

**1106555 [2011] RRTA 1039 (12 December 2011)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1106555

**DIAC REFERENCE(S):** CLF2010/81019

**COUNTRY OF REFERENCE:** Pakistan

**TRIBUNAL MEMBER:** Giles Short

**DATE:** 12 December 2011

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies paragraph 36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is a review of a decision made by a delegate of the Minister for Immigration and Citizenship on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] June 2011 refusing an application by the applicant for a Protection (Class XA) visa. The applicant was notified of the decision under cover of a letter dated [in] June 2011 and the application for review was lodged with the Tribunal [on a further date in] June 2011. I am satisfied that the Tribunal has jurisdiction to review the decision.
2. The applicant is a citizen of Pakistan. He arrived in Australia in February 1989 as a visitor and he applied for a Protection (Class XA) visa [in] June 2010.

### RELEVANT LAW

3. 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 (Class XA) 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 to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol; 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.’
4. 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.
5. 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.’

6. The time at which this definition must be satisfied is the date of the decision on the application: *Minister for Immigration and Ethnic Affairs v Singh* (1997) 72 FCR 288.
7. 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.
8. In requiring that ‘persecution’ must involve ‘systematic and discriminatory conduct’ subsection 91R(1) reflects observations made by the Australian courts to the effect that the notion of persecution involves selective harassment of a person as an individual or as a member of a group subjected to such harassment (*Chan Yee Kin v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 per Mason CJ at 388, McHugh J at 429). Justice McHugh went on to observe in *Chan*, at 430, that it was not a necessary element of the concept of ‘persecution’ that an individual be the victim of a series of acts:
 

‘A single act of oppression may suffice. As long as the person is threatened with harm and that harm can be seen as part of a course of systematic conduct directed for a Convention reason against that person as an individual or as a member of a class, he or she is “being persecuted” for the purposes of the Convention.’
9. ‘Systematic conduct’ is used in this context not in the sense of methodical or organised conduct but rather in the sense of conduct that is not random but deliberate, premeditated or intentional, such that it can be described as selective harassment which discriminates against the person concerned for a Convention reason: see *Minister for Immigration and Multicultural Affairs v Haji Ibrahim* (2000) 204 CLR 1 at [89] - [100] per McHugh J (dissenting on other grounds). The Australian courts have also observed that, in order to constitute ‘persecution’ for the purposes of the Convention, the threat of harm to a person:
 

‘need not be the product of any policy of the government of the person’s country of nationality. It may be enough, depending on the circumstances, that the government has failed or is unable to protect the person in question from persecution’ (per McHugh J in *Chan* at 430; see also *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225 per Brennan CJ at 233, McHugh J at 258)
10. Thirdly, the applicant must fear persecution ‘for reasons of race, religion, nationality, membership of a particular social group or political opinion’ Subsection 91R(1) of the Act provides that Article 1A(2) does not apply in relation to persecution for one or more of the reasons mentioned in that Article unless ‘that reason is the essential and significant reason, or those reasons are the essential and significant reasons, for the persecution’ It should be remembered, however, that, as the Australian courts have observed, persons may be

persecuted for attributes they are perceived to have or opinions or beliefs they are perceived to hold, irrespective of whether they actually possess those attributes or hold those opinions or beliefs: see *Chan* per Mason CJ at 390, Gaudron J at 416, McHugh J at 433; *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 570-571 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ.

