

1217565 [2013] RRTA 517 (8 August 2013)

DECISION RECORD

RRT CASE NUMBER: 1217565
DIAC REFERENCE(S): CLF2012/45141
COUNTRY OF REFERENCE: Pakistan
TRIBUNAL MEMBER: Alison Murphy
DATE: 8 August 2013
PLACE OF DECISION: Melbourne
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 dependent.

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 on 5 March 2012. He seeks to invoke Australia's protection obligations so that he does not have to return to Pakistan where he claims to fear harm on the following bases:
 - His ethnicity as Sindhi;
 - His actual and imputed political opinion as a person opposed to MQM and PPP and as a member of Jiye Sindhi Qaurni Mahaz (JSQM);
 - His religion as a Shia Muslim;
 - His membership of the particular social groups:
 - Family members of political activists/ people opposing MQM;
 - Returnees from a western country;
 - Failed asylum seekers returning from a western country.
3. The applicant produced the following documents in support of his claims:
 - A copy death certificate indicating that his father [name] died at age [deleted] from heart failure on [date] 1999;
 - A copy of an untranslated card marked 'party card';
 - A copy medico-legal certificate purportedly issued by the [hospital] dated [date] January 2009 stating among other things that the applicant suffered non-serious injuries with a hard and blunt instrument;
 - A copy FIR and English language translation indicating that the applicant's mother lodged a complaint [in] December 1999 regarding an incident in which people with whom her husband had political differences being [Mr A] and [Mr B] came to her house and hurled abuse at her. She states that [Mr A] pointed his pistol at her and fired in the air and while leaving threatened that she would not be spared and her children killed;
 - A copy FIR and English language translation indicating that the applicant lodged a complaint [in] January 2009 regarding an incident in which [Mr A], [Mr B], [Mr C] and [Mr D] came to his family home and that they were known to him because they had political differences with his father. He states that they had pistols and lathis in their hands and told him that he was following the policy of his father with whom he

had political differences/ enmity and that [Mr A] fired his pistol at him but he remained safe. He states that the other accused persons hit him with pistol butts and lathis on different parts of his body and while leaving they fired in the air and stated that they would not spare him and his family and would kill them;

- A copy document apparently issued by the Chief Medical Officer of [name] Hospital, stating that the applicant's father [name] was admitted [in] August 1999 and died [the following day] of a brain haemorrhage;
 - Two unsigned written statements lodged on his behalf from his former migration agent which are discussed in detail below.
4. The delegate refused to grant the visa on 29 October 2012, noting in the decision record of the same date that he did not consider the applicant to be a reliable witness nor did he consider his evidence to be credible. In particular the delegate noted that the applicant had made two separate written statements in support of his claim, claiming in one statement to fear harm from MQM and in the other to fear harm from the PPP.
 5. The applicant applied for a review of the delegate's decision from this Tribunal on 12 November 2012. The applicant's representative provided further written submissions to the Tribunal on 12 July 2013, together with a statutory declaration made by the applicant on 10 July 2013.
 6. The applicant appeared before the Tribunal on 17 July 2013 to give evidence and present arguments. The applicant was represented in relation to the review by his registered migration agent.
 7. At the conclusion of the hearing the Tribunal adjourned the review application for 14 days to receive further documents and submissions.

THE RELEVANT LAW

8. 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.
9. 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).
10. 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').

11. 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.
12. The issue in this case is whether the applicant meets the criterion set out in either of s.36(2)(a) or s.36(2)(aa). For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

Country of nationality

13. The applicant claims to be a citizen of Pakistan. The applicant showed to the Tribunal his current Pakistani passport and his expired Pakistani passport. Each of those passports state that the applicant is a Pakistani national and that he was born in Hyderabad, Pakistan. There is no evidence before the Tribunal to suggest that either applicant is a national of any other country. The Tribunal finds that the applicant is a national of Pakistan and has assessed his claims on that basis.

