

**1216297 [2013] RRTA 799 (22 October 2013)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1216297  
**DIAC REFERENCE(S):** CLF2012/97700  
**COUNTRY OF REFERENCE:** Pakistan  
**TRIBUNAL MEMBER:** Andrew Jacovides  
**DATE:** 22 October 2013  
**PLACE OF DECISION:** Sydney  
**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 applied to the Department of Immigration for the visa [in] 2012 and the delegate refused to grant the visa [in] 2012. The applicant applied for review of the decision on 22 October 2012.

### THE APPLICANT'S CLAIMS

#### *Evidence to the Department*

3. The applicant stated in his protection visa application that he was a citizen of Pakistan. He indicated that he was born in [Libya], on [a certain date] and he lived there until 2010. He indicated that he was able to remain in Libya as a dependent of his parents but he currently had no right to enter and reside in Libya. The applicant indicated that he spoke Urdu, English, and Arabic; he was a Muslim Pakistani; he first arrived in Australia [in] 2010; he returned to Pakistan [for about a month in] 2012; he had previously visited [other countries in 2008 and 2010]; he attended [a certain school] until [year deleted]; he was self-employed [that time] until 2010; and he was a student in Australia. The applicant stated that his parents were in Libya, his brother, [Mr A], was in Australia and had applied for a protection visa, and he had [sisters] in Pakistan. He submitted copies of his Pakistani passport, a certificate of registration of birth, and his Pakistani National Identity Card. He submitted articles relating to al-Qaeda and terrorist activities in Libya and Pakistan, including articles stating that al-Qaeda had been wiped out in Pakistan; media reports regarding terrorist networks in Libya; and other documents relating to human rights conditions in Pakistan.
4. The applicant submitted a statement of claims which had been prepared by his migration agent. He began with an overview of human rights conditions in Pakistan and comments on terrorist activities in Libya and Pakistan. The applicant stated that growing up in Libya he was frequently at risk of being forcibly recruited by terrorists, as many Pakistani youths had been recruited, but he was able to avoid it. He stated that he was permitted to remain in Libya after he finished school, when he would have otherwise been expected to leave the country, because of the security situation in Pakistan.
5. The applicant stated that “around 2007” he attended a lecture given by Abdul Sayed (spelt four different ways in the submission) and found that he spoke about “the turmoil the Muslims were facing after the war [on] terror and how ... Muslims should rise against the western powers who slander Islam and were planning to destroy [their] religion and culture”. The applicant stated that Abdul Sayed encouraged the 100 Muslim youth attending the lecture to join the “jihad”. He claimed that after the lecture, “men” associated with Abdul Sayed came to his house and tried to recruit him and his brother. He stated that his father told those men that the applicant and his brother were leaving Libya permanently for Pakistan. The applicant claimed that the men told his father that the applicant and his brother could work for Abdul Sayed in Pakistan. He claimed that later they discovered that Abdul Sayed was “a known member of al-Qaeda and had been working for [the] Taliban” and another terrorist organisation known as the “Libyan Islamic Fighting Group (LIFG)”. He stated that

before they departed from Libya they were told to report to “senior LIFG men” who told them that they had to join the group in Libya or support it financially. He claimed that his father gave monthly payments to the group until the applicant and his brother departed from Libya in 2010. He stated that before they went to Pakistan in 2010, he and his brother started to visit other overseas countries during their holidays so they could avoid the “terrorist groups” in Libya.

