

1417275 (Refugee) [2016] AATA 3112 (25 January 2016)

DECISION RECORD

DIVISION: Migration & Refugee Division
CASE NUMBER: 1417275
COUNTRY OF REFERENCE: Pakistan
MEMBER: Susan Pinto
DATE: 25 January 2016
PLACE OF DECISION: Sydney
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 25 January 2016 at 3:37pm

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

BACKGROUND AND APPLICATION FOR REVIEW

1. The applicant is a citizen of Pakistan who is aged in his early[age]. The applicant arrived in Australia [in] January 2010. He first applied to the Department of Immigration for a Protection visa [in] April 2010. A delegate of the Minister for Immigration refused to grant the Protection visa and the applicant applied for a review of the decision to the Refugee Review Tribunal (RRT). The RRT affirmed the delegate's decision [in] December 2010. An application to the Federal Circuit Court was unsuccessful and the decision of the RRT was upheld [in] January 2012. The applicant lodged an application for a Subclass 820 (Partner) visa which was refused [in] November 2012 and upheld by the Migration Review Tribunal on 25 March 2013.
2. Following the decision in *SZGIZ v Minister v Minister for Immigration and Citizenship* (2013) 212 FCR 235 (see below), the applicant made a further application for a Protection visa on 22 April 2014. The applicant essentially claimed that due to his involvement in the Pakistan Muslim League Q (PML-Q) and his refusal to join the rival Pakistan People's Party (PPP) he made enemies with them and his friends and colleagues who joined the PPP, and he would be harmed for this reason upon his return to Pakistan.
3. The delegate of the Minister for Immigration refused to grant the Protection visa [in] October 2014. 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).

RELEVANT LAW

4. Section 48A imposes a bar on a non citizen making a further application for a Protection visa while in the Migration zone in circumstances where the non-citizen has made an application for a Protection visa which has been refused. In *SZGIZ v MIAC* [2013] FCAFC71, 3 July 2013, the Full Federal Court found that s.48A did not prevent a non-citizen who had made a valid application on the basis of the Refugee criterion in s.36(2)(a) from making a further application on the basis of the Complementary Protection provisions in s.36(2)(aa) whilst he or she remained in the migration zone. According to *SZGIZ*, a person who had previously applied for and been refused a Protection visa on the basis of one of the criterion in s.36(2) is eligible to lodge a further valid application on the basis of one of the other criterion.
5. As indicated above, the applicant has previously been refused a Protection visa in Australia. However, the visa application under review is a valid application because the applicant is considered 'SZGIZ-affected' as he has not left Australia since the final determination of his previous Protection visa application which preceded the Complementary Protection provisions. As the applicant has previously had his claims for protection assessed under s.36(2)(a), the Tribunal must confine its consideration to whether he satisfies the requirements of s.36(2)(aa) and (c).
6. The Complementary Protection provisions (see attachment for the full text of these provisions) in s.36(2)(aa) essentially require that the applicant is a non citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because there are 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'. Significant harm is defined in s.36(2A) of the Act to include that the non citizen will be arbitrarily deprived of his or her life; the death penalty will be carried out on the non-citizen; the non citizen will be subjected to cruel or inhuman treatment or punishment; or the non citizen will be subjected 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.

7. Subsections 36(2)(c) provides an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen mentioned in s.36(2)(aa) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person.