11. Fourthly, the applicant must have a 'well-founded' fear of persecution for one of the Convention reasons. Dawson J said in *Chan* at 396 that this element contains both a subjective and an objective requirement:

'There must be a state of mind - fear of being persecuted - and a basis - well-founded - for that fear. Whilst there must be fear of being persecuted, it must not all be in the mind; there must be a sufficient foundation for that fear.'
12. A fear will be 'well-founded' if there is a 'real chance' that the person will be persecuted for one of the Convention reasons if he or she returns to his or her country of nationality: *Chan* per Mason CJ at 389, Dawson J at 398, Toohey J at 407, McHugh J at 429. A fear will be 'well-founded' in this sense even though the possibility of the persecution occurring is well below 50 per cent but:

'no fear can be well-founded for the purpose of the Convention unless the evidence indicates a real ground for believing that the applicant for refugee status is at risk of persecution. A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation.' (see *Guo*, referred to above, at 572 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ)

## **CLAIMS AND EVIDENCE**

13. The Tribunal has before it the Department's file CLF2010/81019 relating to the applicant. The applicant appeared before the Tribunal [in] November 2011 to give evidence and present arguments. The applicant was represented by [name deleted: s.431(2)] of the Immigration Advice & Rights Centre Inc, a solicitor and registered migration agent.

### **The applicant's identity and history**

14. The applicant has produced as evidence of his identity an old passport, issued in 1981 and numbered [number deleted: s.431(2)], identifying him as a citizen of Pakistan, born in Karachi in [year deleted: s.431(2)]. The passport identifies him as an employee of [Organisation 1] at the time of issue and gives his address as [address deleted: s.431(2)], Karachi (see folios 136 and 137 of the Department's file CLF2010/81019). The passport contains stamps indicating that the applicant travelled to Singapore and Thailand in March 1981 and February 1984. He also produced a Government of Pakistan - Ministry of Defence - Airports Security Force card and an Airport Entry Pass 1989 identifying him as a [Occupation B] working for [Organisation 1] (see folio 172 of the same file).
15. The Department's movement records indicate that the applicant entered Australia as a visitor travelling on a Pakistani passport numbered [number deleted: s.431(2)] [in] February 1989. (As referred to below, the applicant has said that he has lost this passport or that it was stolen.) The applicant was granted two further temporary entry permits as a visitor, the last of which expired [in] December 1989. After that he remained in Australia illegally until 2010.

16. A letter dated [in] May 2010 from a Case Manager at [Location 2], a men's crisis service operated by the [Suburb 3] Mission (part of the Uniting Church of Australia), which was submitted with the applicant's original application, said that the applicant was homeless and was currently residing at [Location 2]. The Case Manager said that the applicant had worked as a taxi driver in Australia until 2007 when he had lost his job. She said that in late 2009 she had referred him to the [Suburb 3] Mental Health Team for assessment as he had been displaying bizarre delusional behaviour. She said that unfortunately he had exited their service at that time and had re-entered in January 2010. She said that he had responded well to medication and that he had stabilised.
17. A letter dated [in] May 2010 from a psychiatrist with the NSW Department of Health which was also submitted with the applicant's original application said that the applicant had a psychotic illness characterised by marked disordered thinking and persecutory and bizarre delusions. He said that the applicant was taking antipsychotic medication, Risperidone, that he had never required admission to a psychiatric hospital, and that, apart from being prescribed anti-psychotic medication, he was unlikely to be a burden on the health system. He said that the applicant might be able to return to work in the future if his illness remitted with treatment. It is apparent from the evidence before the Tribunal that the applicant has told different stories to different people about where he comes from. The psychiatrist, for example, said that it was not clear if the applicant was from Afghanistan or Pakistan but that he had left during the war between Afghanistan and Russia. He said that the applicant had told him that he had completed a [degree and university deleted: s.431(2)].