6. The applicant stated that in 2009 his brother returned to Pakistan, and stayed in their home in [City 1], with a view of applying for a visa to [another country]. He stated that his brother was shocked at the temperament of the Pakistani youths who supported terrorist groups such as the Taliban and al-Qaeda. The applicant stated that his brother became well known in the local area because young people, and a local mullah, were interested in hearing about his experiences in Libya. He stated that later his father decided that the applicant and his brother should return to Pakistan to live with their sister in [City 1]. He stated that his sister was living alone during the week, because her husband had a business in [City 2], and his father wanted him and his brother to provide her with security. He stated that his brother-in-law was a successful and influential businessman in [City 2].
7. The applicant stated that when he and his brother went to Pakistan in [2010], the local mullah demonstrated great interest in them. He stated that the mullah wanted to know more about their alleged links with LIFG and Abdul Sayed. The applicant claimed that the mullah told them that they should be proud to have met such a person and to have established a connection with him and his associates. He stated that his brother was invited to talk about those connections at the local mosque, but he left the task to the applicant. The applicant stated that when his father heard about the mullah’s interest, he advised the applicant and his brother to leave the country as soon as possible. He stated that there was great interest from everyone in the community regarding their alleged links to the LIFG and Abdul Sayed. He stated that after he gave the speech at the mosque, they were asked questions regarding Abdul Sayed’s location, whether he would become the leader of al-Qaeda, details about the LIFG, and how to join terrorist organisations. He stated that the locals asked him and his brother “why they didn’t join [Abdul Sayed’s] group” and they wanted to know “how they could join his group”. He stated his father sent them to Australia on student visas, six months after they arrived, because he did not think that it was safe for them to remain in Pakistan.
8. The applicant claimed that after they came to Australia, his sister told them that “the local Muslims” were repeatedly asking about their return. He stated that they did not want to return to Pakistan, but in [2012] their sister informed them that she was ill, and her husband could not take time off work to look after her, so the brothers returned to Pakistan to look after their sister. He stated that they told his sister not to tell the local mullah or the “neighbours” that they were returning to Pakistan. The applicant stated that the neighbours and the mullah subsequently discovered they were back in the country, and the mullah came to their house in [2012], with a “group of militants”, took the brothers forcibly to a remote area about ten to twelve hours drive from their house, and interrogated them with a group of militants. The applicant stated that they asked the brothers questions about Abdul Sayed and admonished them for speaking publicly about him. He stated that they were told that they had placed Abdul Sayed’s life at risk because NATO was trying to kill him. The applicant stated that the men told him and his brother that they had to join the “jihad”. The applicant stated that they told the men that he and his brother would join the holy war but first they wanted to finish their studies in Australia. He stated that the mullah and his associates agreed to let them go, on the proviso that they join the holy war when they finished their studies in Australia. The

applicant stated that the mullah thanked them for their commitment to join the jihad and told them that he would wait for them to return. The applicant claimed that he and his brother immediately fled and hid at his brother-in-law's [workplace] until they departed the country. He stated that after he returned to Australia his sister informed him that she had moved to [City 2] with her husband.