The applicant's credibility

14. The Tribunal has had regard to the applicant's written claims for protection as well as the oral evidence of the applicant and materials submitted to the Tribunal in the course of review. There were a number of inconsistencies in the applicant's evidence and the documents he provided in support of that evidence that caused the Tribunal to have significant concerns about the credibility of his claims. Those concerns are of sufficient gravity as to cause the Tribunal to find that the applicant is not a witness of truth.
15. In making this assessment the Tribunal has considered the submission that the applicant is a vulnerable person. The Tribunal has considered its Guidance for Vulnerable People dated June 2012 which states that a vulnerable person is a person whose ability to understand and effectively present their case or fully participate in the review process may be impaired or not developed, noting that age, physical or psychological abuse and trauma, sensory impairment, mental illness or emotional disorder, intellectual, developmental and learning disabilities, physical disabilities, acquired brain injury and older age or frailty all comprise factors which can affect a person's ability to participate in the review process.
16. In forming an assessment of the applicant's credibility, the Tribunal has had regard to the fact that the applicant's claims involve significant trauma. Prior to the hearing it was submitted that he hoped to obtain counselling in Australia, but as he does not have Medicare the services available to him are limited. In a post hearing submission dated 31 July 2013 it was submitted that the applicant has attended one [counselling session] and that he has been assessed as eligible for ongoing assistance, but that [the counsellor] is currently not in a position to provide a written report as to his mental health. There is no medical evidence before the Tribunal that would indicate that he suffers from any medical condition. The

Tribunal indicated to the applicant that it was happy to adjourn the hearing for short breaks at any time if he wished and adjourned on two occasions during a three hour hearing.

17. The Tribunal notes that the applicant is a [age] male who gave evidence that he has lived in Australia with his sister since arriving in July 2009. He gave evidence that he has completed grade 12 in Pakistan and obtained an Advanced [Diploma] in Australia. He gave evidence that he has worked in various casual jobs in Australia, including in a factory, at a clothing shop and at [company deleted]. The Tribunal accepts that the Tribunal review process is stressful for applicants appearing before this Tribunal. However for the reasons set out in detail below, the Tribunal does not accept the applicant's particular claims to have experienced past harm in Pakistan before travelling to Australia.

The applicant's written statements

18. The Tribunal's first concern about the applicant's credibility relates to the two unsigned written statements which were lodged with the department by his former migration agent. The first statement was lodged with the protection visa application on 5 March 2012. In that statement the applicant states among other things that his father was a businessman and an active member of Jai Sindh Mahaz (which he describes as the movement party in Pakistan). He states that one of the biggest political parties in Pakistan is the People's Party Pakistan (PPP) which had several issues with Jai Sindh Mahaz, the majority of those issues being about race. The applicant states that in the late 1990s, his father had some dealings with Sindhi people of the ruling PPP and came across evidence of their wrongdoing, including bribery and murder. He states that his father was constantly tortured and harassed by members of the PPP for that evidence and that he was offered money to join the PPP which his father rejected. The applicant claims that as a result of the harassment, his father went into a coma and died 10.5 months later. Later in that statement the applicant states that after his father died, his mother was approached to join the PPP and asked for the evidence held by his father. He later states that the family moved to Karachi as it was governed by MQM, but that the PPP came into power in the elections and the situation worsened as they started killing people for money and power, especially families belonging to Jai Sindh Mahaz.
19. The second statement was lodged with the department on 7 June 2012 and is in broadly similar terms to the first statement. However in the second statement, all references to the PPP have been replaced with MQM. The applicant makes some new claims in the second statement, including that MQM tortured his mother as they thought she might have the evidence collected by his father and also tried to engage the applicant in their party as they knew he was close to his father in Pakistani culture. He claims that they also tried to kidnap the applicant and tortured his mother for money, stating that his mother gave them money and business property in exchange for the applicant's life. He later states that the family moved to Karachi as it was governed by MQM, but that the PPP came into power at the elections, forming a joint government with the MQM and started killing people for money and power, especially families belonging to Jai Sindh Mahaz.
20. The applicant's oral evidence at hearing was that he had only ever made one written statement which he had emailed to his former agent in a word document prior to his application for protection being lodged. He gave evidence that when he was notified of his interview date, his agent told him that he had not submitted a written statement and asked him to provide one. The applicant stated that shortly prior to his interview he emailed his agent his written statement which was exactly the same as the statement he had emailed to his agent the first time. He stated that he did not become aware that his agent had submitted a

written statement with his protection visa application until his current migration agent obtained the departmental files after his application had been refused.

