, acquiring a good qualification to ensure a good future.
18. He stated that he had never personally experienced any physical harm. However, he claimed that his father who holds a good position in [a particular industry] has had threats in the past and was, at one time, provided with a 24 hour armed guard for himself and his family’s protection.
19. His stated fear was that he could lose his life as his family has received death threats in the recent past in regard to him.
20. Further, as he has been studying in Australia for the past five years anyone could cause him harm.
21. While in Australia he has been inclined to join the MQM as [Relative A] and [Relative A]’s close friends have been supporting this group in [City 1].
22. At Q. 46 which asked, “Who do you think may harm/mistreat you if you go back?” the applicant responded by saying:
 - a. It could be anyone including some ethnic communal groups. As life is not secure in anyway back in Pakistan anything can happen to you any time for the sake of revenge, ransom, political etc...
23. In response to the question “Why do you think this will happen to you if you go back he wrote:
 - a. My family has experienced some life threats in the past, as up till now it’s been 5 years since I am living and studying in Australia. Back home not everyone can afford to have such luxuries in life, I thank to God that I am alive and blessed. Since my arrival in Australia I became an active member of this political group called “MQM” without knowing the fact my life could be in even more grave danger. The MQM support all those people who migrated from India to Pakistan during war, majority of these people were Urdu speaking. I am Bihari (Urdu Speaking) by caste which is a minority in Pakistan and to

look after us migrants or standing up for our rights , this organisation, MQM was established. One of our great leaders Dr. Imran Farooq, he was a migrant during the war, this person was murdered in England last year.

- b. Target killings, kidnapping for ransom have become a normal life in Pakistan. No one is safe back there, even high government officials/bodies/leaders are not secure. My last visit to Pakistan, which was in February 2010, just a few months after I left the country the situation got worse when our president Benazir Bhutto was assassinated on 12/5/10. My relatives have been connected to “MQM” were kidnapped for ransom in the past. My family had some life threats for me being the only son and a bit inclined to join this political party to stay out of it.

24. As to whether or not the authorities could protect him he stated:

The authorities are corrupt, including the police and the politicians. There is no such authority back home which can guarantee me a safe life. As I said I am afraid that I am just a normal human being, knowing the fact that there is no life security for including all the big shots, politicians and government officials. Even if there are rules and policies set out by the government, no one follows it, including the officials. People misuse their powers, with money and power, one can almost do any criminal activity and get away with it in Pakistan. The current situation has been real bad, since past 1 year there has been too many kidnappings for ransom money/vengeance in my city, you can get all the videos, documentaries and proofs on the media and internet. The reason for these killings and violence is conflict between LYARI Gang war and other political ethnic groups in Pakistan.

25. The delegate found that the applicant, who entered Australia as a student, had appealed the decision to cancel and failed and then sought Ministerial intervention. The delegate stated, “at no time in all his interaction with the department and interviews with officers did he mention his persecution in Pakistan. In an interview in January 2011 he only mentioned that his family is very well off and he had been sent around \$100,000 to support him financially. He also advised that his parents are aware of his current immigration issues and that he loves living in Australia and wishes to be able to stay here long term. This information is held at folio 137 of the departmental file.
26. After further consideration the delegate found that the applicant had a lack of a political profile and stated. “It is far more probable in my view that the applicant only applied for a Protection Visa in a last bid attempt to remain in Australia.”
27. In a document dated [in] July 2013 the applicant repeated many of the claims he had provided in his written application.
28. He also claimed that while in Pakistan he had supported the MQM by voting for them in elections. He claimed he had been offered the opportunity of joining there but his parents had intervened because of the danger involved.
29. He claimed that when he came to Australia in 2007 he had started assisting [Relative A]’s branch of the MQM in various functions informally. He claimed he joined the party officially in [2010].
30. He stated that his delay in applying for a protection visa was because he didn’t understand the process for seeking asylum and, he had also hoped that his student visa would be restored in the period June 2011 to April 2012. He claimed that he felt the path of student application would achieve the aim of being able to remain in Australia.
31. He claimed that he applied for a protection visa in May 2012 because he was feeling at risk after he had complications with his student visa.

