

1408828 (Refugee) [2015] AATA 3875 (7 December 2015)

### DECISION RECORD

<b>DIVISION:</b>	Migration & Refugee Division
<b>CASE NUMBER:</b>	1408828
<b>COUNTRY OF REFERENCE:</b>	Pakistan
<b>MEMBER:</b>	Susan Pinto
<b>DATE:</b>	7 December 2015
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 07 December 2015 at 3:32pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 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. The applicant is a citizen of Pakistan, who is aged [age range]. The applicant is from Karachi and he first arrived in Australia on a Student visa in November 2007. The applicant was granted further student visas in November 2007, November 2009 and August 2011. Since his arrival in Australia he has departed and returned four times and his most recent arrival was [in] May 2012.
2. The applicant applied to the Department of Immigration for the Protection visa [in] August 2012. The applicant made claims in relation to kidnapping attempts in Pakistan. He also claimed that whilst in Australia he reported one of his housemates, who was living illegally in Australia, to the Department of Immigration. He also reported the same housemate to [a bank] because he was engaging in bank fraud. The applicant fears that this person or his family will harm him if he returns to Pakistan.
3. The delegate refused to grant the Protection visa [in] April 2014. The delegate accepted the applicant's claims, but found that they were not related to the Refugees Convention. The delegate also found that the applicant could live in another part of Pakistan if he returned and there was not a real risk that he would suffer significant harm. 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 visa under s.65 of the *Migration Act 1958* (the Act).
4. A summary of the relevant law is set out in an attachment to this decision. The issues in this review are whether the applicant has a well founded fear of persecution in Pakistan for one or more of the five reasons set out in the Refugees Convention and, if not, whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of him being removed from Australia to Pakistan, there is a real risk that he will suffer significant harm. If the Tribunal is not satisfied that the applicant has a well founded fear of persecution, the Tribunal must consider whether there are substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia that there is a real risk that he will suffer significant harm.

### CLAIMS AND EVIDENCE

#### Application to the Department

5. When lodging the application to the Department, the applicant indicated that he speaks, reads and writes English and Urdu. The applicant indicated that he is unmarried and his mother and [family composition] reside in Pakistan. The applicant's father is deceased. The applicant's [brother] is residing in Australia and has Australian citizenship. The applicant indicated that he has completed [number] years of education in Pakistan and Australia. He indicated that in Australia he undertook studies between [year] and 2011 at [his college]. The applicant indicated that prior to his arrival in Australia he was employed as an [occupation] and he has worked [in another position] at [employer] in Sydney.
6. In response to a question on the application form as to why he left Pakistan, the applicant stated that he came to Australia as a student. Even before he left Pakistan he experienced bullying from people many times and more than two times people tried to kidnap him but he tried to escape. Last time they even tried to shoot him and that is why he is frightened to return and his family does not want him to return.
7. When asked on the application form if he has ever experienced harm in his own country, the applicant stated that before coming to Australia some people from different political parties

tried to kidnap him because he did not want to join their group. When he left Australia for Pakistan on the first time in 2007, he faced the same thing on the second occasion and on the third occasion he only stayed for [number] days as people who he did not know tried to shoot him. Even though he saw his family after three years he could not stay and had to return after only [number] days. Since then he has been trying and thinking about doing something but nothing seems to be working. The applicant states that his country is becoming worse and worse and he was unable to study at all because his "sick mother" was on his mind. When he sorted himself out last year he deferred his course and he has also had several expensive dental treatments.