21. The Tribunal noted that significant parts of the two statements were in near identical terms other than that the references in the first statement to the PPP were changed in the second statement to MQM and questioned how the applicant's former agent could have independently written a statement in March 2012 which was so similar to the applicant's own statement in June 2012. The applicant stated that he wasn't suggesting that his former agent had written the whole statement, rather that the first statement that he had emailed to his former agent in about March 2012 must have been altered by someone before being submitted to the department. The Tribunal put to the applicant at hearing that it could not think of any conceivable reason why his former agent or anyone acting on his behalf would deliberately change the applicant's statement by changing the name of the political party from he claims to fear persecution, nor could it conceive of any way in which such changes could have been accidentally made. The applicant stated that he was confused by it too.
22. The Tribunal has considered the post-hearing submission dated 31 July 2013 in which it is submitted that the manner in which the application for protection was prepared by the applicant's former agent raises concerns about the level and extent of representation received by the applicant. The Tribunal does not accept that any of the matters identified in that submission are such as would lead to a plausible explanation as to how or why a statement drafted by the applicant and emailed to his former agent would be changed in the way described above prior to being submitted to the department on the applicant's behalf. In making that assessment the Tribunal notes that the submission attached email correspondence between the applicant and his former agent indicating that the applicant emailed his written statement to his former agent on 28 May 2012 which he describes in that email as 'updated with all information' and that his former agent responded on 5 June 2012 advising him to send his documents directly to the department. The Tribunal considers that email correspondence contradicts the applicant's evidence at the Tribunal hearing that the statement he sent to his agent prior to his departmental interview was exactly the same as the one he provided prior to his application being lodged.
23. Nor does the Tribunal accept the explanation that the distinction between the PPP and MQM is not important because the two parties formed a coalition government at the time and that therefore the inconsistencies between the two statements are not material. In the Tribunal's view such an explanation cannot be reconciled with the applicant's own evidence that the single statement he prepared and emailed it to his agent must have been changed before being submitted to the department.
24. On the evidence before it, the Tribunal finds that the applicant provided to his former agent two contradictory statements, each of which was submitted to the department on his behalf. The Tribunal considers that the preparation of such contradictory statements reflects adversely on the credibility of the applicant's claims.

The applicant's residence and education in Pakistan

25. The applicant has given inconsistent evidence about his residence in Pakistan during the years before he travelled to Australia. In his form 886C, he states that he lived at [address deleted] Hyderabad between 2002 and 2009. In his personal particulars form he states that he lived at that address from 1990 to 1999, giving no details of his residence between 1999 and 2009. The applicant's current passport states that his address in Pakistan is an address in

Hyderabad which the applicant stated at hearing is his grandfather's address. In each of his written statements lodged with the department he states that his family moved to Karachi and in his statutory declaration he clarifies that this was when he was about 15 years of age.