### **The applicant's original application**

18. In his original application and in a statement accompanying that application the applicant said that he had been born in Dhaka in what was then East Pakistan. He said that his parents had been Biharis who had moved from India to East Pakistan at the time of Partition in 1947 (although in the Form 80 he said that they had been born in Lucknow in India, not in the Indian state of Bihar). He said that his parents had probably been Christian and that they had gone to church occasionally but that they had not publicised their religion because of the potential dangers they would have faced because of their religion. He left the question asking for his own religion (question 13 on Part C of the application form) blank. The applicant said that he only spoke English although his family had spoken a lot of different languages.
19. The applicant said that in East Pakistan his father had worked in security for [Organisation 4]. The applicant said that at the time of the war which led to the creation of what is now Bangladesh in 1971 his family had escaped to West Pakistan 'with unknown help'. He said that they had been picked up by a C-130 aircraft and taken to Colombo and then to West Pakistan. He said that his father had remained behind and had been kept as a prisoner of war for four years. He said that his father had died a few years later. He said that he himself had seen a cousin who had had a medical centre in East Pakistan being killed. He said that one of his sisters and her husband and their two children had also remained behind and that his sister had died from an illness related to conditions in a camp for displaced persons. He said that his family had lost their house and land forever.
20. The applicant said that although he had been able to go to school and to work in Pakistan there had always been fighting and curfews. He said that they had not been able to go to certain areas because they were Bihari. He said that his family had been called Mohajirs (although that term - which means refugees - is more commonly associated with the people who fled from India to Pakistan, in particular to Karachi, at the time of Partition) and that

they had been harassed by the police and sometimes by other groups. He said that they had not had any health care and that he had been discriminated against in relation to employment.

21. The applicant said that he had graduated from [university] with a [degree] but he had been unable to get a [job] without a Masters degree or a doctorate. He said that he had not done these degrees because he had not been able to afford it financially and life had been too difficult because of curfews and intimidation. He said, however, that while studying he had been the President of the [Student Union]. He said that he also had a certificate in [qualification deleted: s.431(2)] from an organisation in Karachi and that he had worked for [Organisation 1] as a [Occupation B] and subsequently as a [occupation deleted: s.431(2)]. He said that this had not been a good job as there had always been threats and intimidation.
22. The applicant said that when he had seen the situation in West Pakistan deteriorate as it had in East Pakistan 'where the army under a brutal dictator brutalised the civilian population' he had decided to get out. He said that he had obtained a Pakistani passport in about 1987 by paying a bribe. He said that he did not believe that he had Pakistani citizenship and that he did not think that he would be able to return to Bangladesh because he had no proof of where he had been born. He said that even if he could return to Bangladesh he would not because his family had been forced to flee for their lives and his sister had died there. He said that he thought that the Bangladeshi government would target him if he returned there. In the application forms he described his citizenship as 'unknown' or 'stateless' He said in answer to question 47 on Part C of the application form that he had left his home country in June or July 1987 and he said in answer to question 33 and in his statement that he had visited China, various European countries, the USA, various countries in South-East Asia and Japan before coming to Australia in 1989.
23. The applicant said that he thought that if he returned to Pakistan they would want to shoot him or kill him because he was not from that country and they thought that he was a threat to them. He said that he did not like dictatorships and they still had a dictatorship although they tried to call it a democracy. He said that he had been President of the Student Union when he had been studying so his political views would be known. He said that his family had been discriminated against because they had been from India and they were Biharis. He said that the term Bihari was used for all foreigners. He said that he feared being persecuted by the police, the government and 'some of the other groups'.
24. The applicant said that he now had an open religion. He said that he thought that religion could be a problem for him also. He said that religion was always a problem in Pakistan and that the way that they followed their religion was totally wrong. He said that they had killed many innocent people because of religion.
25. The applicant said that he had no contact with his family in Pakistan. He said that he assumed that his mother had died and he said that he had no family or friends in Pakistan who could help him. He said that he could not return to Pakistan, Bangladesh or India because of what they had done to his family. He said that they were all racist countries under brutal regimes and that they could not support their own people so they would not protect him, given that he had not even been born there. He said that there was nowhere in any of these countries where he would be safe. The applicant said that he was receiving treatment for schizophrenia and that he had other problems because he had nowhere to live and it was difficult for him to find food to eat. He said that these problems made it hard for him to remember his situation in Pakistan and what had happened to him in the past. He said that if

he were to return to Pakistan he would not get the sort of treatment for his mental health problems that he was getting here.