CLAIMS AND EVIDENCE

Application to the Department

8. When lodging the application to the Department, the applicant indicated that he was born in Lahore where he lived until his departure from Pakistan in October 2008. The applicant indicated on the application form that he speaks, reads and writes English and Urdu. He indicated that his religion is Sunni Muslim. The applicant stated that he was married [in] 2013 and divorced in Australia [in] 2013. He indicated that he left Pakistan in October 2008 and resided in [Country 1] from that time until [January] 2010.
9. The applicant gave no details of his education on the application form. The applicant stated on the application form that he was employed at a [Shop] between 2007 and 2008 in Pakistan and between 2008 and 2010 he was employed for a [company] in [Country 1]. He stated on the application form that from 2010 he has been unemployed. The applicant stated that his parents reside in Pakistan. He also has a [sibling] residing in [another country] and a [sibling] in [Country 1]. His [other siblings] reside in Pakistan.
10. The applicant stated on the application form that he fears harm in Pakistan and is seeking asylum in Australia because he suffered life threatening harm in Pakistan. The applicant states that he was involved with the Pakistan Muslim League (PML-Q) during the 2008 elections and he was approached by members of the Pakistan People's Party (PPP) and they asked him to leave the Muslim League Party to join them. The applicant refused to leave and continued his involvement with the PML-Q. The PML-Q lost the elections and the PPP formed government. When the PPP came into power members of that party came to his house seeking to harm him. The applicant was not at home but they harassed his family and the perpetrators took valuable belongings. The applicant became aware that four PML-Q members were taken by PPP cadres and killed. He left Pakistan because he feared he would suffer the same fate.
11. The applicant was interviewed by the delegate [in] September 2014. The Tribunal has listened to the CD Rom recording of the interview.

Application for review

12. When lodging the application to the Tribunal, the applicant provided a copy of the delegate's decision record.
13. The applicant appeared before the Tribunal on 25 January 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Urdu and English languages.

CONSIDERATION OF CLAIMS AND EVIDENCE

14. **Are there 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?**
15. In considering whether there are substantial grounds for believing that there is a real risk that the applicant will suffer significant harm if he is returned to Pakistan, the Tribunal has had regard to the applicant's written claims and his oral evidence to the Department and the Tribunal. The Tribunal has also had regard, where relevant, to the most recent Department of Foreign Affairs and Trade report on Pakistan. Having considered all of that evidence, the Tribunal is not satisfied that the applicant is a truthful witness. The Tribunal considers that the applicant has manufactured the entirety of his claims to fear harm in Pakistan. The Tribunal's consideration of the evidence and its reasons for reaching those conclusions follows.
16. As indicated above, the applicant was interviewed by the delegate. The applicant told the delegate that he has no new claims and his claims are the same as made in his previous application. The applicant told the delegate that he has had no contact with anyone from the PML-Q or any other political parties since 2008 when he left Pakistan. When asked why anyone would be interested in him some six years after he left Pakistan, the applicant stated that they are still searching for him. The applicant claimed, when advised that the PML-Q had a large number of members and he was asked why anyone would be interested in him, that it has rich supporters and they do not help the poorer supporters. He stated that the most of his former friends and colleagues who were members of the PML-Q have since joined the PML-N because they were bribed to defect to the PML-N, along with former PPP members and they are against him. The applicant claimed that his brother told him that they are still looking for him and when his brother leaves his home with his family they threaten him. The applicant confirmed that when he was in [Country 1] he was working. When asked why he had not remained in [Country 1], the applicant indicated that he no longer had a valid visa to work in [Country 1].
17. At the Tribunal hearing held on 25 January 2016, the applicant was asked about his reasons for leaving Pakistan for [Country 1] in 2008. The applicant stated that he went to [Country 1] because his life was in danger in Pakistan. The applicant confirmed that he worked in [Country 1] from where he travelled directly to Australia. When asked why he did not remain in [Country 1], the applicant stated that the living conditions were not good and his contract was finished. When asked why he decided to come to Australia, the applicant stated that his friends told him that if he came to Australia he may be able to live here. The applicant applied for protection in Australia because of his work with the PML-Q. The applicant told the Tribunal that the opposing party was seeking to harm him. The applicant stated that he was a member of the PML-Q and his work involved [details deleted]. When asked about the aims and manifesto of the party, the applicant stated that they wanted to win office. The Tribunal advised the applicant that most political parties wish to win office, and asked if he could provide more details of the aims, policies and manifesto of the party. The applicant stated that it was helping the poor and doing good things on the streets. When asked if he knew how many seats the party gained in the 2008 national elections, the applicant stated that there were three or four, but then indicated that he did not know because he had left his home by that time and lived in a small village. When asked why he would not have sought information about his party's electoral gains in the 2008 elections when he had purportedly been involved with the party and wanted because of that involvement by those who wanted him to join another party, the applicant stated that his [brother] was treating him harshly at that time. When asked why he would not have looked at a newspaper or Internet to find out the election results, the applicant stated that it has been a long time and he has forgotten. When asked whether he knows what happened to his party in the 2013 elections, the

applicant stated that he does not know. Nor does he know who the current president is, but he suspects that there may not be a president at the moment.