9. The applicant was interviewed by an officer of the Department [in] 2012. The Tribunal has listened to the interview. The applicant stated that he had no right to return to Libya. The applicant stated that when he visited [other countries], he explored study opportunities, but he was told that he had to return to his country and apply from there. He stated that he could not live permanently in Libya, but he may be able to visit his parents. He stated that he could not remain there as a dependent, as he did previously, because of his age. The applicant stated that he and his brother departed from Libya in [2010]. The delegate asked the applicant about the mullah's interest in him and his brother. The applicant stated that he wanted them to "join him" because of their connection to Abdul Sayed. He was asked why he attended the meeting with Abdul Sayed. The applicant stated that he and his brother assumed it was a religious lecture. He was asked why he went. He stated that his father told his brother to take him. The delegate asked the applicant if he was involved in any militant activities. He stated that he was not. The delegate asked the applicant why the mullah was so interested in him and his brother. The applicant stated that it was the connection with Abdul Sayed. He was asked if he ever told the mullah that he was not interested in working for him. The applicant stated that they told the mullah that they had no real connection with Abdul Sayed but he told them that they should be proud of the connection they had with Abdul Sayed and that they should join his party. The delegate commented that he found it difficult to accept that the mullah would be so interested in recruiting him and his brother. The applicant stated that it may have been due to their background and the languages they spoke.
10. The delegate asked the applicant why he returned to Pakistan in 2012. He stated that his sister was ill and his father suggested to him and his brother that they return to look after her. He was asked what his sister was suffering from and he indicated that she had [condition deleted]. He stated that she went to a hospital, saw a doctor, and then she returned home. The applicant stated that she went alone because his brother was too afraid to leave the house and he had to go to the market. The delegate asked the applicant if his sister's visit to the hospital was before or after he and his brother were abducted. The applicant stated that it was before. He was asked why his brother was afraid to go outside. The applicant stated that his father warned them not to go outside "too much" and his brother was afraid of the mullah.
11. The applicant stated that he and his brother were taken by the mullah, held overnight, and released the following day. The applicant stated that the mullah came to their home at 4.00 in the morning, he had two other people with him who held guns, he stated that they were placed in a four wheel drive and they drove for approximately 10 to 12 hours, and taken to a gathering of militants in [a certain area]. He stated that they were taken to a house where they met two men, who told them that they were with al-Qaida, and they were admonished for talking publicly about Abdul Sayed and endangering his life. The applicant stated that they were told to join al-Qaida. The delegate asked the applicant how these persons knew about their meeting with Abdul Sayed. The applicant stated that the mullah must have told them. He stated that in 2010, they told him that they had attended a rally held by Abdul Sayed and his group.
12. The applicant stated that they told the al-Qaida men that they were willing to join the group but they needed time to finish their studies in Australia. He stated that they "got suspicious"

and accused them of trying to “run away from them”. He stated however, that his brother was able to convince them that their intentions were genuine. The applicant stated that the al-Qaeda men wanted to know why they had not joined Abdul Sayed’s group in Libya. He stated that they told them that they did not have a visa to live in Libya so they returned to Pakistan with the intention of joining the “group” there. The applicant stated that the following morning they were taken back to their home “about noon time” and on the same day they fled to [City 2] and hid at his brother-in-law’s [workplace]. He stated that they remained in [City 2] approximately two weeks until they found a flight back to Australia.

13. The delegate asked the applicant if he ever spoke at a mosque in Pakistan. The applicant stated that once he spoke about his meeting with Abdul Sayed. He stated that he was a Sunni Muslim and he practiced his religion sometimes. He stated that if he had time he went to the mosque. The applicant stated that when he spoke about Abdul Sayed at a mosque in Pakistan he was forced by the mullah to read a prepared statement. He was asked to describe the statement. The applicant stated that he was forced to say that Abdul Sayed was a young man working for Muslims, that he was looking after the Islam religion, that he and his people were protecting Islam, and that young Muslim people should support Abdul Sayed. He stated that he could not refuse to read the message because he was terrified of the mullah. He stated that the mullah could torture him if he did not comply. He indicated that in 2012, he did torture him. The applicant stated that he was suspicious of the mullah’s intentions because he had previously told his brother that they should be proud to have met Abdul Sayed. He stated that the mullah could have been receiving money to promote Abdul Sayed’s group in Pakistan. The delegate asked the applicant if the group had a name. The applicant stated that he had “no idea” what the group was called in Pakistan. He stated that he was “not much interested” and he did not try to find out. The applicant stated that he only knew that the Taliban in Pakistan had links with Abdul Sayed. He was asked if he reported the matter to the police. The applicant stated that he did not approach the police because the police were afraid of the militants.
14. The delegate discussed with the applicant his sister’s circumstances in Pakistan. He stated that she was living with her husband in [City 2]. He stated that when he and his brother lodged the application for protection in Australia, the mullah went to his sister’s house in [City 2] and told her to tell the applicant and his brother to telephone him.
15. The delegate asked the applicant if he could avoid the mullah by relocating within Pakistan. The applicant stated that they would be easily found by the mullah and his associates throughout Pakistan. He stated that he actually did not know anyone in Pakistan and when he went there for the first time he was too frightened to go out of the house. The delegate stated that he could go and live somewhere else with his brother. The applicant stated that they could not live there because they are at risk of serious harm by extremists and terrorists.