8. In response to a question as to what he fears may happen if he returns to Pakistan, the applicant states that some people are waiting for him because when he went there in April 2012 he was meant to stay until the end of May 2012, but he came back eight days earlier before the date on his ticket because he was experiencing the "same thing again". This time there was a "guy living with me illegally" who the Department did not know about. The man had credit cards and a bank loan which was worth nearly [amount] AUD. The applicant went to the [bank] and told them the story because the man wanted to run away with the money. After that time the bank stopped his loans and his credit cards and "they thanked him" because it was a large amount. The guy moved out and was "so angry" with the applicant. His family lives near the applicant's family in Pakistan and they know that this has happened.
9. The applicant states, in response to a question as to who he thinks may harm or mistreat him if he returns, that his family members have told him that some mysterious people have been asking about him from his friends and want to know where he is. The applicant is very sure they are his family members and they will get someone to kill him as he made them lose all of the money he was expecting to take from Australia. The man who lost the money will harm the applicant because he went to the [bank] and told them about the man. He will try his best to give money to some political parties who will kill the applicant and it is very easy for them. The applicant states that he believes this will happen because it is a large amount of money in Pakistani money and he was the one who made the complaints. The applicant also called the Department and reported the person and gave someone the person's address and details. The person told the applicant that he would never forgive him and he has been under a lot of stress in the last few years because although he did the right thing he is fearful that the person will harm him.
10. The applicant states that he does not think that the authorities of his country can protect him because people are being killed there every day and nobody takes any notice. The applicant states that there is no security and even if he leaves the city where he lives it will be very dangerous for him. Pakistan is an unstable and dangerous country and the police system is very bad in Karachi. There is no protection and nobody takes any notice if hundreds of people die. The applicant states that due to his problems he has been unable to concentrate on his studies.
11. The applicant provided a copy of his passport which indicates that since his arrival in Australia he returned to Pakistan in December 2007, staying until April 2008. He again departed Australia in May 2008, returning in October 2008; departed [in] October 2011 and returned [later in] October 2011; departed [in] April 2012 and returned [in] May 2012; he applied for protection three months after his return. The applicant provided his flight details for the 2012 trip showing he was supposed to leave Karachi [in] May 2012.
12. The applicant was interviewed by the delegate [in] November 2012. The Tribunal has listened to the CD Rom recording of the interview. The applicant told the delegate during the interview he wants to stay in Australia for some more time and will return when the situation with the person whom he informed on settles down.



### **Application for review**

13. When lodging the application to the Tribunal, the applicant provided a copy of the delegate's decision record.
14. In a statement to the Tribunal, the applicant states that he wishes to explain the situation to the Tribunal. He states that he previously lived at [a Sydney address]. "This guy named [Mr A] was living illegally and I never knew about it till the Department of Immigration came to our house". The applicant states that he came to know that this person was trying to cash in his credit cards and had also asked for bank loans which he wanted to take with him. After the Department came to their house, the man moved out in the next few days. There were three other people living with them, [Mr B], [Mr C] and [Mr D]. [Mr D] was also against him "doing all this wrong stuff" and he told him not to do it. [Mr B] and [Mr C] were "on his side" because he told them how to get credit cards with high limits even though they were on student visas. They wanted to help him so that he could tell them even more tricks.
15. The applicant states that he decided to write a notice to [the bank branch] about his immigration status and credit cards and bank loans. [The bank] stopped his cards and loans and was thankful to the applicant. As [Mr A] was trying to run away with the money which was around [amount] he became angry when he got to know that the applicant was the cause of the [bank] stopping his credit cards and cancelling his loan and he threatened him. The applicant states that his life is in danger and he wants the Australian government to protect him. As he said in his first interview he promises never to become illegal again. He states that he is true that people are still waiting for him to return to Pa so they can harm him. There is "one guy" who previously lived on [a specified] floor [at his address] while they were living on [another] floor and he saw him recently. This person works as a [different occupation] at [an employer] and he told the applicant that they still blame him and the man and his family are still in Pakistan waiting for him. The applicant also states that he does not want to be another victim in Pakistan and wants to live a safe and a healthy life. He has followed the rules and told the bank as he was using their address. The states that he has attached a letter which states that he has returned his money back to him "which he wanted me to keep in case of getting in trouble".
16. The applicant provided a statutory declaration, dated [in] April 2012, by [Mr A] who states that the money he transferred to the applicant's online bank account [in] March 2012, being [amount], he has given the money back to him and he does not owe him anymore money and he has no outstanding debts.
17. The applicant appeared before the Tribunal on 3 December 2015 to give evidence and present arguments.

