

0801380 [2008] RRTA 531 (16 September 2008)

DECISION RECORD

RRT CASE NUMBER: 0801380

COUNTRY OF REFERENCE: Pakistan

TRIBUNAL MEMBER: Sydelle Muling

DATE DECISION SIGNED: 16 September 2008

PLACE OF DECISION: Melbourne

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

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 and Citizenship 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, arrived in Australia in the 2000s and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa after arriving. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to 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).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to 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.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. According to the protection visa application, the applicant is a male Punjabi Sunni Muslim . The applicant departed Pakistan legally in the 2000s
21. In an attachment to his protection visa application, the applicant claimed that he was born in City A, Pakistan and needed to change his name so that Family Q could not find him. He was given a passport in a name and with a date of birth which were not his own. The applicant claimed when he was living in City A he met a girl from Family Q. He stated in Islam it was not allowed for a person from the Sunni religion and a person from the Shiite religion to be together. He claimed the girl became pregnant and Family Q were very angry and sent members of the family to find and kill him. He was told to leave City A and go to City B. The applicant's parent, who was retired, was at home when members of Family Q came and killed him. The applicant claimed a man told him that his parent had been killed in the early 2000s but the police did not write a report because the Family Q were so well known and respected and they gave money to the police. The applicant claimed he went to the home of Family R and they gave him food and somewhere to live. Person 1 of Family R said he was his son and got him a passport and documents so he could leave Pakistan. He could not go back as he would be found and he did not want to endanger Person 1's family. The applicant feared he would be killed if he returned to Pakistan by Family Q. He claimed Sunni and Shiite Muslims were not together and he had made a big mistake under the Muslim religion, being with the girl. The girl could not marry now as she had disgraced her family by being with him. He did not have parents as one had died many years ago. Family Q wanted revenge and he did not think he could be protected by the government or anyone in Pakistan as the family was so big that they had people who worked in the government and other places, so they would not help him.
22. During the application process, the Department contacted the applicant's adviser to request that questions 8 and 11 on Part B of the applicant's application form number 866, relating to members of the family unit and close family members, be completed. The adviser informed that the applicant had told her he had no family members, either in Australia or offshore. A completed Form B was submitted to the Department confirming the information provided by the adviser.
23. About one month later, the Department received two letters sent to the applicant from Pakistan with translations. The first letter from Person 1 stated that the situation was such that "they" were looking for the applicant every where after murdering his parent and had visited his residence but Person 1 had told them the applicant was not living there. The author suspected they were hovering around searching for the applicant and Person 1 advised the applicant he/she would let him know once things settled down so he could return to Pakistan

if he wished. In the latter letter, the author states, that it is with great regret that he had to inform the applicant that his parent had been murdered by people who were very powerful and had not yet been arrested. The author claimed that it had been heard that these people had also said they would kill the applicant upon his return so therefore the applicant should not think about coming back to Pakistan until things settled down.

24. A few months later, the Department wrote to the applicant advising that according to information received from un-disclosable sources, both his parents were in fact alive and he was in contact with them, that the name he claimed was his correct name was actually false and the details of his real name. The applicant was advised that the information outlined may lead to a rejection of his claims because it showed evidence of a lack of credibility on his behalf and contradicted claims made by him.
25. The Department subsequently received original and certified copies of the death certificates for the applicant's mother and father, original and certified copies of the applicant's family record which was issued in the 1990s and a statutory declaration made by the applicant stating that his name was as he claimed and not the name provided by the undisclosed source. He claimed he was called one name because his real name was difficult. He also disputed the information regarding his parents being alive and stated that the information contained in the letter sent by the Department was completely incorrect.
26. The Department wrote to the applicant advising that according to information received from un-disclosable sources, he intended (and did) provide bogus documents including death certificates in response to the Department's previous notification of adverse third party information, in order to further his application for a Protection Visa and his documents in these matters were fabricated. The applicant was advised that this information may lead to a rejection of his claims because it showed evidence of a lack of credibility on his behalf.
27. According to details included in the delegate's decision, a response was received from the applicant's adviser that month stating that she had forwarded the letter to the applicant but had not been able to contact him by phone but she would continue to try and make contact with him. Two days later, the applicant's Australian spouse rang the Department and advised that the applicant had nothing further to add and that the documents submitted were genuine.
28. The delegate refused the applicant's application for a Protection Visa shortly thereafter.
29. The applicant subsequently applied to the Tribunal for review of the delegate's decision refusing his application.
30. The applicant appeared before the Tribunal to give evidence and present arguments.
31. The applicant stated he was born in City A, Pakistan. He was brought up in City A in an area called Area N. After the death of his parent he moved from Area N to City B where he stayed for a few months before moving to City C. He lived in City C for several months and then moved back to City B where he stayed for another few months before departing the country from City A. He received several years of education and held no qualifications. He came to Australia and learnt English for a while. He can speak a number of regional languages. The applicant stated he could not say he had a job in Pakistan but when he went from City A to City B he held a job in the services sector for a few months for which he received food in exchange for work. He did not have a paying job. The applicant stated he departed Pakistan legally in the 2000s. He had no siblings in Pakistan. He may have other relatives but did not