#### *Evidence to the Tribunal*

16. The applicant and his brother attended the hearing together. They provided evidence in support of both applications. The Tribunal discussed the claims with each applicant individually. They essentially repeated their claims and provided an identical description of their circumstances.
17. The applicants stated however, that when they left Pakistan in 2010, they did not believe that they faced serious harm in Pakistan. They stated that it was for that reason that they decided to return to Pakistan in 2012. They stated that they were on holiday and they decided to return

to see their sister. They stated that their sister was suffering from [a certain condition] and they wanted to assist her. The Tribunal indicated to the applicants that in their written statement they clearly indicated that they left Pakistan in 2010 because they did not feel safe there. The Tribunal commented that it appeared to be the main reason they left the country. The applicants stated that this was not the case. They indicated that their involvement with the mullah was unpleasant, and they wanted to distance themselves from him, but they did not believe or anticipate that he would harm them as he did when they returned in 2012.

18. The Tribunal indicated to the applicants that the name 'Abdul Sayed' was spelt four different ways in their written submissions. It indicated that it knew which person they were referring to, because of his unique connection with Al-Qaeda and LIFG. They were asked to provide his full name. The applicants stated that they knew him only as Abdul Sayed. The Tribunal asked the applicants how it was possible that they could have had the experiences they described, without knowing the man's name. The applicants stated that the issue of his name did not arise and they knew him only as Abdul Sayed. The Tribunal commented that his name was *Aly Soliman Massoud Abdul Sayed*. The Tribunal referred to sources which discussed his activities: United Nations, The Al-Qaida Sanctions Committee, undated, *Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, QI.A.229.07 Aly Soliman Massoud Abdul Sayed*, at <http://www.un.org/sc/committees/1267/NSQI22907E.shtml> accessed on 15 October 2013; European Union 2007, *Commission Regulation (EC) No760/2007 of 29 June 2007*, 29 June, at <http://eur-lex.europa.eu/Notice.do?mode=dbl&lang=en&ihmlang=en&lng1=en,en&lng2=bg,cs,da,de,el,en,es,et,fi,fr,hu,it,lt,lv,mt,nl,pl,pt,ro,sk,sl,sv,&val=451418:cs> accessed on 15 October 2013; US Department of Treasury 2007, *Treasury Designates Al Qaida, LIFG Operatives*, 15 June at <http://www.treasury.gov/press-center/press-releases/Pages/hp462.aspx> accessed on 15 October 2013; and HM Treasury 2013, *Consolidated List of Financial Sanctions Targets in the UK: Last Updated:11/10/2013*, 11 October at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/249791/alqaid\\_a.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249791/alqaid_a.pdf) accessed 15 October 2013. The Tribunal commented that the sources provided details regarding Abdul Sayed's terrorist activities. It commented that these sources were easily accessible on the internet.
19. The Tribunal asked the applicants when they attended the Abdul Sayed lecture. They stated that it was in [2007]. The Tribunal commented that the above reports indicate that Abdul Sayed was known to be an active extremist in the 1980s and 1990 with various terrorist networks in Libya, Afghanistan, Pakistan, Chad, Sudan, and Yemen, but on 8 June 2007 he was classified a terrorist by the UN Security Council and shortly afterwards he was blacklisted by the governments of the USA, UK, and the EU. The Tribunal commented that he was known to be an active member of al-Qaida and LIFG. The Tribunal commented that he was a well-known Libyan terrorist and it found it difficult to believe that they had never heard of his involvement in terrorist activities at the time they attended the lecture. The applicants stated that their father had made some inquiries but they thought it was lecture on religion.
20. The Tribunal indicated to the applicants that it had doubts as to whether they were providing a credible account of their circumstances. It commented that those doubts arose for several reasons. The Tribunal commented that they appeared to have limited knowledge regarding Abdul Sayed and it found it difficult to believe that they had the experiences they described,

in relation to Abdul Sayed, and yet they did not know his name or that he was a well-known terrorist by 2007.