26. At hearing he stated that his mother moved the children to Karachi for her children's education when he was about 15 and that they remained living there for about 3-4 years. However at the Tribunal hearing he was unable to tell the Tribunal his address in Karachi, nor was he able to answer questions about his schooling in that city. The applicant stated initially that he couldn't remember the name of the school he attended in Karachi and that he returned to Hyderabad to do his final exams. When asked if he attended school in Karachi or Hyderabad at the time of his graduation, the applicant stated that he didn't remember and that he changed schools often. When asked how it was that he couldn't remember the name of the school from which he had graduated, the applicant stated that he did not know the name. Later in the hearing the applicant advised the Tribunal that he didn't attend school in Karachi but completed his O levels privately, attending a centre where he received tuition and sat exams privately. When asked the name of this centre, the applicant stated that he couldn't remember. The Tribunal advised the applicant that his inability to recount details of his education and residence in Karachi where he apparently lived for four years together with the discrepancies in the documents before the Tribunal caused the Tribunal to doubt that the family relocated to that city as claimed.
27. In a post-hearing submission dated 31 July 2013, the applicant's representative referred the Tribunal to the applicant's overseas student visa application which records the applicant's residential address as an address in Karachi and a rental agreement entered into by the applicant's mother in August 2007 for a property in Karachi. The Tribunal was also provided with documents purporting to be the applicant's statements of entry and results for 2006 and 2007 issued by the Karachi British Council. However these documents appear to contradict the applicant's evidence at hearing that he returned to Hyderabad to sit his final exams. The delegate cited country information in his decision dated 29 October 2012 indicating that document fraud in Pakistan is rampant and gave the applicant's documents little weight and a copy of the delegate's decision was attached to the applicant's application for review. Similarly the documents provided by the applicant in support of the applicant's claims that his family relocated to Karachi do not assuage the Tribunal's broad and serious concerns as to the applicant's credibility. On the evidence before it, the Tribunal does not accept that the applicant's family relocated to Karachi as claimed. The Tribunal notes the applicant's evidence that his mother and sister now reside in Hyderabad where his grandparents remain living and that if he returned to Pakistan, he would also return to Hyderabad. The Tribunal finds that the applicant's home region in Pakistan is Hyderabad.

The delay in lodging an application for protection

28. Further, the timing of the applicant's arrival in Australia in July 2009 and the delay in lodging the protection visa application until March 2012 cause the Tribunal to be concerned about the seriousness, gravity and immediacy of the applicant's claims to fear harm if he returns to Pakistan. The applicant has sought to explain this delay by stating that at the time he arrived in Australia he did not know that he could lodge a protection claim and that he did not become aware of this until meeting a lawyer in 2012 who advised him that he should apply for protection. The Tribunal notes the applicant's evidence that he was refused a further student visa in 2011 and that he subsequently sought a review of that decision from the MRT where he was unsuccessful. The applicant gave evidence that it was only after this that he was advised to claim protection by his former migration agent. In a post-hearing

submission dated 31 July 2013 it was submitted that it was conceivable that upon his arrival in Australia he felt that his immediate future was secure and sought to forget the past. Given the broad concerns the Tribunal holds about the applicant's credibility the Tribunal does not accept this to be the case. Rather the Tribunal considers that the applicant would have sought advice and acted earlier if he genuinely held concerns for his safety in Pakistan as he now claims.

The applicant's background

29. The Tribunal accepts that the applicant was born and grew up in Hyderabad, Pakistan, noting that to be consistent with the statement in his Pakistani passport. The Tribunal further accepts that the applicant grew up in a household comprising his parents and [siblings] until the death of his father [in] 1999.

The applicant's political opinion

30. The applicant claims that his father was involved in JSQM before his death in 1999, in the course of which he came into possession of evidence about MQM's involvement in corrupt and criminal activities. The applicant gave evidence that he did not know the details of those activities or the evidences held by his father and that his mother did not know either. He claims that MQM found out about his father's evidences when members of JSQM left to join MQM and told them and that the harassment his father suffered as a result of this led to him falling into a coma from which he later died.
31. Given the death certificate and document issued by the Chief Medical Officer of [hospital deleted] lodged with the department, the Tribunal accepts that the applicant's father died [in] 1999 in Hyderabad. The death certificate lodged with the department records the cause of his death as heart failure while the document purporting to be issued by the Chief Medical Officer of [hospital deleted] states that he died of a brain haemorrhage. Given the Tribunal's broad concerns about the credibility of the applicant the Tribunal does not accept that the applicant's father was involved with JSQM, nor that his death was in any way caused by his political activities or any difficulties with MQM, PPP or any other political party, rather the Tribunal finds that the applicant's father died of natural causes.
32. In making that assessment the Tribunal has had regard to the two written statements lodged on behalf of the applicant with the department in support of his protection claim. As set out above, in the first of those statements the applicant claims that his father was threatened and harmed by members of the PPP. In the second of those statements he claims that his father was threatened and harmed by members of the MQM. At hearing the applicant denied that his claims ever related to the PPP and gave evidence that somebody must have amended the statement he emailed to his former agent prior to submitting it to the department. For the reasons set out above, the Tribunal has not accepted this and has found that the applicant provided to his former agent two contradictory statements, each of which was submitted to the department on his behalf.
33. The inconsistencies in these statements, taken together with the Tribunal's other concerns about the credibility of the applicant's claims set out above, cause the Tribunal not to accept that the applicant's mother or other family members were harmed by or received threats from members of MQM or the PPP after his father's death in Hyderabad. Nor does the Tribunal accept that the applicant himself was threatened on the phone or in person by members of either of those parties while the applicant was living in Hyderabad.