know them because his parents did not introduce him to any of his family as they did not talk to them. He confirmed he had no relatives in Pakistan, to his knowledge. He was not in contact with any friends in Pakistan. The applicant gave the full names of his parents but stated he did not know their dates of birth. One parent passed away when he was very young, from some sickness. His other parent looked after him after this. His remaining parent used to work in one profession but then retired. After this his parent took on different work.

32. The Tribunal asked the applicant when he first met his girlfriend in Pakistan. The applicant gave the date when they met. He met her in an area near her house. They just looked at each other and smiled. He was riding pillion on a friend's motorbike and she was in the street in front of her house. The applicant stated he was a teenager at the time and she was a year younger. He claimed they talked and a few days later he saw her again on the street, close to her house. The applicant explained when he used to go and see her he did not always talk to her. He would sometimes go and watch her through the window of her house from the street or write her a note on a piece of paper and pass it to her and she would write back to him. The applicant stated he would see her almost every day. Sometimes he would just say hello and not much else. He spoke to her more a few months later. The Tribunal asked the applicant where he would meet her when he spoke to her. He stated he would write on a paper for her to meet him at a particular place such as a park at a particular time. She also came to his home when his parent was not there, after they became very close.
33. The Tribunal asked the applicant about the girl's family (Family Q). Her family were descendants of an important family and were respected too much. They did not let their sons or daughters marry any other castes. The family was well known in Pakistan and Country 1. Some of their family members were employed by the government. The girl used to tell him that her parents knew many important people. The Tribunal asked the applicant how he managed to meet the girl alone given her age, her Muslim background and her family's position in society. The applicant stated that she would say she was going to see a relative or for tuition but would come and see him instead.
34. The applicant stated his relationship with the girl became sexual in the 2000s. They managed to keep their relationship a secret because they did not tell anyone. They kept it to themselves. She became pregnant about a year after they met. The Tribunal asked the applicant which month she told him that she was pregnant. He stated it was in [date stated]. He did not know if she had the baby. The last time he saw her was in [date stated], a few days before his parent was killed. The Tribunal asked the applicant if he had seen his girlfriend regularly up until the last time he saw her. The applicant stated no. He explained that he had not seen her for a few weeks before that last time because they had suspected someone had seen them together in the city so they tried to keep away from each other for a while. The applicant stated the girl only told him she was pregnant in her 4th or 5th month and he tried to think about what they could do.
35. The applicant stated that Family Q came to his house looking for him in [date specified]. He was home at the time. The shop keeper in the shop next to their house came and told his parent that someone was coming down the street and he thought they wanted to make some trouble. The applicant claimed that he had told his parent about his girlfriend 2 days before that so his parent knew there would be some problems. His parent told him to run away from the house so he left out the back door. The applicant stated he did not see who came to his house looking for him because he was not there but probably it was members of Family Q. He did not see how many people came to his home looking for him.