21. The Tribunal commented that their claims have changed over time. The Tribunal commented that initially they claimed that they faced serious harm in Pakistan during 2010, and for that reason they fled the country, but at the hearing they were stating that it was not serious and that was why they returned to Pakistan in 2012. It commented that these inconsistencies in relation to a major claim raised further doubts for the Tribunal as to whether the applicants were providing a truthful account of their circumstances.
22. The Tribunal commented that the applicants' decision to return to Pakistan in 2012, for the reasons provided and under the circumstances they described, raised more doubts as to whether they were providing a credible account of their difficulties in Pakistan.
23. The Tribunal further commented that it found it difficult to believe that terrorists in Pakistan had made so much effort to recruit them, even though the applicants had not demonstrated any apparent interest or ability to undertake the tasks expected of them, but then they were released so they could finish their studies.
24. The Tribunal invited the applicants to comment. [Mr A] stated that they told the truth. The applicant indicated that he did not wish to comment.

#### **THE DELEGATE'S DECISION**

25. The delegate was not satisfied that the applicant provided a credible account of his circumstances in Libya and Pakistan. He was not satisfied that the applicant was a person of interest to extremists in Pakistan. The delegate found that if the applicant experienced difficulties in Pakistan he could seek state protection or relocate within the country.

#### **THE TRIBUNAL'S FINDINGS**

26. The issue in this case is whether the applicant will be face harm in Pakistan because he has attracted the adverse interest of extremists and terrorists. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.
27. 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.

#### *Refugee criterion*

28. 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).

29. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
- owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
30. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
31. The applicant claims to be a citizen of Pakistan. The Tribunal has considered the evidence he provided regarding his identity and nationality, including his Pakistani passport, and it accepts that the applicant is a citizen of Pakistan. The Tribunal accepts his claim that he does not have the right to enter and reside in Libya.
32. The applicant claims that he faces life-threatening harm from a particular mullah in Pakistan, and other extremists and terrorists associated with the mullah, because he refused to comply with their demands and join the jihad. The Tribunal is not satisfied that the applicant provided a credible account of his circumstances.
33. The Tribunal does not consider it appropriate to take an overly stringent approach to questions of credibility but neither does it consider it appropriate to accept all claims uncritically.<sup>1</sup> The *Handbook on Procedures and Criteria for Determining Refugee Status*, suggests that it is “frequently necessary to give the applicant the benefit of the doubt... [but only after]... all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts”.<sup>2</sup>
34. In the present matter, the Tribunal has formed the view that the applicant has contrived all his claims relating to extremists and terrorists in Libya and Pakistan. The Tribunal finds that the claims were contrived by the applicant in the belief that it would enable him to get a protection visa.
35. Several factors have cumulatively contributed to the Tribunal’s view regarding the applicant’s credibility. First, the applicant’s inability to provide the full name of the central figure in his claims, Abdul Sayed. The Tribunal has formed the view that if indeed the applicant’s life changed so dramatically because of Abdul Sayed, and he had the interactions which he claims to have had regarding this person, he would have known more about him, including his full name. The Tribunal has formed the view that the applicant did not know Abdul Sayed’s full name, when the matter was discussed with him at the hearing, because he had no real connection with that person or any of his associates. The Tribunal finds that the

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<sup>1</sup> *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 per Beaumont J at 451; *Minister for Immigration and Ethnic Affairs v Guo & Anor* (1997) 191 CLR 559 at 596; *Prasad v Minister for Immigration and Ethnic Affairs* (1985) 6 FCR 155 at 169-70.

<sup>2</sup> United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status*, 1992, Geneva, paragraphs 203 and 204.

claims relating to Abdul Sayed, and the applicant's involvement with him, were contrived by the applicant to enhance his application.