26. In her letter submitted with the applicant's original application referred to above the Case Manager said that the applicant was capable of working and supporting himself. She said that of most concern was his family situation, with the whereabouts of his family unknown, and that he would face extreme hardship if repatriated to Pakistan. The psychiatrist said in his letter referred to above that the applicant might be able to return to work in the future if his illness remitted with treatment but he said that it was not possible to predict the outcome of his treatment. He said that after being in Australia for around 20 years it was unlikely the applicant would have the social support required to ensure that he was able to continue treatment for his mental illness if he returned to Pakistan.
27. In a letter dated [in] May 2010 likewise submitted with the applicant's original application the Director of Homeless Services with the [Suburb 3] Mission said that the applicant would be able to re-enter the workforce shortly. He said that Australia had been the applicant's home for over 20 years and that he was now receiving a level of care which would enable him to restore his health and to resume a productive life. He said that returning the applicant to Pakistan would be difficult as his family was lost.

#### **Further letter from the psychiatrist**

28. Under cover of a letter dated [in] September 2010 the applicant's representatives produced a further letter from the psychiatrist dated [in] September 2010 in which he said that the applicant was compliant with medication for schizophrenia and that he was displaying improvement in his psychotic symptoms. He said that the applicant had insight into having a mental illness and the need for long-term treatment with an anti-psychotic medication. He said that the applicant was also willing to be compliant with regular review by a psychiatrist. He said that this awareness of having a mental illness had only evolved after the applicant had been assessed by the Mental Health Homeless Outreach Team and he had been diagnosed with schizophrenia in late 2009. He said, however, that it was likely that the applicant had been suffering from schizophrenia since his mid-20's. He said that two years before the applicant had left Pakistan he had become fearful for his life because of the unrest in that country and that the applicant stated that he had been concerned that the state of martial law had meant that he had been at risk of being killed on the way to work.
29. The psychiatrist noted that this concern had arisen despite there being no change in the political and social unrest in Pakistan. Although he referred to the fact that the applicant had obtained [work] in Pakistan he said that the applicant had been unable to get work and had decided to leave Pakistan. He said that the applicant's concerns about being killed on the way to work and then deciding to leave Pakistan were consistent with paranoid illness. The psychiatrist said that the applicant was only able to subsist because he was receiving financial assistance from the Red Cross and housing from a non-government organisation and that it would be inappropriate for him to be returned to Pakistan.

#### **Letter from [Dr C] of [Workshop D]**

30. The applicant's representatives also produced a letter dated [in] July 2010 from [Dr C] who said that the applicant had begun attending his services on Saturday mornings and evenings at [Workshop D] in [Suburb 3] about six months previously, that he attended the services two to three times a week, that he also helped by cleaning the yard and even the front of the building

before each service and that [Dr C] had also learned that he helped out with another church on Sunday, [Church 5] (also in [Suburb 3]). [Dr C] said that the applicant had 'a general belief in God the creator with a Christian slant' and that his beliefs were best described as non-denominational.