32. He went on to claim that there are a number of organisations involved in target killings and kidnappings including the Tehreek e Taliban and the People's Aman Committee (lyari gang) who abduct and demand ransoms. He said that he was afraid of becoming a victim at the hands of any one of these groups. He claimed that Taliban had also issued threats to members of the MQM on the party's website. He added that the MQM had condemned the killing of Hazaras and Shias and, being liberal in this way, the extremist groups didn't like them.[Family home location deleted].
33. Further to this he claimed that he feared becoming a victim for reasons of jealousy or envy as he had spent six years in Australia and that may cause people to see him as privileged.
34. He went on to state that relocation was not reasonable as the MQM is a minority group in every city except Karachi.
35. He also stated that, as the only son in the family it is a cultural trait that he would be the responsible head of the family and would be unable to study on return and thus not be able to support his family financially or morally.
36. He said that his photograph is on facebook, the MQM website and twitter.
37. He claimed ethnic, sectarian and political violence has increased in Karachi with the death toll, in the first six months of the year, reaching 1726.
38. He provided a psychologist report dated [in] April 2013 in which the writer stated that the applicant had expressed "grave concerns" about returning home to Karachi and feeling "paralysed" by anxiety. The applicant had reported becoming more active since officially enrolling in 2010.
39. The writer went on to say that [Relative A] the applicant was living with was checking on his study routine and reporting to his father and also reporting on outings with his friends and this also was causing greater conflict and pressure. The report further states:

[The applicant]'s current fear of returning home as well as other pressures being exerted through family and the humiliation he feels at his failure to complete his studies or support himself have all compounded to create high level of distress. He experiences anxiety and ruminates about these issues further strengthening the cycle of anxiety.
40. The applicant also submitted a letter which he claimed his father had written dated [in] July 2013. That letter states that the writer holds grave concerns about the welfare of his son if he were to return to Pakistan. He claims that he has received threatening phone calls telling him to make sure his son stays away from MQM or they will kill him.
41. The writer claims he does not know who is calling but that they referred to his application for a protection visa. The letter states that this tells them that people are monitoring his son.
42. The letter also states that the writer is an old man who is retired and that it is nearly impossible for him to support his wife, himself, his [daughter and her children]. He states that if his son returned he would be a burden and a risk factor for the rest of the family members.
43. The applicant also provided a letter from the Unit in charge of [MQM] stating that the applicant had helped out with organising events and gatherings whilst attending meetings and protests. "On October [date] 2010 he became an official member of [MQM]."

44. The applicant also provided a number of papers referring to [MQM] activities including BBQs and the canvassing of the suggested content of the branch news including news to share among friends, items for sale such as books, Automotive equipment, Business and service advertising, Clothing and Jewellery, Kid's Corner and Women's Corner.
45. Other papers refer to a list of equipment needed for the barbeque and level of contribution fees.
46. [On another document the applicant's name is listed].
47. A number of media articles refer to the crime rates in Karachi whose population is listed as being between 14 and 15 million. The statistics include:
48. 2,284 deaths in Karachi as a result of sectarian or political violence for the year 2012.
49. A further article in the *Tribune* of 3 November 2012 advises that Taliban threatened action against the MQM and in another, headed MQM official website hacked by Taliban due to Altaf's threats, a message left on the website states "we have been monitoring your activities for a very long time...we are in all your systems and very near to your HQ90 Azaizabad. Our silent sleepers are more near to you than you think."
50. The applicant also provided the Tribunal with a memory stick containing various pictures and clips as evidence of his association in the party.
51. The Tribunal Hearing
52. The applicant appeared at the hearing with his adviser by telephone link.
53. The applicant had been in Australia since 2007 and, as he was confident with his English levels he had not requested an interpreter so I cautioned him saying that if he had any language difficulties whatsoever to please inform me so that I could rephrase or put matters to him in a way that was clear to him.
54. I started by talking about his family and said that it was my understanding that his home area was in Karachi and his family were still living there. He confirmed that his father had held a responsible position with a [firm] but was currently retired and that his mother was involved in home duties. In addition to his parents he said that he had one sister living with them. She has [children] and she is divorced with the husband living in [another country] possibly.
55. He said that he also had [sisters, details deleted].
56. I put to him that he had stated that when he had come to Australia he had come for the sole purpose of receiving a good education so he could have a good future.
57. I said that, it was my understanding that his parents had been born in Dacca and, with partition they, along with other muslim people had come to Pakistan and had become known as Muhajir. He confirmed that was correct.
58. I put to him that it was my understanding that Mohajirs made up about 35% of the total population of Karachi and he agreed with that also. He added that, while it was correct that he had come to Australia for study he had also come for a more secure situation as the situation in Pakistan had become more difficult and unstable.