### **CONSIDERATION OF CLAIMS AND EVIDENCE**

#### **Does the applicant have a well founded fear of being persecuted for one or more of the five reasons set out in the Refugees Convention?**

18. As stated above, the Tribunal must consider whether the applicant has a well founded fear of persecution in Pakistan for one or more of the five Convention reasons. Having considered all of the evidence, the Tribunal is not satisfied that the applicant has a well founded fear of harm for a Convention reason. The Tribunal's consideration of the evidence and its reasons for reaching these conclusions follows.
19. At the Tribunal hearing, the applicant was asked about his claims to fear harm in Pakistan. The applicant confirmed that he came to Australia as a student. The applicant completed some studies in Australia, but ceased his studies at the end of 2011. The applicant was no

longer able to continue his studies because of the problems he had in Australia. The applicant confirmed that he shared a house with his friends, [Mr B], [Mr D name variation], [Mr C] and [Mr A]. The applicant stated that the problems began when [Mr A] received a letter from the Department of Immigration. When they gave the letter to [Mr A] he moved out of the house also most immediately. The applicant and his friends learned at that time that [Mr A] had been living and working in Australia illegally for some time. They also learned soon after that time that he had obtained credit cards and a significant loan by deception. The applicant informed the Department and the [bank] at the end of 2011 about [Mr A's] deception. The [bank] subsequently cancelled the loan and the credit cards. The applicant believes that [Mr A], who has citizenship in both [Country 1] and Pakistan, was planning to leave Australia owing large amounts of money. [Mr A] had also been trying to encourage the applicant and the other two people in the house to become involved in the fraud and to obtain credit cards and loans through deception. The applicant did not want to be involved in breaking the law in Australia and refused to become involved.

20. When asked what problems he has had as a result of his disclosure to the Department and the [bank], the applicant stated that he has never told his family in Pakistan about his problems in Australia, but his brother told him that there were some "strange people" hanging around their home. The applicant does not know who these people were and he also received a telephone call from [Mr A], but he did not speak with because the applicant disconnected the telephone call. When asked whether anyone has threatened him or harmed him as a result of the information he provided to the Department and the bank, the applicant stated that no-one has done so but he is still "a bit scared" because [Mr A's] family lives near his family. The applicant believes that anything can happen in Karachi where he lives and nobody takes any notice, given the number of people who are killed and disappear in Karachi every day. The Tribunal commented that there has recently been a significant decrease in the crime rate in Karachi, largely due to the presence of the rangers. The applicant agreed but stated that he continues to be a bit scared.
21. The applicant confirmed that he returned to Pakistan in 2012, after he had informed the Australian authorities about [Mr A's] activities. In response to the Tribunal's comments that this does not indicate he genuinely feared harm, the applicant stated that his [relative] was getting married and he had to return for the wedding. The applicant confirmed that he was in Pakistan at that time for approximately a month and stated that nothing happened to him during that time, except that his brother was robbed when they were [at an event]. The applicant stated that [Mr A] has since left Australia, and he does not know whether he is residing in Pakistan or [Country 1]. The applicant agreed that he may be in [Country 1] but he is not entirely sure.
22. The applicant stated that he has told the truth about what has happened and he did not want to manufacture documents or provide untruthful evidence. When asked whether he fears harm in Pakistan for any other reason, the applicant stated that he does not. The Tribunal commented that he has made additional claims in his written statement that he did not raise during the interview and hearing. When asked about the claims made in his statement, the applicant stated that his brother had some problems with political parties and they wanted him to join as well but he has not experienced any harm as a result of this issue. The applicant stated that his only fear is in relation to [Mr A] and he has only a "little bit" of fear remaining as a result of this. When advised that his evidence does not indicate there is a real chance or a real risk that he will suffer serious or significant harm, the applicant stated that he was previously ready to leave Australia but he then obtained employment with [a business]. He also stated that he is looking forward to seeing his mother.
23. The Tribunal has considered the applicant's claims to fear harm in Pakistan. As discussed during the hearing, the Tribunal appreciates that the applicant has given a truthful account at the hearing of his experiences and his reasons for seeking protection. Although the applicant