36. The applicant stated he left the house and came back a few days later. The shop keeper told him that they came and killed his parent and the people from the street buried him. This was the first he learnt of his parent's death. The Tribunal asked the applicant if he went to the police and reported what had happened to his parent. He stated no. He would not go because maybe Family Q had already contacted the police and reported him so he would be handed over to the family by the police if he went and reported the matter. He did not know if anyone else reported his parent's death to the police. The applicant stated he ran away to the bus station and caught a bus to City B. He stayed for a few months. He was working in City B in the service sector and he would receive food as payment for his work
37. The applicant stated he remembered that his parent used to tell him he/she had a friend in City C in whose company he/she had invested so the applicant went to City C and found his parent's friend. His parent's friend's name was Person 1. He stayed in Person 1's house for a number of days and then stayed at his/her farm house and helped on the farm for several months. The applicant stated he left City C because Person 1 told him he/she had seen a few people wandering around town and was not sure but thought maybe these people were from Family Q and wanted to make trouble for him. Person 1 told him to go to City B because it was a bigger city and a bit busier therefore it was harder to find a person. The applicant confirmed Person 1 did not know who these people were but assumed they were looking for him.
38. The applicant stated he went to City B and stayed there for several months. He explained that he did not apply for the visa to come to Australia. Person 1 asked him to sign a few documents a few months before he came to Australia and the day before he left the country he/she brought him the passport and told him he was going to Australia. The applicant stated he did not know what he was signing. When he asked Person 1 what he was signing he was told he was helping him to get out of Pakistan. He signed the documents when he was in City B. The applicant stated that Person 1 helped him to leave the country because he/she was his parent's friend and he/she had money. Person 1 also had some money from the applicant's parent, as well, so he could give this to him to help him.
39. The Tribunal asked the applicant if he ever experienced any problems whilst he was living in City B or City C. The applicant stated he used to always be scared of what would happen if someone saw him or the police caught him. He did not trust anyone or tell anyone where he was. No-one ever came up to him or tried to hurt him.
40. The applicant confirmed that when he last saw his girlfriend she was pregnant at the time but he reiterated he did not know what happened to the baby.
41. The Tribunal put to the applicant in the interview with the delegate he claimed his girlfriend became pregnant a few months after they first met. The applicant stated he did not mean the end of the year he met her but the end of the next year. He explained if she had been pregnant at the end of the year he met her he would have known what had happened to the baby because he was still seeing her after that. He did not know because it did not happen at that time.
42. The Tribunal noted that he had claimed in the hearing today that it was in [date specified] that he last saw the girl and that was also when his parent was killed. However, in the interview with the delegate he claimed it was [date specified] that he last saw his girlfriend and his parent was killed. Also in the statement attached to his protection visa application he claimed that it was on a different date that his parent was killed. The applicant stated before he was

mentally disturbed and did not know what he was doing. He could not remember things but slowly he was recalling the circumstances.

43. The Tribunal noted that he had provided death certificates to confirm his parents were both deceased. However, as the delegate identified in his decision refusing his application, Form B Death Certificates were freely available to be downloaded from the Pakistan Government website and the certificate he submitted was purportedly signed by the Secretary Union Council Town D, City A. However the Union Council was specifically for the division in Town E and not in Town D. Town D was a different Union Council and his parent's address was in Town D and not Town E so this suggested that the certificates may not be genuine. The applicant stated that he did not make them. He had asked someone to get it for him. In Pakistan, if a person did not pay money they would not get anything. A bribe had to be given to get anything. He asked Person 1 to get the document for him. The Tribunal noted that he would have read in the delegate's decision that a forensic examination of the death certificates and domicile certificate raised doubts about the genuineness of the documents. The applicant stated he was told this but it was not up to him. He did not make them. He did not know how the documents were obtained.
44. The Tribunal put to the applicant that the Department had also received information that his parents were not deceased and that he spoke to them everyday. Further, it received information that he provided bogus or fabricated documents including the death certificates in response to the Department's notification of third party adverse information. The applicant stated he would not say that his parents were dead if they were still alive. He stated he came to Australia on bogus documents and if he had provided bogus documents it was not his fault as he had asked someone to help him.
45. The Tribunal noted that he had provided dated two letters which stated that "they", who the Tribunal assumed was Family Q, were looking for him. In the second letter he author stated that it was with great regret that he had to inform him that his parent had been murdered. Given that this letter was dated [date specified], it suggested his parent was murdered around this time and not in one of the three dates he had claimed at various stages, and this raised serious doubts about the credibility of this evidence. The applicant stated he did not know anything. His lawyer had asked him to get some evidence from Pakistan so he wrote a letter to Person 1 and he wrote back to confirm that his parent had been killed.
46. The Tribunal asked the applicant why the Family Q would still be interested in him now if he returned to Pakistan, a number of years after his parent was allegedly killed when they came looking for him. The applicant stated he could not definitely say for sure that they would find him but if they did, they would not leave him alone because he was from a poor family and they were from a powerful family. Caste made a big difference. He was a Sunni and from a poor family and the girl was Shia and from a rich family. Even if he was Shia, it would not be possible because she belonged to a powerful family. The fact they were together would reflect badly on the family so they would want revenge.
47. The Tribunal asked the applicant if he could not seek protection from the authorities if anything happened on his return to Pakistan. The applicant stated probably he could ask the authorities to protect him but if someone in the authorities were bribed by the family he would be handed over to them. The Tribunal asked the applicant if he could not return to City B or City C, where he stayed for a period and did not experience any problems. The applicant stated he could but if they found him then.... He claimed when he was in City C they were looking for him. If he went back to City C or City B, even after a few years, whenever they