59. I said that I understood from his file that he had returned to Pakistan in 2008 and also 2009. I asked if he had experienced any difficulties in those visits.
60. He said that he hadn't as he wasn't active in the MQM at that time but that since that time his parents had received threats.
61. I asked when he had first become a member of the MQM and he said that it was in [2010].
62. I said that from his file I understood him to be saying that he had become a member of the MQM because he was living with [Relative A] who was a member and that he and his close friends were supporting the MQM.
63. He replied that they were the ones who had initiated the MQM [Location] in 1990. He went on to say that he, as a child in Pakistan, had always wanted to join but because of the situation in Pakistan his parents had not wanted him to. He said that people involved in politics could be harmed regardless of what level they were at.
64. I said that from what he was saying that his parents were never involved in politics. He said that was correct in that they were not active but they were supporters of the same party, MQM. He said that they were not registered members. He said that his father had had an involvement but he couldn't remember what it was.
65. The applicant said that when he came in 2007 he used to work for them but kept his profile low. He said that even his parents were unaware of this. He said that he became a formal member in 2010.
66. I asked what it was that the MQM [location] did. He said that it was to promote the activities and policies of the MQM. He said that they were involved in protests when the party protested and they also collected donations. He said that there were multiple activities depending on the situation at any time.
67. He said that in recent times they had protested in [City 2]. He said that there had also been protests in [City 1] as well. He said that they had also protested at the [office].
68. I asked how many members there were in [a particular] branch and he said [number] but they were increasing in number. He said that the most recent demonstration he had been involved in was [in early 2013].
69. I asked if [the office] was the organisation which organised the protest. He said that it wasn't but that his group had taken a petition to the [office]. He said that there were [certain amount of] people altogether. He said that it was reported in the media in Pakistan. He said that there had been protests in a number of [countries].
70. He said that there were other issues concerning the leader Altaf but not on that occasion.
71. I asked how often [Relative A], the one who had started the organisation, returned to Pakistan, and he said that it was about every four years. He said that [Relative A] had returned for his sister's wedding. He added that, when [Relative A] visited Pakistan he would also attend meetings of the MQM.

72. He added that [Relative A] had also returned on one occasion to bring his wife and their children back to Australia. He said his wife had returned to Pakistan for about a month but wanted her husband to go and collect her when it was time to return.
73. I moved on to say that he had claimed that the family had received threatening messages. The applicant said that they were in the form of phone calls. He said they had started around 2011 and the last one was in May 2013. He said that there had been three calls. The first time was to say the applicant should leave the MQM, the second time was to say that they would kill him if he returned and the third time, a month ago, was to say that they were aware that the applicant had applied for protection.
74. I asked how they would be aware that he had applied for protection and the applicant at first said he had no idea but then said that while he was in [City1] he had told people what his situation was if they asked him. He added that this was why his family had advised him to leave [City 1]. He said that his father was concerned that the callers seemed to know so much.
75. I said that I was surprised that he would have told people that he had applied for a protection visa if the phone calls had started two years previously showing that people were aware of what he was doing. The applicant said that he was an honest person and if people wanted to know what his situation was he told them.
76. I asked when [Relative A] had gone back to Pakistan on the last occasion and he said that it was about two years ago.
77. When I then asked if anything had happened to him he replied that [Relative A] kept a low profile when he returned.
78. I said that it puzzled me that [Relative A], the head of the movement since 1990 was able to return and not face any problems but the applicant with a much lower profile was receiving threats even when he hadn't returned.
79. The applicant replied that he didn't understand why they were targeting him. He said that perhaps it was because he came from a family who were reasonably well off.
80. He said that another possible reason for lack of interest in [Relative A] was because he was not a card holding member of the organisation having never signed a registration form.
81. I said that this didn't make sense to me that he, as head of the movement in [City 1] was not a registered member in that he hadn't signed any registration form whereas the applicant with only a minor role had.
82. He said that [Relative A] was a person who was very emotionally involved in the movement but, yet had not formalised his membership of the party. I again said that I was also surprised that a person who had been responsible for setting up the party had not formalised his membership while the applicant, as a student, through his association with [Relative A] had registered as a formal member. He said he wasn't sure but it was his understanding that [Relative A] had not become a member.
83. The applicant said that at one time about twenty years ago when the family were living in another area the firm his father worked for provided him with a security guard for about two

years. He said that later when the family moved to another area [the firm] had taken the security guard away but the family did have a gun.