34. In making this assessment the Tribunal has had regard to the copy FIR and English language translation contained on the departmental files which purports to relate to the applicant's mother's complaint lodged [in] December 1999 regarding an incident in which people with whom her husband had political differences being [Mr A] and [Mr B] came to her house and abused and threatened her. However the Tribunal's concerns about the applicant's credibility are of a gravity and degree that the Tribunal gives little weight to this document.
35. As the Tribunal has not accepted that the applicant's family members were harmed by or received threats in Hyderabad from members of MQM or the PPP nor that the applicant's family relocated from Hyderabad to Karachi, the Tribunal does not accept that any person from Hyderabad followed the applicant or his family to Karachi and proceeded to threaten them in that city. In particular the Tribunal does not accept that the incident described by the applicant as occurring soon after the family moved to Karachi in 2005 and described by him in his statutory declaration in paragraphs 29 – 35 took place. In making this assessment the Tribunal also notes that it was not mentioned in either of the applicant's prior written statements submitted to the department.
36. As the Tribunal has not accepted that the applicant's family relocated to Karachi, it follows that the Tribunal does not accept that the applicant joined the Student Federation of JSQM in that city or in any other city in about 2005 as claimed. In making this assessment the Tribunal notes that it has not accepted that the applicant's father was involved with that group before his death in 1999, nor that the applicant's father's death was in any way caused by his political activities or any difficulties with MQM, PPP or any other political party. Given the concerns the Tribunal holds about the applicant's credibility discussed elsewhere in this decision, it is not prepared to accept that the applicant himself because involved in the Student Federation of JSQM in Karachi or in any other place in Pakistan, nor that he went on to become an official member of JSQM after turning 18 in [date].
37. In making this assessment the Tribunal has had regard to the untranslated identity card produced to the department, the original of which the applicant produced to the Tribunal. The applicant's representative advised the Tribunal that the card was unable to be translated because they had been advised that there were no accredited Sindhi translators in Australia and the card would have to be sent overseas to be translated and the Tribunal accepts that explanation. The applicant told the Tribunal that the card stated his name and that of his father and that it was issued in Hyderabad in [date]. However the Tribunal's concerns about the applicant's credibility are of a gravity and degree that the Tribunal gives little weight to this document.
38. Nor does the Tribunal accept that the applicant was threatened and assaulted by any person at his family home in Hyderabad in January 2009 as he claims. In making this assessment the Tribunal notes that the applicant's evidence in his statutory declaration made 10 July 2013 contradicts the contents of the FIR he produced to the department and the applicant's oral evidence at hearing. In particular, the applicant states in his statutory declaration that:
 51. [In] January 2009, we were at home when some men came to the door and rang the bell. When I answered the door, two men forced their way into the house and started hitting me with a stick. They were telling me to stop what I was doing and hit me across the head causing me to black out. After I had been hit I became totally disoriented but my mother told me that they had hit her and they told her that she should stop me from doing my activities against MQM.