saw him, he would be in trouble. The applicant suggested that maybe his name had been given to the police so if he was caught by the police he would be in trouble. The Tribunal noted that in the hearing today he stated he was in City C for several months but in the interview with the delegate he claimed to be there for a few years. The applicant stated the whole period between him leaving City A and coming to Australia was only 2 years.

48. The Tribunal asked the applicant if there was any other reason why he feared returning to Pakistan. The applicant stated he was not scared of anything else. If someone found him, he was scared he would not be left alone. He claimed Family Q was not small and they had links everywhere. The applicant also claimed he was married in Australia so if he returned to Pakistan he would have to leave his wife, which would hurt both him and his wife. If he did take his wife to Pakistan, he could not expect her to run around the country with him. The applicant stated he was telling the truth and he discussed his dealings with the Australian Federal Police, which had stressed him a lot. The Tribunal reiterated the definition of refugee, as discussed with the applicant at the beginning of the hearing, and explained it had to determine whether he faced a real chance of serious harm or persecution for one of the five reasons outlined. The applicant discussed a case in which a boy and girl had run away together and later they were killed by the girl's family. In another case, the applicant stated a girl and boy ran away and the family were unable to kill the boy but they killed their daughter by pouring acid down her throat.

49. The Tribunal wrote to the applicant, in accordance with s424A of the Act, inviting him to comment on the following information, which subject to his comments, may be the reason or part of the reason for deciding he was not entitled to a protection visa:

- In your statement attached to your protection visa application you claimed you were told by a man that your parent had been killed in [date specified]. In the interview with the Department, you claimed that you last saw your girlfriend on [date specified], and your parent was killed a few days later. However, in the hearing with the Tribunal you claimed that your parent was killed a few days after you last saw your girlfriend a few months later than originally stated.

This information is relevant because the discrepancies in your evidence as to when you last saw your girlfriend and when your parent was killed, raises serious doubts about your claims relating to your relationship with the girl and your parent's death at the hands of your girlfriend's relatives.

- In the hearing you claimed that your parent was killed in [date specified] and you ran away to City B and stayed there for a few months before going to stay in City C for several months with your parent's friend, Person 1. You then claimed you went from City C to City B, where you stayed for several months. However, at the beginning of the hearing you claimed you were in City B prior to your departure from Pakistan for a few months. In the interview with the Department you claimed that you had been staying in City C for a period of a few years.

This information is relevant because the timeline provided by you in the hearing only accounts for a period up to several months before your departure from Pakistan, and the inconsistency in your evidence as to the duration of your stay in City C raises doubt you fled to either City B or City C and stayed there for any period.

- Information provided to the Department from an un-identified source states that your parents are not deceased as you claim and that you speak to them everyday. Further, the un-identified source declares that you submitted bogus or fabricated

documents, including the death certificates of your parents, in response to the Department's notification of third party adverse information.

This information is relevant because it raises serious doubts about the overall credibility of your claims but particularly the claim that your parent had been killed by relatives of your alleged girlfriend.

The letter was faxed to the applicant's authorised recipient. A copy was also sent by registered post to the applicant's residential address..

50. The Tribunal received a response from the applicant advising that his migration agent was no longer acting for him and providing a new address for service. The applicant confirmed he had received the Tribunal's letter and agreed that he had provided different dates for when his parent died and when he moved from City A to City C and City B. However, he submitted that he could not remember dates after what had happened to him and because of the stress he was living with due to the uncertainty of his future.