84. I said that I wanted to return to look at the applicant's own profile and asked what it was he did, apart from attending a few protests and meetings.
85. He said that there was a large gathering at a [another] location. He said that he had provided the department with a number of photographs of his involvement.
86. He said that he had organised two barbeques. He explained that there were superiors but that it was his responsibility to see that people are organised to do the spade work.
87. He said that different people organised particular venues and particular activities. Once this had been done he would then find out about setting it up.
88. I asked him how many people there were as office bearers. He said there was a financial secretary, a unit in charge and then an assistant unit in charge.
89. I asked what [Relative A]'s position was and he said that he was in contact with people in other states. I said that the description was like a [officer] and he said it was something like that.
90. I asked the applicant when it was that he first felt fearful and he said that it was in the early part of 2011 and he felt fearful of returning to Pakistan. He said that it was about the same time as he started experiencing complications in regard to his student visa.
91. I asked, if it was that he was fearful in the early part of 2011 why he didn't apply for a protection visa until May 2012.
92. The applicant said that he had hoped to rectify the problems with his student status and he had also not wanted to reveal his political activities in Australia. He said that he had felt safe as a student.
93. I put to him that at the time he had been interviewed by the delegate that the MQM was the ruling party. He agreed that was the case.
94. He said that in 1992 the government had been involved in a clean up program concerning the MQM. I put to him that was twenty years ago.
95. The applicant said that because of that history members could be suspect and looked at with suspicion.
96. I put to him that it was my understanding that, at that time (1992) the reason for the clean-up was that MQM was a terrorist organisation but that these days it was a respected and recognised political party. (See: Country information)
97. The applicant then went on to say that there are two separate MQM bodies, MQM Haqiqi and MQM Altaf.
98. He said that MQM Haqiqi was established to give it the chance to be a political party to weaken MQM Altaf, the party he supports.

99. He said that in the past five years that a large number of non Mohajirs had become members and the image had changed positively. I said that I was aware that this had happened and the name had changed from Mohajir (meaning the people who had migrated to Pakistan from India during partition to Muttahida (meaning united).
100. I then put to the applicant, in summary, it appeared he had had a good lifestyle in Pakistan. His father had had a good job, was retired and the applicant had received a good education and came to Australia to further his education.
101. As a consequence of staying with [Relative A] in [City 1] he had become a member of the MQM in [City 1] with between [number of members] and [Relative A] was the person who had set the group up though not a formal member.
102. At this point the applicant interrupted saying that he wasn't sure, but believed, [Relative A] was not a member as other members had jokingly said that the applicant had become a member while [Relative A] hadn't signed anything.
103. I went on with the summary saying that [Relative A] had twice returned to Pakistan and he, in 2008 and 2009 had also done so without any negative repercussions.
104. Since that time he had become a member early in 2010 and had undertaken basic tasks for the MQM.
105. I said that I would leave the applicant to consult with his adviser and that my concerns were that [Relative A], the one who [had been involved with the MQM since] 1990, had gone back twice in recent years and nothing happened to him and no threats were made in regard to him and he, the applicant, had a low political profile and had returned to Pakistan on three occasions since 2007 with no adverse consequences on those visits.
106. The applicant said that he had always regarded the situation of himself and [Relative A] differently as [Relative A] held Australian citizenship while he didn't.
107. In regard to his status as a Behari, the applicant stated that he had, on occasion suffered taunts.
108. I adjourned the hearing for ten minutes after agreeing that period of time with his representative.
109. Following the adjournment the adviser said that he had no oral submission to make but that his client had some documents to give the Tribunal. He said that his client also wished to make some comments about his political profile.
110. I asked the applicant to tell me what it was he wanted to say about his profile first.
111. He said that he had begun to work with the MQM in [City1] in 2007 but that he had kept his profile as low as he could. He didn't make any statements on the organisation face book or webpage but, after he had become a formal member in 2010 he did have his photo taken with a high profile MQM [office bearer].
112. I asked where that official was currently and he said that he had returned to Pakistan.

113. The applicant said that he had entered a profile on the [MQM site]. He explained that he had done that about three and a half years previously before he became a member of the party. He said that it was on MQM [City 1]. He said that he had kept his profile low.
114. I said that I found it strange that he would enter his profile on the [site] if he was trying to keep his profile low.
115. I asked if [Relative A] had a profile on the site and he said he did but the photo on that profile was one of his children rather than his own.
116. The applicant said that Taliban had hacked into the MQM website but when I looked at the evidence he provided I said that it didn't appear that the website had been hacked but rather that it had an entry put on it as anyone could do.
117. He said that it demonstrated that Taliban had threatened the MQM in Pakistan as it warned them that they were monitoring the activities and had "sleepers" in the organisation.
118. I put to him that this was not hacking as they had simply made an entry on a website that was publicly available.
119. The applicant also provided a written statement reiterating his claims.
120. He also provided the Tribunal with a memory stick with some photographs of MQM members and activities. He further provided a range of media articles referred to earlier in this decision.
121. He went on to say that there was also an organisation within the Pakistani People's Party, the Aman group who were essentially gangsters and who targeted MQM members.
122. He provided an article from wikileaks concerning the Aman Committee as a militia group supporting the Pakistani People's Party but the article advises that the Aman committee had agreed to disband in 2011 at the request of the Pakistani People's Party when the MQM was an ally to the Pakistani People's Party.
123. The article further advises that the Aman Committee was banned under anti terrorism legislation and establishing offices and making it defunct. Security agencies were directed to keep an eye on the activities of the committee. See: Wikipedia "People's Aman Committee."
124. The Tribunal noticed a reference, in the psychologists report, to the applicant's falling out with [Relative A] and that the applicant had claimed that he hadn't received correspondence addressed to him from a university which is why he had defaulted on his obligations in regard to a student visa.
125. The applicant began to talk about this but, I informed him that this was not relevant in his protection visa application.
126. He also provided a copy of a character reference in regard to some volunteer work he had engaged in but not related to the MQM. I handed this back to him and told him that it was not relevant in his protection visa application.
127. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