18. When asked when he last had any involvement with the PML-Q, the applicant stated that it was in 2007 or 2008. It was at that time that a group of people came to the PML-Q offices looking for him and then came to his home. The applicant was not at home and subsequently went into hiding. When asked why anyone would have any interest in him in relation to incidents that occurred some eight years ago, the applicant stated that they are still threatening his brothers and one of his brothers was threatened three to four months ago and his brother's father in law was assaulted. When asked why they would be threatening his brother or have any interest in him or his family, the applicant stated that they wanted him to join their party and now they want to take revenge on him.
19. The applicant confirmed that he was not registered with the UNHCR in [Country 1]. When asked why he had not registered with the UNHCR if he left Pakistan because he feared harm, the applicant stated that he thought he could obtain employment in [Country 1] and stay there for a number of years.
20. The Tribunal has considered the applicant's claims to have been sought by the PPP or persons who subsequently joined the PML(N) or PPP because of his involvement with the PML-Q and his purported refusal to join rival political parties. The Tribunal considers that the applicant exhibited very little knowledge of the PML-Q when asked at the hearing about its aims, policies or manifesto. The Tribunal does not accept that his evidence is consistent with his claims to have been involved with the party from 2001 or 2002 until 2007 or 2008. The Tribunal does not accept the applicant's explanation for his limited knowledge of the aims or policies of the party and considers it to be indicative of the fact that he did not have any involvement with the PML(Q).
21. Furthermore, the Tribunal considers that the applicant's evidence as to why anyone would have any continuing interest in him to be not credible. As discussed with the applicant during the hearing, he claims to have been sought in 2007 or early 2008, which is now some eight years ago. The Tribunal does not accept that it is credible that anyone would be continuing to pursue family members in Pakistan three to four months ago due to the applicant's claimed refusal to join an opposing party. The Tribunal also considers that the applicant's evidence, indicating that he sought to work in [Country 1] and left because he could not continue to work, and did not seek any assistance from the UNHCR, to be indicative of the fact that he did not leave Pakistan because he feared harm. The Tribunal considers that his evidence indicates that he left Pakistan for [Country 1] because he had obtained work in [Country 1] and his failure to seek assistance from the UNHCR is indicative of the fact that he had no genuine fear of harm in Pakistan.
22. The Tribunal does not accept that rival party members or any other groups or individuals have any adverse interest in the applicant and considers that his claims that his brothers are being threatened and asked about the applicant's whereabouts and his brother's father in law attacked to be not credible and indicative of the fact that his claims have been manufactured. The Tribunal is drawn to the conclusion that following the failure of his first application for protection and then the failure of his Partner visa application, that the applicant has attempted to rely on manufactured claims in a further attempt to provide a basis for remaining in Australia. The Tribunal does not accept that the applicant was ever sought by the PPP or any other political parties or any other persons or that he left Pakistan for this reason. The Tribunal does not accept that the applicant genuinely fears harm in Pakistan.
23. Having not accepted any previous involvement in the PML-Q, the Tribunal does not accept that he will seek to be involved in this organisation in the future or that there is a real risk he will suffer significant harm from any opponents or persons involved in the PPP or the PML(N)

or any other political parties or persons in Pakistan. Accordingly, the Tribunal is not satisfied on the evidence before it that there are 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. The Tribunal is not satisfied, therefore, that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, Pakistan, there is a real risk that he will suffer significant harm, including arbitrary deprivation of life, the death penalty, torture, cruel or inhuman treatment or punishment or degrading treatment or punishment.

CONCLUSIONS

24. For the reasons given above the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations. Therefore the applicant does not satisfy the criterion set out in s.36(2)(aa) for a Protection visa. Nor does the applicant satisfy the criterion set out in s.36(2)(c). As he does not satisfy the criteria for a protection visa, he cannot be granted the visa.

DECISION

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

Susan Pinto
Member

ATTACHMENT - RELEVANT LAW

26. 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.'

Complementary protection criterion

27. The Complementary Protection criterion is set out in paragraph 36(2)(aa) of the Act. 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.