made claims in his statement to have been shot at and to have been the subject of attempted kidnappings, his evidence at the hearing was that his brother had some problems due to his involvement in a political party, but he did not. The Tribunal considers that the applicant's evidence during the hearing indicates although he was asked to join a political party he did not do so and he does not fear harm in relation to these factors. The applicant's evidence during the hearing and, indeed, during the Department interview, indicates that his claims are based on his experiences in Australia, not those which occurred prior to his arrival in Australia. The Tribunal does not accept, therefore, that the applicant was shot at or kidnapped or had any problems because he did not join a political party. The Tribunal does not accept that the applicant was harmed in Pakistan for these reasons.

24. The applicant's claims, as set out above, focus on his disclosure to the [bank] and the Department of Immigration about the activities of [Mr A] whilst he was living in Australia. The applicant's evidence indicates that he informed the Australian authorities about [Mr A's] illegal status and involvement in bank fraud at the end of 2011. Since that time, the applicant's evidence does not indicate that [Mr A] was charged or convicted of any crimes. The applicant's evidence was that [Mr A] has left Australia and may be living in [Country 1] or Pakistan. The applicant also indicated that apart from a telephone call where he did not speak with [Mr A], and a possibility that some people may have been around his family home, he has not been threatened or harmed by [Mr A] or his family and no members of his family have been harmed by [Mr A] or his family. Although the applicant's brother was robbed whilst he was in Pakistan, the applicant has not claimed that this was related to [Mr A] or his family. The applicant has also not claimed he will suffer serious harm due to the high crime rate in Pakistan and, in any event, the evidence before the hearing indicates a significant reduction in the crime rate in Karachi.<sup>1</sup>
25. The Tribunal is not satisfied on the evidence before it that [Mr A] or his family has sought to threaten him or harm the applicant in Australia. The Tribunal accepts that the applicant's family and [Mr A's] family live in close proximity in Karachi. The Tribunal does not accept that the evidence establishes that [Mr A's] family has sought to harm or threaten the applicant's family in the four years since the applicant informed on [Mr A]. The Tribunal is not satisfied that there is any evidence that [Mr A's] family know about the applicant's involvement in disclosing information about [Mr A]. The Tribunal is also not satisfied that there is any evidence that they or [Mr A] will seek to do so upon the applicant's return to Pakistan. In the Tribunal's view, had [Mr A] or his family wished to take revenge on the applicant, they have had ample opportunity to do so. The Tribunal is not satisfied on the evidence before it that there is a real chance that [Mr A] or his family will seek to harm or threaten the applicant upon his return to Pakistan.
26. The Tribunal is also not satisfied that the applicant will suffer serious harm from any political parties or that he has suffered harm in the past due to his political opinion or imputed political opinion or because he has not become involved in political parties or that there is a real chance that he will suffer serious harm for this reason if he returns to Pakistan. Nor is the Tribunal satisfied that there is a real chance that the applicant will suffer serious harm for any other Convention reason. Accordingly, having considered all of the evidence the Tribunal is not satisfied that there is a real chance that the applicant will suffer serious harm for a Convention reason if he returns to Pakistan now or in the reasonably foreseeable future.

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<sup>1</sup> See for example, Xia ur-Rehman, Crime Down in Karachi, Paramilitary in Pakistan shifts focus, *The New York Times*, Asia Pacific, 7 November 2015. The article discusses the presence of paramilitary troops who watch over police and convoys conduct daily raids which have had a significant effect on the crime rate in Karachi, although there are several reports of human rights violations conducted by the rangers.