128. Country Information

129. In August 2011 the Institute of South Asian Studies (ISAS) reported that there are approximately 7 million Muhajirs in Karachi and they account for almost 35% of the Karachi population.

The third large movement of people in South Asia occurred after the British decided to divide their Indian colony into two states – a predominantly Hindu India and a predominantly Muslim Pakistan. The British decision launched a massive ethnic cleansing operation – the term ‘ethnic cleansing’ had as yet to be coined – which caused eight million Muslims to move into what is now Pakistan while six million Hindus and Sikhs went in the other direction. This transfer of 14 million people within a space of a few months remains the largest episode of involuntary migration in human history⁹. A part of this movement created a different kind of diaspora. The *muhajir* (refugees) community in Karachi and southern Sindh in Pakistan is a diaspora – distinct people with their own social, cultural and economic needs that are different from that of the host population. ISAS Special Report No.3 19 July 2011 held at http://www.isas.nus.edu.sg/Attachments/PublisherAttachment/ISAS_Special_Report_03_-_South_Asian_Diasporas_29072011121217.pdf (downloaded 30 July 2013)

130. The MQM formation is described in a “Global security” publication <http://www.globalsecurity.org/military/world/para/mqm.htm> and advises:

The Muttahidda [Mothaidda] Quami Movement (MQM), formerly known as the Mohajir Quami Movement, is a political group which represents the Urdu-speaking immigrant urban population ... The Mohajir Quami movement [MQM] came into being on March 18, 1984 as the ‘All Pakistan Mohajir Students Organisation’ (APMSO) but politically it was activated in 1986.

The Muttahida Quami Movement-Altat (MQM-A) has been widely accused of human rights abuses since its founding two decades ago...the MQM-A was heavily involved in the widespread political violence that wracked Pakistan’s Southern Sindh province, particularly Karachi, the port city that is the country’s commercial capital. MQM-A militants fought government forces, breakaway MQM factions, and militants from other ethnic-based movements.

131. A second MQM body called MQM Haqiqi, essentially a breakaway group from MQM-A is described by Global Security as follows:

In 1992, a breakaway MQM faction, led by Afaq Ahmed and Aamir Khan, launched the MQM Haqiqi (MQM-Q), literally the “real” MQM. Many Pakistani observers alleged that the MQM-H was supported by the government of Pakistan to weaken the main MQM led by Altat Hussein.

132. Global Security further advises that the political party was formed in 1984 and was founded by Altat Hussein who fled Karachi when, in 1992 there were military actions against the MQM. He has subsequently run the party from London.

133. Jane’s Sentinel Country Risk Assessments in the Security section updated on 2 December 2010 advised:

...the United National Movement (Muttahida (initially Mohajir) Qaumi Movement: MQM). Throughout the mid-to late 1990s, the MQM effectively wrought considerable violence across Karachi, targeting police and government officials and their families. The MQM is divided between a parliamentary wing that has gained representation in the provincial legislatures and National Assembly and a terrorist wing campaigning for greater autonomy and/or separatism. The campaign against the MQM-supporting terrorist groups has been largely successful, but Karachi remains a particularly violent city, with several ethnic groups involved in acts of terrorism against each other and the state. Hundreds of people have died in politically motivated attacks since January 2010. Most recently, more than 50 people were killed when violence broke out on 16 October during a by-election for a provincial assembly seat that was previously held by local MQM politician Raza Haider, who was murdered in a Karachi mosque on 2 August .