### **Submission from the applicant's representatives**

31. The applicant's representatives also produced a submission dated [in] September 2010 in which they referred to the applicant's claim that he was stateless and that he had obtained his Pakistani passport through bribery. They submitted that the applicant claimed he had a well-founded fear of being persecuted as a Bihari, as a failed asylum seeker who had travelled on a false passport, 'imputed political views since he is returning from a Western country and was previously President of the [Student Union]', and as a Christian in a predominantly Muslim country. They submitted that these factors combined with the applicant's mental illness, lack of native language, homelessness and lack of a support network cumulatively placed him in an extremely vulnerable position and suggested that he would face a real chance of being persecuted if he returned to Pakistan or Bangladesh.
32. The applicant's representatives quoted from travel advice issued by the Australian Department of Foreign Affairs and Trade advising Australian citizens against travelling to Pakistan and the introduction to the US State Department's *Country Reports on Human Rights Practices for 2009* in relation to Pakistan in relation to problems in that country. They referred to information about the lack of psychiatrists and psychiatric facilities in Pakistan and a shocking level of ignorance and suspicion of the mentally ill, even amongst those who worked in hospitals. The applicant's representatives also quoted from travel advice issued by the Australian Department of Foreign Affairs and Trade advising Australian citizens to exercise a high degree of caution in Bangladesh and to information about the treatment of people with disabilities in Bangladesh.
33. The applicant's representatives submitted that the applicant faced serious harm in the form of significant economic hardship and a denial of access to basic services as a result of a combination of his mental illness and his vulnerability as a Bihari or outsider in both Pakistan and Bangladesh. They referred in this context to the suspicion of those with a mental illness, the difficulties in accessing mental health treatment without family or monetary support, the discrimination against Biharis and 'the lack of enforceable legal rights' which they said would make it very difficult for the applicant to earn a livelihood of any kind.
34. The applicant's representatives referred to information about the treatment of Biharis in Bangladesh. They submitted that as a Bihari he would be able to apply for citizenship in Bangladesh but that returning there now as a Bihari with no support network and a serious mental illness, unable to speak the local language and as a failed asylum seeker from a Western country would make him extremely vulnerable to persecution on other grounds such as religion or imputed political opinion. They submitted that, although the applicant had previously had access to education and employment in Pakistan, this did not mean that these rights would continue to be available to him if he were to return to Pakistan 'since he chose to leave the country'.
35. The applicant's representatives referred to information suggesting that, if a person deported from a foreign country was handed over to the Pakistani authorities, the FIA (Federal Investigative Agency) would undertake an inquiry and if the person was found to have forged a passport or to have committed any other illegal activity the person would be charged in



relation to those offences. The applicant's representatives submitted that the applicant would be arrested and 'subject to persecution' as a result of his departure on a passport he claimed to have obtained through bribery.

36. The applicant's representatives submitted that given the length of time for which the applicant had been outside Pakistan and Bangladesh, the fact that he now only spoke English and the fact that he would be returning from a Western country, he would be likely to be viewed as a Westerner and they referred in this context to the travel advice issued by the Australian Department of Foreign Affairs and Trade suggesting that Western interests and persons were being targeted for kidnapping, assassination and terrorist attacks.
37. The applicant's representatives submitted that although the applicant had described himself as having an open religion he would be likely to be viewed as a Christian in a predominantly Muslim country. They referred in this context to information about an attack on Christian communities in Punjab in 2009 and to discrimination against religious minorities in both Pakistan and Bangladesh.
38. The applicant's representatives submitted that the applicant's mental illness made it difficult for him to provide a coherent and comprehensive account of his past, his status and the dangers he faced. They referred to his lack of family support and they reiterated that the combination of factors to which they had referred meant that there was a real chance that he would be persecuted in Pakistan or Bangladesh.

#### **The applicant's evidence at the Departmental interview**

39. The applicant was interviewed by the primary decision-maker in relation to his application [in] October 2010. The applicant confirmed that he claimed that he had been born in Dhaka in East Pakistan and that he and his family had been 'kicked out' of there because they were not from Bangladesh. He said that now he had 'taken the passport from Pakistan' He said that this was his only nationality. He produced his old passport referred to above and he noted that this was not the passport which he had used to travel to Australia. He said that he had lost this more recent passport or that it had been stolen. He said that his Pakistani national identity card had also been stolen. The applicant said that his passport was genuine and that all the information in it was correct. He said that he had used an agent to obtain the passport.
40. The applicant said that he was still taking medication for schizophrenia. He said that he believed that everything in his original application was true but that he suffered from memory loss. He said that before he had come to Australia he had lived in different places because in his mind someone had been following him and wanting to kill him. He referred to the fact that he had visited Japan and Singapore before coming to Australia but he said that he had not spent long in either country.
41. The applicant said that no one had helped him in Pakistan. He said that there was always martial law, there were curfews and there were riots in which thousands of people died. He said that he had worked as a cook as well as a taxi driver in Australia. The applicant referred to his evidence that he had been President of the [Student Union] [in] Pakistan. He said that he had been targeted by the authorities because he had held this position. He said that he had been elected because the locals had thought that he was one of them. He said that it had been in his mind why things had happened so badly and how he could correct the problems which had happened in the past, why his parents had been 'kicked out' of India where they had been

born. He said that he could not remember where they had been born. He said that he had wanted to help people not to be slaughtered but he had not been able to help the situation there. He said that the religious extremists were too strong to correct anything.