36. The Tribunal finds that the applicant's limited knowledge regarding Abdul Sayed and his circumstances during 2007, when he allegedly gave the public speech in Libya, further contributes to the Tribunal's view that the applicant contrived his claims regarding this person. The applicant claims to have taken extraordinary steps to avoid extremists and terrorists in Libya, as described in his written submissions supporting the application, and yet he claims that in [2007], [after] Abdul Sayed had been exposed as a terrorist by the United Nations, the United States, and several governments in Europe, he did not know who he was and he unwittingly attended one of his al-Qaeda and LIFG recruitment rallies. The Tribunal finds that by the time of the alleged Abdul Sayed lecture or rally in [2007], Abdul Sayed was already a well-known Libyan terrorist. The Tribunal has formed the view that the applicant would have known something about him, and his links to terrorism, if indeed he had an interest in avoiding such persons. The Tribunal does not accept as credible the applicant's claim that he attended a lecture by Abdul Sayed, or an al-Qaida and LIFG recruitment rally, in [2007]. It is not satisfied that the lecture or rally took place. It finds that the claim was contrived to enhance the protection visa application.
37. The third reason the Tribunal is not satisfied that the applicant provided a credible account of his circumstances, relates to the changing nature of the applicant's claims over time. The applicant initially claimed that he was forced to leave Pakistan in 2010, when it became apparent to him and his family that he risked serious harm from the terrorist mullah and the mullah's associates. However, at the hearing the applicant stated that there was no apparent risk of harm in Pakistan and for that reason he and his brother decided to return there in 2012. The Tribunal finds that the applicant's claims changed over time to enhance his application and to explain his decision to return to Pakistan in 2012. The Tribunal is not satisfied that the events he described, relating to his contact with the mullah in Pakistan during 2010, took place. It finds that the claims were contrived to enhance the application and changed over time when it became apparent to the applicant that his decision to return to Pakistan in 2012, was inconsistent to his earlier claims that he fled the country in 2010 because he faced serious harm from extremists and terrorists.
38. The Tribunal finds that the applicant's decision to return to Pakistan in 2012, greatly diminishes his earlier claims that he came into contact with extremists and terrorists in Pakistan and Libya, and that those persons were seeking to recruit him. The Tribunal has formed the view that the applicant returned to Pakistan in 2012, because none of the difficulties he described, regarding the mullah and his associates, actually occurred. It finds that he returned to Pakistan in 2012 because he had no contact or connections with extremists or terrorists in Pakistan or Libya and he had no reason to believe that he would be a person of interest to extremists and terrorists in Pakistan. The Tribunal does not accept as credible the applicant's claim that he came into contact with extremists and terrorists in Pakistan during his visit in 2012. It finds that the claims were contrived to enhance the application.
39. In summary, the Tribunal finds that the applicant contrived all his claims relating to Abdul Sayed to enhance his protection visa application. The Tribunal does not accept that he attended a lecture or rally given by Abdul Sayed; or that the LIFG targeted his family for the reasons provided; or that he attracted the adverse interest of extremists in Pakistan; or that he was abducted and invited to participate in a holy war with religious extremists and terrorists in Pakistan; or that he is a person of interest to extremists, terrorists, and the police in Pakistan.

40. Accordingly, having rejected the applicant's main claims provided in support of the application, the Tribunal is not satisfied that there is a real chance that the applicant will be subjected to persecution in Pakistan for a Convention reason.

*Complementary protection criterion*

41. 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').
42. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
43. The Tribunal has considered whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan, there is a real risk that he will suffer significant harm under the complementary protection criterion. However, in view of the above findings regarding the applicant's credibility, and the Tribunal's decision to reject all his main claims, the Tribunal is not satisfied that the applicant is at risk of significant harm in Pakistan for the reasons provided. Accordingly, it finds that there is no real risk that the applicant will suffer significant harm in Pakistan under the complementary protection criterion.

**CONCLUSIONS**

44. 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).
45. 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).

**DECISION**

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

Andrew Jacovides  
Member