Country of Reference

134. The applicant entered Australia using a Pakistani passport in the name he has consistently provided and which is evidenced on a range of other documents. He had been granted a visa by the Australian authorities in Pakistan who had considered his application for a student visa and used that passport to issue the visa.
135. I am satisfied on the evidence before me that the applicant is a Pakistani national and, in the absence of any evidence to the contrary find that he does not an enforceable right to enter or reside in any other country.
136. This being the case, I find that the country of reference in this matter is Pakistan.
137. The Psychologists Report
138. I have read and considered the psychologist's report in respect of the applicant.
139. While respecting the professionalism of the psychologist I am of the view that it adds little to the applicant's case or that it leads to a conclusion of a well-founded fear. It restates the applicant's claims and, claims that further stress is a consequence of issues outside the range of this decision, a family issue of [Relative A] reporting his study patterns to his father.
140. It is also of note that the role of a psychologist is not to question the veracity of any claims or to challenge the client in any way but to accept the claimed cause of any anxiety or mental concern and to provide an appropriate course of action to relieve that distress.
141. A decision maker, on the other hand is required to look beyond any subjective fear and to use independent material and a sometimes challenged account of the applicant's claims to determine the credibility of the account and to then determine whether or not the fear is well-founded.
142. I accept the professional opinion that the applicant is distressed for a number of reasons, his perceived failure to achieve his education goals, his failure to live up to a standard [Relative A] set and which he feels his father expected, the cancellation of his student visa and his concerns about returning to a society somewhat more violent than that in [City 1].
143. Bearing that mental pressure in mind I have then considered the applicant's claims, whether his mental stress affected his ability to give evidence, his opportunity to fully put his case and the support he has had through a professional migration agent.
144. I am satisfied that the applicant has had every opportunity to put his case to the fullest possible extent, notwithstanding any pressure he has been under and that the evidence he has provided is that which he wanted the Tribunal to consider his claims on.
145. The applicant's claims
146. The applicant claims that he is from a caste which is looked down on, the Behari, and that he is from a family who moved to Pakistan in the period of partition. This group is known by the collective name as Muhajir. He has claimed some low forms of abuse and insults for reasons of his membership in those groups.
147. His main claim is that he became a supporter of a branch of the MQM Altaf, while living in [City 1] and became a formal member in [2010].

148. He claims to fear harm at the hands of other parties for reasons of his membership and role in that party and, more recently, that it is a party which has been threatened by Taliban.
149. He also claims that the level of violence and crime in Karachi is such that he could be harmed by anyone at any time and, that, as a person who has enjoyed the privilege of being an overseas student he could be perceived as being wealthy and targeted for kidnapping or ransom.
150. The applicant's Behari caste and status as a Mohajir
151. The applicant, by his own account has provided evidence that his family has done well and has been shown respect. He states that the family is well-off and that his father had held a good position in [a company] he worked for.
152. At one period of time the company provided his father with an armed security guard on a twenty four hour basis for two years. I find that the family was not discriminated or harmed for reasons of their status as Muhajirs. Neither has he, as a member of that family and a Muhajir descendant suffered serious harm.
153. While the applicant has claimed that the Behari are considered to be low caste he hasn't claimed to have suffered any adverse consequences as a result of his membership of that caste group and I find that he hasn't.
154. Printed independent evidence the applicant provided to the Tribunal, at hearing, concerning the Behari, was that in 1947 during partition the Behari who were mostly Muslim moved to East Pakistan or Bangladesh. That article from Wikipedia states, "In east Pakistan they lived for 24 years and developed their livelihood, made properties, got jobs, education and started a standard living" It further states that those who went to Bangladesh were not accepted by the Bangla people and eventually made their way to Pakistan.
155. These days, according to the article they are spread throughout Pakistan, "engaged with the local culture and language."
156. The failure of the applicant to claim any adverse consequences at a level of serious harm and the independent material he provided satisfies me that the applicant neither suffered serious harm for reasons of his membership of that caste nor, having regard to that material, would he in the reasonably foreseeable future.
157. He is from a group of people who are descendants of people who migrated to Pakistan during the partition of India and Pakistan and who are referred to as Muhajir.
158. He is from the city of Karachi and the independent material before me, which the applicant agrees is correct, advises that Muhajirs constitute 35% of the overall population of Karachi.
159. Again he has not claimed to have personally, suffered any adverse consequences for reasons of his membership of this group.
160. The evidence before me comes from his own account that his family is relatively well-off, his father, now retired, held a good position with a [company] and the applicant himself was able to acquire a good education. Although he claimed his family supported the political party MQM he said that they were never members. He stated that he had not experienced any problems while living in Pakistan, nor did he when he visited in 2008, 2009 and and 2010. I

am satisfied, on the evidence before me that the applicant has not suffered any serious or significant harm as a consequence of his Mohajir status and, I am further satisfied, based on the evidence before me, that he would not do so in the reasonably foreseeable future.