39. In the FIR lodged by the applicant, he is recorded as stating as follows:

On [date] 01-1999 I was present in my house that at about 2015 hours there was knock at the door of my house to which I opened the door and saw that four persons are standing on the door to whom I already known and who have political differences with my father, they were (1) [Mr A] s/o [name], (2) [Mr B] g/o [name], (3) [Mr C] s/o [name] (4) [Mr D] s/o [name] who were having pistols and lathis in their hands and asked me that you are following the policy of your father with whom we have political differences/ enmity, out of them [Mr A] made fire from his pistol but I remained safe and other accused persons caused pistol butt and lathis blow to me on different parts of my body and while leaving made aerial firing and threatening that we will not spare you and your family and will kill you . . .

40. At hearing, the applicant told the Tribunal that when he opened the door, he saw four men who rushed him and started holding him, stating that he knew all four people but could not remember their names and later stating that one of them was called [name] and two of them had [name] in their names. When asked about the weapon with which he was beaten, the applicant stated that it was a hard stick. When asked if any other weapons were used, the applicant stated that he couldn't remember but he thought they had guns because he heard gunfire. When the discrepancies with his earlier statements were put to the applicant at hearing, he sought to explain them by stating that there were four people at the door when he answered it, but only two had entered the house and beaten him. He stated that his memory of the incident was clear when he lodged the FIR but he could no longer remember the exact details. In a post-hearing submission dated 31 July 2013, it was submitted that all of the evidence provided by the applicant in relation to this incident is consistent, as the applicant's statements in his statutory declaration that two men entered his house is not inconsistent with his other statements that four men came to the house and that his description of the men carrying sticks is not inconsistent with his earlier statement that they carried *lathis*, being steel-tipped bamboo canes and that the passage of time has caused the applicant to forget the level of detail he was originally able to provide to authorities shortly after the incident.
41. The Tribunal does not accept this submission, considering the applicant's various statements to be materially inconsistent in relation to the number of people who entered his house and beat him and the weapons that they used. Even if the Tribunal were to accept that the applicant's apparently inconsistent statements merely sought to distinguish between the number of people who came to his house and the number of people who entered it and assaulted him, it does not accept as plausible that the applicant would not remember being shot at and pistol whipped as recounted in the purported FIR had such an incident actually taken place. In making this assessment the Tribunal has had regard to the Tribunal's *Guidance on the Assessment of Credibility*, but its concerns about the applicant's credibility are not assuaged by the matters referred to in that Guidance. Given the grave concerns the Tribunal holds about the applicant's credibility, the Tribunal gives little weight to the copy FIR and the copy medico-legal certificate that the applicant has submitted to the department which purports to relate to his injuries in that attack. The Tribunal does not accept that the applicant was assaulted or threatened by members of MQM, PPP or any other persons in Hyderabad in January 2009 as claimed.
42. The applicant gave evidence to the Tribunal that his mother and [siblings] have also been targeted by MQM members in Hyderabad and in Karachi. He stated that one of his [siblings] was forced to give up [their job] in Karachi as a result of that harassment and return to live with their mother in Hyderabad. The applicant gave evidence that his other [sibling]

travelled with him to Australia, also as a student. Given that the Tribunal has not accepted that the applicant's father or the applicant belonged to JSQM, nor that they were targeted for harm in Hyderabad or Karachi, the Tribunal does not accept that any member of the applicant's family has been harmed, harassed or otherwise targeted by any member of MQM, PPP or any other persons for the reasons claimed by the applicant. For the same reasons the Tribunal does not accept that the applicant was of adverse interest to MQM or PPP members in Hyderabad or Karachi prior to leaving Pakistan, nor that he will be of adverse interest to them if he returns, now or in the reasonably foreseeable future.

43. In a post-hearing submission dated 31 July 2013, it is submitted that members of JSQM and political activists are at risk throughout Sindh province. For the reasons set out above, the Tribunal has not accepted that the applicant is a member of JSQM, nor that he is of adverse interest to MQM or PPP. It follows that the Tribunal does not accept that the applicant holds or would be imputed as holding a political opinion as a person opposed to MQM or PPP, or that he would be known as a person supporting JSQM. The Tribunal has not accepted that the applicant's father was a member of JSQM or that he opposed the MQM or PPP and for that reason the Tribunal does not accept that the applicant is a member of the particular social group, family members of political activists/ people opposing MQM. On the evidence before it, the Tribunal does not accept that the applicant is a political activist of any description.