42. The applicant said that his father and his mother and his brother and his sister had all been slaughtered in Pakistan at different times by many different people. He said that this was a problem created by curfews and martial law. He said that the people who had slaughtered his family had been from the army. He said that he had read in the newspaper that the army took many forms and he said that this was why he was so scared. He said that it was the same army he had seen in Bangladesh. He referred subsequently to his evidence that his father had been a prisoner of war in Bangladesh and had died shortly after he had come to Pakistan and that his sister had died from an illness related to conditions in a camp for displaced persons.
43. The applicant said that because his family had been refugees and Biharis they had faced discrimination in Pakistan. He said that discrimination was so extreme there because there was not much education. He said that they had been told that as refugees they had no right to live there. The applicant confirmed that he claimed that he had left Pakistan in 1987. He confirmed that he claimed that he was not in contact with his family in Pakistan.
44. The applicant said that he thought that his parents had probably been Christian because they had always talked about Jesus. He said that they had celebrated the birth of Jesus. He said that religion was very secret over there. He said that in East Pakistan his father had worked for [Organisation 4] and then for [Organisation 1].
45. The applicant said that after his family had relocated to Pakistan their life had not been good: they had been starving for a long time, for years. He said that none of the ethnic groups in Pakistan liked each other and they had been sandwiched between them. He said that he had not been able to speak their local language. He said that many people were killed. He said that people had wanted to bash him but he had escaped. He said that he had not been able to bear to live there and this had been why he had escaped from the country.
46. The applicant said that he believed that he had been targeted because he had not been from there. He said that many people there were very clever in knowing who was not from there. He said that they had been called 'Mohajirs', meaning 'refugees', or Biharis. He referred again to curfews and martial law: he said that the army took over each time. He said that this meant that you had no right to go anywhere. He said that this was most of the time. He said that this was a kind of mini civil war. He said that this was sometimes for a day and a night.
47. The applicant confirmed that he had worked for [Organisation 1] in Pakistan but he said that he had only worked there for a short time, for daily wages. He said that he had been a [occupations deleted: s.431(2)]. He said that he had been mentally disturbed because it had been a hard job. He said that the reason he had got this job had been so that he could take the ticket and run away. The applicant said that he could not live in Pakistan. He said that his father had still been alive at this time. He said that he did not remember the year when he had first started working for [Organisation 1]. He said that Pakistan was full of people with mental health problems and that no one thought they had mental health problems.
48. The applicant said that he had completed his 'matric' (Year 10) at the [school and university deleted: s.431(2)]. He said that he would have liked to be involved in student politics at [university] but financially he had not been able to be involved and the situation had become more dangerous. He said that he had been involved in the MQM (Mohajir Qaumi

Movement). He said that 'involvement' meant not to slaughter, to discriminate against or to persecute all the hungry and poor people who had no say. He said that he did not know when he had been involved in the MQM.