161. The Applicant's Political Profile

162. The applicant, by his own account, come from a family who, while supportive of the MQM in Pakistan, have no history of being members or, in any way actively involved with the party. The applicant, similarly was never involved either, in any student wing of the party or its main branch.
163. His involvement in the party only developed when he came to Australia in 2007 and lived with [Relative A]. The applicant himself, is uncertain as to whether or not [Relative A] is a card holding or registered member of the party.
164. The branch membership of the party is between [number] and while it has undertaken some lobbying against Taleban attacks on Hazaras and Shias the applicant's accounts of it more regular activities are social.
165. The documents that the applicant provided to the Tribunal are also of that nature. Barbeques and fund raising and the suggestions for a newsletter with advertising, a "buy and sell" column and kids' and women's corner articles. This does not suggest to me a hardline political role.
166. He claims that, on the two occasions that [Relative A] has been back to Pakistan, he has attended meetings of the MQM as well as attending to family matters without facing any hardship or harm.
167. The applicant himself has been back to Pakistan on three occasions since he began supporting the group. The most recent visit was in the early months of 2010. By his own account the applicant did not face any harm then or on any other occasion.
168. It is, however, not a requirement that an applicant demonstrate past harm to be able to establish a real chance of harm but, profile and past events can be an indicator of the chance of prospective harm, and it is this which I am considering in this determination.
169. Although the applicant has provided the Tribunal with a letter advising that he did, in fact, become a member of the [City 1] branch of the MQM in 2010 and he has provided a memory stick with photographs of himself and other and MQM activities to show he is involved with the party that does not raise his profile above that of a member of an MQM branch of [number] involved largely in social activities in support of Pakistanis in Australia. The incidence of protests are not focussed on the [City 1] branch of the party or issues affecting it but anti-Taliban atrocities and an effort in support of the MQM leader who the applicant and his fellow members feel had been slandered. This means that the protests against Taliban or other adversaries of the MQM in Pakistan are at a low level and by a few people.
170. When considered as a whole the applicant can only satisfy me that he is a low profile member of a small branch of a political party which has a significantly large membership such that it was the ruling party prior to this year's elections.

171. The applicant has provided evidence of the murder of a senior party figure in London and the death of the son of a Sindh Assembly politician when he was fired at leaving a mosque in June 2013. These people have profiles which far exceed that of the applicant.
172. Given that the level of his profile in Australia where he has lived with [Relative A] of the [City 1] branch is very low. I have formed the view that his profile in Pakistan in the reasonably foreseeable future would continue to be low if he had one at all. I find his father whose care he would be under for the reasonably foreseeable future would counsel him to have little if any contact with the MQM.
173. Furthermore, by his own account, he states that even in Australia he has chosen to maintain a low profile. This being the case, I find that he would continue to do so if he returned to live in Pakistan.
174. In this matter, the applicant has established that he has never been a person of adverse interest to any group. He has also established an extremely low political profile which raised the question of how genuine his claimed fear is. I have discussed this when I have considered the delay in making application.
175. There remains the applicant's claim that his father has received three anonymous phone calls which, for reasons I have discussed below, I find are embellishments.
176. The letter from the applicant's father and the claimed threats
177. The applicant provided a letter, purporting to be from his father in Pakistan. I accept that his father wants him to remain in Australia, not least, for reasons of his education, which was, by the applicant's own account, his initial motive for coming to Australia.
178. The psychologist report advises that the applicant had raised as one of the matters of concern that [Relative A] had been forwarding information about his study patterns to his father and this had caused him concern as well as his sense of failure and disappointment to his father.
179. I have considered the applicant's low profile and his claims that [Relative A] has not come to adverse attention even when he returned to Pakistan. In addition the applicant, has not come to any adverse attention on his visits home, despite the fact that he was openly supporting the [City 1] branch prior to becoming a member.
180. Together with the delay in making application for a protection visa, discussed below, I find that the claims that there have been three anonymous phone threats to the applicant's father to be a fabrication and provided to strengthen the very weak claims in regard to his profile.
181. Consideration of the Delay in making application for a protection visa.
182. The applicant first realised that he was in trouble in regard to his stay in Australia when his student visa was cancelled in March 2011. He made no application for protection at that stage but sought, instead to review the decision to cancel.
183. The application for review failed and the decision to cancel was affirmed by the Tribunal. This did not trigger a protection visa application. Instead it triggered an application for Ministerial intervention in which he made no mention of a real chance of harm or a real risk of significant harm. Nor did he claim to hold any fear. That application failed and the

outcome was “not considered”. Only then was a decision made to lodge an application for a protection visa.