The applicant's Sindhi ethnicity

44. The Tribunal accepts the applicant is an ethnic Sindhi. The Tribunal has been referred to independent sources set out in the applicant's representative's submissions dated 12 and 31 July 2013 and accepts the contents of the independent sources set out in those submissions, specifically that Sindhis and Mohajirs are the two largest ethnic communities living in Sindh numbering approximately 50 million people and 30 million people respectively and that Sindhis have felt marginalised since independence, particularly as Pakistan made Urdu the national language, denying Sindhi its traditional status in Sindh. The Tribunal accepts that ethnic disturbances in Sindh resulted from these tensions and that Sindhis blame Mohajir militants for killings and other outrages, including a wave of attacks launched in 1992 which led to the Pakistani army becoming involved. However there is nothing in those sources, nor in other materials before the Tribunal, that would indicate that Sindhis are at risk of serious or significant harm in Hyderabad or elsewhere in Pakistan for reasons of their Sindhi ethnicity. On the evidence before it, the Tribunal does not accept there to be a real chance that the applicant will be targeted for serious harm if he returns to Pakistan, now or in the reasonably foreseeable future, on the basis of his Sindhi ethnicity.

The applicant's profile as a person returning to Pakistan from a western country and/ or failed asylum seeker

45. The Tribunal accepts that the applicant, if forced to return to Pakistan, will do so as a person who has spent time in a western country and as a person who has made an unsuccessful application for protection in Australia. At hearing the Tribunal put to the applicant that independent sources did not indicate that persons returning to Pakistan were targeted for harm merely because they had spent time in a western country or lodged a claim for asylum that was not successful and that a great many Pakistani nationals came to Australia and other western countries as students and did not face harm on return. The applicant stated that this was because those persons did not have the political problems that the applicant had experienced. For the reasons set out above, the Tribunal has not accepted that the applicant has faced harm in the past on the basis of his political opinion, nor that he is of adverse

interest to MQM or PPP for the reasons he claims. On the evidence before it, the Tribunal does not accept there to be a real chance that the applicant will be targeted for serious harm on for reason of his political opinion, now or in the reasonably foreseeable future.

46. The Tribunal has considered the independent sources referred to in the representative's submission dated 12 July 2013 which report instances of targeting and kidnapping of returned residents and overseas nationals in Pakistan by the Taliban. However the sources cited in the submission suggest that those incidents are few in number and on the evidence before it the Tribunal does not accept there to be a real chance that the applicant will be targeted for harm if he returns to Pakistan on the basis that he is a returnee from a western country or a failed asylum seeker.

The applicant's Shia religion

47. The applicant claims to fear harm if he returns to Pakistan because of his Shia religion, stating that although he had not directly experienced harm on this basis, there had been occasions when bombs had been placed in *majlis* in Hyderabad. The Tribunal accepts that the applicant is of the Shia religion and that he will be involved in the Shia community if he returns to Hyderabad.
48. At hearing the Tribunal put to the applicant information before it from independent sources about the religious composition of Hyderabad and the distance of that city from Karachi. The applicant advised the Tribunal that the information to which the Tribunal was referring related to the city of Hyderabad in India, rather than Hyderabad in Pakistan. The Tribunal acknowledges that to be the case and accepts that it is not relevant to the applicant's situation as a resident of Hyderabad, Pakistan. The Tribunal has had no regard to that information in its assessment of the applicant's claims.
49. The applicant's representative has referred the Tribunal to independent sources that indicate that Shia Muslims are increasingly targeted by extremist groups in Karachi and in other parts of Pakistan. For the reasons set out above, the Tribunal has found that the applicant's home region is Hyderabad and that he will return to that city if he returns to Pakistan.
50. In a post-hearing submission dated 31 July 2013, the applicant's representative referred the Tribunal to country information that in the first six months of 2011, the South East Asian Terrorism Portal recorded only one fatal attack on Shias by Sunni militants in Sindh (excluding Karachi), being the assassination of the Vice President of Shia Ulema Council in the city of Hyderabad, and noting two other sectarian incidents in Sindh during the same period, being the killing of a Shia in Hyderabad in January 2011 and an attack on the house of a local Shia Ulema Council member in the town of Kotri, Sindh.
51. The Tribunal put to the applicant at hearing that independent sources indicated that Shia Muslims make up about 20% of Pakistan's population and that there are large Shia populations in cities including Hyderabad, which may cause the Tribunal to consider that the risk of him being caught up in Pakistan's sectarian violence to be remote. The applicant stated that other Shias did not share his political background and other issues and his problems related not only to him being Shia but also to his political activities. The applicant has not suggested that he has been targeted for harm in the past because of his Shia religion and the Tribunal does not accept that his usual practise of the Shia religion would raise his profile to one of any prominence in Hyderabad.