49. The applicant said that he would be persecuted if he went back to Pakistan because he was not from that part of the world and he had his own political opinions and religious views. He said that now he did not follow their religion, the Muslim religion. He said that now he belonged to the Uniting Church in [Suburb 3] although he also referred to [Dr C]. He said that he would be discriminated against because they thought he was from outside. He repeated that no one helped anyone else in Pakistan. He said that he had escaped from Pakistan and it would not make sense to go back to the place from which he had escaped. He said that there were bad things there and he repeated that he could not live there.
50. The applicant said that he was not familiar with the situation in Pakistan now but people's nature did not change. He said that he would not be able to obtain citizenship in India or Bangladesh because they had kicked his family out of both countries. He said that he feared being persecuted if he returned to Pakistan because he had been President of the Student Union, because he was a Mohajir, because he came from East Pakistan, because he was an outsider, because his family were Biharis (because they were targeted from time to time because they were not from there), because of his religious views (because he was a Christian) and because he had lived for such a long time in a European culture (which he suggested they might think he would bring to Pakistan). He said that he would be killed if he returned to Pakistan.
51. After a break the applicant's then representative referred to the evidence of the psychiatrist that the applicant had been suffering from schizophrenia since his mid-20's which she submitted would explain the applicant's delay in lodging an application for a protection visa. She submitted that the applicant was extremely vulnerable, that he was not able to articulate his claims well and he suffered from lapses of memory. She submitted that his subjective fear was clear and that there was an objective basis for his fear.
52. The applicant's representative submitted that if the applicant was barely able to subsist in Australia with the assistance of charities he would face serious harm if he returned to Pakistan or Bangladesh or India due to his inability to articulate his problems and the fact that he was an outsider with no family support, that he had been in Australia for so long, that his political opinions would bring him to the notice of the authorities, that his illness risked being untreated and that he would therefore be denied basic services and would be unable to earn a living. She submitted that he risked being arrested on his return because he would not be able to explain where he had been.

#### **Letter from a friend submitted to the Tribunal**

53. In a letter dated [in] July 2011 a friend of the applicant who had met him at [Location 2] referred to the applicant's claims regarding his family's displacement from East Pakistan. He said that the applicant had been forced to flee Pakistan at the age of [age deleted: s.431(2)] due to ongoing persecution because of his family's nationality and their Christian beliefs. The applicant's friend said that he regularly attended church with the applicant in [Suburb 3] and that he believed that he was a person of good character.

### **The applicant's evidence at the hearing before me**

54. At the hearing before me the applicant said that his fear arose because his background was from India. He said that they had lost the motherland of India and because of this they had no land in Pakistan. He said that they told them to go back to their motherland. He said that this was why riots always started and people were shot and killed, every two or three months.
55. I noted that it was over a year since the applicant had been interviewed by the primary decision-maker and that in July 2011 the Tribunal had been informed that he had moved to an address in [suburb deleted: s.431(2)]. The applicant said that this was accommodation provided by the Department of Housing. He said that he was still taking Risperidone. He said that he was feeling a bit stressed but he was happy to proceed with the hearing. He said that he was not working. He said that he still went to [Workshop D] every Saturday and Sunday. He said that they had services there which he attended. He said that he also went to services at [Church 5] on Sundays. He said that he went to services at the Uniting Church when somebody died, one of the other homeless people or someone else. He said that he had been baptised by both [Dr C] and [Pastor E]. He said that he had in fact been baptised many times. He said that new pastors also liked to baptise people.
56. The applicant confirmed that before he had left Pakistan he had been living in Karachi. I noted that his passport gave an address in Siddiqabad in [village deleted: s.431(2)]. He confirmed that he had lived there with his family. He said that he had been so depressed and mentally disturbed that he had just left because that country was too much for him. He said that he had not been born in Pakistan and the statement to that effect in his passport was a lie. He said that he had been born in Dhaka. He said that he had lost contact with his family when he had left Pakistan.
57. The applicant confirmed that, as he had told the primary decision-maker, he had completed his 'matric' at [school deleted: s.431(2)]. He said that he had been the President there and he had joined the Pakistan People's Party (PPP) led by Zulfikar Ali Bhutto, 'the one they hanged'. He referred to the fact that Mr Bhutto's daughter, Benazir Bhutto, had also become Prime Minister. I referred to the fact that when the applicant had been interviewed by the primary decision-maker he had said that he had joined the MQM. The applicant said that the MQM was the party of those of Indian descent. He claimed that he had joined both the PPP and the MQM.
58. I noted that the MQM and the PPP fought with each other (Immigration and Refugee Board of Canada, 'Pakistan: Information on the All Pakistan Mohajir Students Organization (APMSO), particularly on formalities and conditions of membership, its past activities and its relationship to the Mohajir Qaumi Movement (MQM) and the Mohajir Students Federation (MSF)', 11 March 1994, PAK16525.E). The applicant said that they had not fought before. He said they fought for their rights but they always killed the head. He claimed that in the history of Pakistan most of the Prime Ministers had been hanged or shot and no one did anything. He said that no civilisation existed there. He referred again to the fact that people had told him to go back to his motherland. He said that he had tried to solve the problem of the MQM and racism and his Indian background. He said that he had found that because of the army involvement there had always been coups. He said that each time democracy came for a little bit and then it was gone. He referred to the fact that Osama bin Laden had been living in Pakistan. He said that Pakistan was the headquarters of terrorism.