184. Heerey J in the matter of Selvadurai v Minister for Immigration and Ethnic affairs (1994) 34 ALD347 commented:
 - a. The applicant complained of the Tribunal’s taking into account the fact that the applicant did not lodge his application for refugee status until some 20 months after he had arrived in Australia and just prior to the expiration of his visa. In my opinion, this was a legitimate factual argument and an obvious one to take into account in assessing the genuineness, or at least the depth, of the applicant’s alleged fear of persecution.
185. Having considered the applicant’s claims, his visa history and the failure to make application for a protection visa until all other avenues of remaining in Australia failed I am of the view, like the delegate but, from my own consideration, that this application has been made as a last ditch effort to remain in Australia and not as a consequence of a well-founded fear.
186. To summarise, the applicant, who entered Australia on a student visa in 2007 had a second student visa cancelled and that decision was affirmed by the MRT. An application for Ministerial intervention made no claims to fear return to Pakistan and was categorised as not for consideration. This is a strong indication that the applicant did not have either a subjective fear or objective one prior to lodgement of his protection visa application in May 2012.
187. Following this the applicant made claims to the effect that he feared serious harm for reasons of his membership in a major political party in Pakistan, the MQM and to a lesser degree for reasons of his status as a Muhajir, a descendant of Muslim migrants from India during the partition of India and Pakistan and his status as a Bihari.
188. His membership in the MQM party is in a small branch in [City 1] and, although he claimed to assist and support the branch from 2007 he did not become a formal member until 2010. From 2007 to March 2010 the applicant returned to his home in Pakistan for three visits and, suffered no harm or threat of harm in that time. Neither did [Relative A] when he returned twice in recent years.
189. From his claims and his interviews with the department and at the Tribunal hearing it is apparent that the applicant’s role, in any event, is minimal and could best be described as that of a “behind the scenes supporter”.
190. The Tribunal has found that the applicant’s membership and activities are such that he has a profile of no interest and does not accept as credible that his family in Pakistan have received threatening letters in regard to his membership in the party. The Tribunal has considered the applicant’s claims and the independent material before it and finds that his profile is of not of such concern that, should he return to Pakistan, there is a real chance he would face serious harm for any Convention reason now or in the reasonably foreseeable future.
191. As a Muhajir, the applicant is a member of a community making up thirty five percent of the population of Karachi, his home town.
192. By his own account he has had a comfortable life in Pakistan. His father held a responsible position and, when there was a risk to his safety his company provided him with a guard on a 24/7 basis.

193. The applicant makes no claims to have suffered serious harm as a consequence of his Muhajir status and the Tribunal is not satisfied, on the evidence before it, that he would face serious harm for that reason in the reasonably foreseeable future.
194. While the applicant has made claims to have been taunted as a Behari he has made no claims to have suffered any harm greater than this and, taking into account his privileged lifestyle the Tribunal finds that the applicant has not suffered serious harm for reasons of that status in the past and, on the evidence before it finds that he would not do so in the reasonably foreseeable future.
195. Complementary Protection
196. I have discussed the applicant's main claims for a protection visa under consideration of Convention grounds of political opinion, race and membership of a particular social group and find that he does not face a real chance of serious harm for those reasons now or in the reasonably foreseeable future.
197. He has also claimed that he could be killed or kidnapped by anyone at anytime in Karachi and that he could not relocate to another area.
198. He further claims that his profile as a person from a well-off family who could afford to send their son overseas for a number of years may lead attackers to kidnap him for ransom.
199. These claims of significant harm have been made against a background of a city with a high crime rate and a considerably higher level of violence than that, for example, in Australia.
200. Karachi does, indeed, have a significantly higher level of violence and crime than that in many other countries but, the question before me is whether or not there is substantial evidence of a real risk of significant harm for the applicant if returned to Pakistan, as the receiving country.
201. He provided articles, documenting the crime rates in Karachi at the Tribunal hearing. A figure of 2,284 is given as the number of deaths from ethnic, sectarian and politically linked violence in Karachi during the year 2012.
202. In another report for the first six months of 2013 the figures provided in a pie graph show 203 were abducted and killed, 92 police were killed, 92 died in bomb blasts, 545 non political killings, 49 killed in robberies and 101 killed due to enmity. See *Daily Times- Site Edition* of 16 July 2013 provided by the applicant at the hearing.
203. As horrendous as these figures are, and the article states this is an increase on the previous year's figures, this is in a city with a population of 14 to 15 million people. This does not provide substantial grounds for a finding that there is a real risk of significant harm from "anyone, anywhere".
204. Even given the applicant's circumstances as coming from a reasonably well-to-do background but which has, according to him, taken security concerns seriously I am not satisfied that his risk is significantly heightened such that there is a real risk of significant harm to him as a necessary and foreseeable consequence of being returned to Pakistan as the receiving country either now or in the reasonably foreseeable future.
205. That being the case, his claims do not engage Australia's protection obligations.

206. 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).
207. 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).
208. 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

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

Roger Fordham
Member