FINDINGS AND REASONS

51. In order to satisfy the Convention definition of a refugee, the applicant must have a well-founded fear of persecution. He must have a subjective fear, and that fear must also be well-founded when considered objectively. There must be a real chance that the applicant will be persecuted for a Convention reason if he returns to Pakistan, which the Tribunal finds is the applicant's country of nationality based on the information provided by the applicant. The Tribunal accepts that the applicant does not want to return to his own country. The question for the Tribunal is whether the applicant's fear of persecution is objectively well-founded within the criteria of the Refugees Convention.
52. The Tribunal is aware of the importance of adopting a reasonable approach in the finding of credibility. In *Minister for Immigration and Ethnic Affairs and McIlhatton v Guo Wei Rong and Pan Run Juan* (1996) 40 ALD 445 the Full Federal Court made comments on determining credibility. The Tribunal notes in particular the cautionary note sounded by Foster J at 482:
 - ...care must be taken that an over-stringent approach does not result in an unjust exclusion from consideration of the totality of some evidence where a portion of it could reasonably have been accepted.
53. In the decision of *Minister for Immigration and Ethnic Affairs v Wu Shan Liang & Ors* (1996) 185 CLR 259, the High Court also made comments on the correct approach to determining findings on credibility. Kirby J said at 39:

First, it is not erroneous for a decision-maker, presented with a large amount of material, to reach conclusions as to which of the facts (if any) had been established and which had not. An over-nice approach to the standard of proof to be applied here is not desirable. It betrays a misunderstanding of the way administrative decisions are usually made. It is more apt to a court conducting a trial than to the proper performance of the functions of an administrator, even if the delegate of the Minister and even if conducting a secondary determination. It is not an error of law for a decision-maker to test the material provided by the criterion of what is considered to be objectively shown, as long as, in the end, he or she performs the function of speculation about the "real chance" of persecution required by *Chan*.

With these points in mind the Tribunal now turns to an assessment of the applicant's claims

54. The applicant claimed that his fear of persecution in Pakistan arose from his relationship with a girl whom he met in the 2000s, whilst riding past her on the street. On the basis of a number of inconsistencies in the applicant's evidence and credibility issues in relation to the documentary evidence submitted by the applicant in support of his claims, discussed below, the Tribunal does not accept that the applicant ever had a relationship with the girl and that the relationship culminated with her becoming pregnant and her family killing his parent. The Tribunal does not accept the applicant's claims that Family Q were pursuing him because of any alleged relationship with her.
55. In the hearing with the Tribunal, the applicant claimed that he met his girlfriend in the 2000s and it was not until over a year after that that she became pregnant. However, when asked when she had told him she was pregnant, he initially stated it an earlier date than initially given. Later in the hearing the applicant stated his girlfriend told him about the pregnancy in her 4th or 5th month, which he claimed was a few months later than previously asserted. The Tribunal finds that the discrepancy in the dates the applicant provided for when he learnt about his alleged girlfriend's pregnancy raises serious doubts about these claims. The Tribunal has taken into consideration the applicant's claims in his submission that he is unable to remember dates because of the stress he is under. However, the Tribunal does not accept that the applicant would not be able to recall, with some consistency, approximately when he learnt he was going to be a father. The Tribunal notes that it did not ask the applicant to remember at all during the hearing exact dates of when events took place. The Tribunal also finds it perplexing that the applicant would have no knowledge whatsoever of what happened to his girlfriend or the baby. Although, the applicant claims Family Q were allegedly pursuing him and had killed his parent, given the seriousness of their reaction to their alleged relationship, as well as the other cases the applicant referred to at the conclusion of the hearing regarding the demise of other couples in forbidden relationships, the Tribunal would have expected the applicant would have some awareness about the wellbeing of his alleged girlfriend of over a year or so and what had happened to his unborn child.
56. The applicant also claimed in the hearing that his parent was killed a few days after he last saw his alleged girlfriend [date specified]. Yet in the interview with the delegate the applicant claimed he last saw her a few months earlier than initially stated and his parent was killed a few days later. In the statement attached to his protection visa application the applicant claimed that he was told by a man that his parent had been killed a number of months later than this. The Tribunal does not accept the applicant's explanation for this discrepancy in the hearing, that he was mentally disturbed and only slowly remembering things. The Tribunal has taken into consideration the applicant's claims in his submission that he is unable to remember dates because of the stress he is under. However, given the seriousness of this incident, as well as the fact that it occurred a few days after his last meeting with his alleged girlfriend, the Tribunal would have expected the applicant would have a better recollection of when his parent was killed than what he has demonstrated. The Tribunal also finds it confounding that the applicant demonstrated very little knowledge regarding what actually happened to his parent. Although the applicant claimed he was not present when Family A allegedly got to his home, the applicant claimed he returned a few days later. He claimed he did not know who actually came to his home or how many people came, despite also claiming that the shop keeper living next door to his home who informed him of his parent's death, witnessed these people coming down the street towards his home. On the basis of the vagueness of the applicant's claims and the inconsistencies discussed above, the Tribunal does not accept that the applicant's parent was killed by Family Q as he claimed.