**Are there substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan, that there is a real risk that he will suffer significant harm?**

27. The Tribunal has also considered the applicant's claims, having regard to the Complementary Protection provisions, which require the Tribunal to consider whether there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country that there is a real risk that he will suffer significant harm. The Tribunal has found above that the applicant has not suffered serious harm in Pakistan and there is not a real chance that he will suffer serious harm if he returns to Pakistan. For the same reasons, the Tribunal is also not satisfied that there is a real risk that the applicant would face significant harm upon his return to Pakistan, including arbitrary deprivation of life; torture; cruel or inhuman treatment or punishment; or degrading treatment or punishment. Accordingly, the Tribunal is not satisfied that there are substantial grounds for believing that there is a real risk that the applicant will suffer significant harm if he is removed from Australia to Pakistan.

**CONCLUSIONS**

28. 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).
29. 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).
30. 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**

31. The Tribunal affirms the decision not to grant the applicant a Protection visa.

Susan Pinto  
Member

## ATTACHMENT - RELEVANT LAW

1. In accordance with section 65 of the *Migration Act 1958* (the Act), the Minister may only grant a visa if the Minister is satisfied that the criteria prescribed for that visa by the Act and the Migration Regulations 1994 (the Regulations) have been satisfied. The criteria for the grant of a Protection visa are set out in section 36 of the Act and Part 866 of Schedule 2 to the Regulations. Subsection 36(2) of the Act provides that:

'(2) A criterion for a protection visa is that the applicant for the visa is:

- (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol; or
- (aa) a non citizen in Australia (other than a non citizen mentioned in paragraph (a)) 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 non citizen being removed from Australia to a receiving country, there is a real risk that the non citizen will suffer significant harm; or
- (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
  - (i) is mentioned in paragraph (a); and
  - (ii) holds a protection visa of the same class as that applied for by the applicant; or
- (c) a non citizen in Australia who is a member of the same family unit as a non citizen who:
  - (i) is mentioned in paragraph (aa); and
  - (ii) holds a protection visa of the same class as that applied for by the applicant.

### Refugee criterion

2. Subsection 5(1) of the Act defines the 'Refugees Convention' for the purposes of the Act as 'the Convention relating to the Status of Refugees done at Geneva on 28 July 1951' and the 'Refugees Protocol' as 'the Protocol relating to the Status of Refugees done at New York on 31 January 1967'. Australia is a party to the Convention and the Protocol and therefore generally speaking has protection obligations to persons defined as refugees for the purposes of those international instruments.

3. Article 1A(2) of the Convention as amended by the Protocol relevantly defines a 'refugee' as a 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.'



4. The definition contains four key elements. First, the applicant must be outside his or her country of nationality. Secondly, the applicant must fear 'persecution'. Subsection 91R(1) of the Act states that, in order to come within the definition in Article 1A(2), the persecution which a person fears must involve 'serious harm' to the person and 'systematic and discriminatory conduct'. Subsection 91R(2) states that 'serious harm' includes a reference to any of the following:
- (a) a threat to the person's life or liberty;
  - (b) significant physical harassment of the person;
  - (c) significant physical ill-treatment of the person;
  - (d) significant economic hardship that threatens the person's capacity to subsist;
  - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
  - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.

#### **Complementary protection criterion**

5. An applicant for a protection visa who does not meet the refugee criterion in paragraph 36(2)(a) of the Act may nevertheless meet the complementary protection criterion in paragraph 36(2)(aa) of the Act, set out above. A person will suffer 'significant harm' if they will be arbitrarily deprived of their life, if the death penalty will be carried out on them or if they will be subjected to 'torture' or to 'cruel or inhuman treatment or punishment' or to 'degrading treatment or punishment'. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are further defined in subsection 5(1) of the Act.

#### **Ministerial direction**

6. In accordance with Ministerial Direction No. 56, made under section 499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration and Citizenship - 'PAM3: Refugee and humanitarian - Complementary Protection Guidelines' and 'PAM3: Refugee and humanitarian - Refugee Law Guidelines' - and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.