52. On the basis of those independent sources, the Tribunal accepts that there are ongoing attacks on Shia mosques, processions and prominent people in Pakistan, including a small number of incidents in Hyderabad. The Tribunal has accepted that the applicant is a Shia Muslim, but for the reasons set out above has not accepted that he has suffered harm in the past on that basis, nor that he has come to the adverse attention of MQM or PPP. The Tribunal accepts there to be a possibility that the applicant, as a Shia Muslim, may be caught up in sectarian violence in Pakistan in the future. However the large number of Shia Muslims reportedly living in Hyderabad and throughout Pakistan together with the small number of reported incidents and the applicant's profile as a member of the Shia community in Hyderabad who has not been targeted for harm in the past, causes the Tribunal to consider that the risk of the applicant being caught up in sectarian violence in Hyderabad is remote, and therefore not real.
53. The Tribunal has considered whether the cumulative effect of the applicant's Sindhi ethnicity and Shia religion would put him at risk of harm if he returned to Hyderabad, now or in the reasonably foreseeable future. However on the evidence before it, the Tribunal does not accept that those matters in combination mean that the applicant would face a real chance of harm if he returned to his home in Hyderabad, now or in the reasonably foreseeable future.
54. Having considered the applicant's claims separately as well as cumulatively, the Tribunal does not accept that the applicant faces a real chance of persecution if he returns to Hyderabad, Pakistan for reasons of his Shia religion or any other Convention ground, now or in the reasonably foreseeable future. The Tribunal therefore finds that the applicant's fear is not well-founded.
55. The Tribunal has considered whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's being removed from Australia to Pakistan, there is a real risk that he will suffer significant harm. For the reasons set out above, the Tribunal has not accepted the applicant's claims of past harm, nor has it accepted that that he holds or will be imputed as holding a political opinion that would put him at risk of harm in the future. The Tribunal has not accepted that the applicant has come to the adverse attention of MQM or PPP in the past, nor that he will be of interest to them in the future for the reasons he has claimed. It has not accepted that there is a real chance that the applicant will suffer serious harm on the basis of his Shia religion or his Sindhi ethnicity, separately or cumulatively, now or in the reasonably foreseeable future. It has not accepted that the applicant's time in Australia will put the applicant at risk of harm if he returns to Pakistan, nor has it accepted that he would face harm as a failed asylum seeker.
56. In *MIAC v SZQRB*, the Full Federal Court held that the 'real risk' test imposes the same standard as the 'real chance' test applicable to the assessment of 'well-founded fear' in the Refugee Convention definition.¹ For the same reasons the Tribunal does not accept that there is a real risk the applicant will suffer significant harm for any of these reasons as a necessary and foreseeable consequence of the applicant's being removed from Australia to Pakistan. Nor does the Tribunal accept there is a real risk the applicant will suffer significant harm for any other reason as a necessary and foreseeable consequence of his removal to Pakistan. Therefore the applicant does not satisfy the criterion set out in s.36(2)(aa).

¹ *MIAC v SZQRB* [2013] FCAFC 33 (Lander, Besanko, Gordon, Flick and Jagot JJ, 20 March 2013) per Lander and Gordon JJ at [246], Besanko and Jagot JJ at [297], Flick J at [342].

57. 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).
58. 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).
59. 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

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