57. The Tribunal has taken into consideration the death certificates submitted by the applicant however given the fact the certificates had been issued by the Union Council of Town E and not Town D where the applicant's parent lived, the Tribunal does not accept that these documents are genuine. The Tribunal has also had regard to the applicant's evidence in the hearing that he asked Person 1 to get the documents for him and his suggestion that money may have been exchanged as a bribe to get these documents. The Tribunal notes that it was the same Person 1, who allegedly organised the applicant's travel to Australia, on fraudulent documents. Further, the Tribunal has also taken into consideration the information provided to the Department from an un-identified source which stated that the applicant's parents were not deceased and that he spoke to them everyday and that bogus or fabricated documents, including the death certificates, had been submitted in response to the Department's notification of third party adverse information. The Tribunal finds that this information is corroborated by the independent information from the Pakistan Government website regarding the administrative arrangements in City A. Given the concerns highlighted above, the Tribunal is not satisfied that the documents submitted by the applicant are credible.
58. The Tribunal has also taken into consideration the timing of the events the applicant provided in the hearing. As discussed above, the applicant claimed his parent was killed in [date specified] and he ran away to City B and stayed there for a few months before going to stay in City C for several months with his parent's friend, Person 1. He then claimed he went from City C to City B, where he stayed for several months. However, at the beginning of the hearing he claimed he was in City B prior to his departure from Pakistan for a few months. The Tribunal notes that the timeline provided by the applicant only accounts for a period up to several months prior to his departure. The applicant did not depart Pakistan until date specified]. When the Tribunal raised the fact that he had claimed in the interview with the delegate that he had been staying in City C for a few years, the applicant insisted that this was not possible as the whole period between him leaving City A and coming to Australia was 2 years. The Tribunal finds that the discrepancy in the time period provided by the applicant for the events that took place after he left City A raises further concerns about the credibility of his claims. The Tribunal has taken into consideration the applicant's claims in his submission that he is unable to remember dates because of the stress he is under. However, the Tribunal is satisfied that the reason the applicant's recollection of the period following the alleged murder of his parent is conflicting is because he had not left City A as he claimed, rather than because of any memory problems.
59. On the basis that the Tribunal does not accept that the applicant was in a relationship with the girl, that she became pregnant by him or that his parent was killed by the girl's family, the Tribunal places no weight on the letters submitted by the applicant to the Department in support of his claims. The Tribunal notes that one letter stated that it was with great regret that the author had to inform the applicant that his parent had been murdered. The Tribunal finds that the wording of this letter suggest that the applicant's parent's death was a more recent occurrence than what the applicant claimed, and this raises concerns regarding the credibility of this document.
60. Based on the above findings, the Tribunal does not accept that the applicant is of any interest to the girl's family. The Tribunal does not accept that the applicant had a girlfriend who was a member of a powerful family and that her family pursued the applicant after she became pregnant and learnt of their relationship. The Tribunal does not accept that the applicant's parent was killed when Family Q came looking for him. Nor does the Tribunal accept that the applicant had to run away to either City B or City C because he was being pursued by the

girl's family. The Tribunal finds, for the reasons provided above, that the applicant does not face a real chance of persecution from Family Q or anyone else if he returned to Pakistan for any reason, let alone a Convention reason. The Tribunal therefore does not accept that the applicant's fear of persecution for reasons of his religion, caste or social status, is well-founded.

61. The applicant raised at the conclusion of the hearing concerns in relation to his separation from his Australian citizen wife if he was returned to Pakistan. This is an issue which is relevant to a humanitarian consideration of the applicant's case and not a matter which the Tribunal has power to determine.

CONCLUSIONS

62. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

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

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*

Sealing Officer's I.D.: rchadw