59. I noted that the applicant had said that he had studied at [university]. The applicant said that this had just been the graduation. He said that he had studied privately. He said that he had also completed his 'intermediate' (Year 12) privately. He said that his degree from the [university] was a two year degree. (Undergraduate university degrees in Pakistan are commonly awarded after only two years of study.)
60. I noted that the applicant had obtained the passport he had produced in 1981 and this indicated that he had been employed by [Organisation 1] at the time. I noted that there were also stamps in the passport indicating that he had travelled to Singapore and Thailand in March 1981 and February 1984. The applicant said that these trips had not been holidays. He said that he had had no money. He said that his job with the company had paid him only enough money to survive. He said that he had faced racism in his workplace. He said that even though he had had a card he had not been able to go inside the airport.
61. I noted that the applicant had produced two cards to the Department: a Government of Pakistan - Ministry of Defence - Airports Security Force card and an Airport Entry Pass for 1989 identifying him as [Occupation B] working for [Organisation 1]. The applicant said that the first of these was called an 'apron card' but they had still denied him access. He said that he had been told that because he worked inside the [section deleted: s.431(2)] he was not allowed to go, even with the pass. He said that the pass had just been part of a show. He confirmed that, as indicated by the second pass, he had been [Occupation B]. He said that only people who had worked in the field service had been able to enter the apron. He said that they had mistakenly made an 'apron pass' for him. He said that they had known that his father had worked for the security department. I put to the applicant that what these documents suggested was that he had been working for [Organisation 1] from at least February 1981, if not before, until 1989. I noted that he had come to Australia in February 1989.
62. I referred to the applicant's evidence that he had not been allowed to go to certain areas because he was a Bihari. The applicant referred to the fact that Bihar was a state in India. He said that they had known by his face and they had just denied. They had said: 'We are the bosses here.' He confirmed that he claimed that he had not been able to go to certain areas in Karachi. He said that there had always been curfews and martial law. There had always been army trucks there. He said that he had not been able to go to some areas because it had been too dangerous to go.
63. I put to the applicant that there was a difference between saying that there were some areas to which he had not been able to go because it had been too dangerous to go and being prevented from going by the army. The applicant said that it was also the local people. He said that there were Pashtun groups, Sindhi groups, Baluchi groups and Punjabi groups. He said that because they came from India they were not from those lands. I put to the applicant that, as I was sure he was well aware, the largest group in Karachi were the people who came from India, known as Mohajirs (Australian Department of Foreign Affairs and Trade (DFAT) cable IS45262, dated 25 September 1994, CX4330). The applicant agreed but he said that they were the ones who faced trouble. I put to the applicant that they were the dominant group. The applicant said that they were just slaughtered like pigs.
64. I put to the applicant that at the time that he had left Pakistan the MQM had been the ruling party in Karachi, it had been part of the coalition in power in Sindh and it had been part of the national government (Amnesty International, *Pakistan: Human rights crisis in Karachi*, February 1996, ASA 33/01/96, page 3). The applicant said that at that time he had known

only the PPP. He confirmed that he claimed that he had been part of the MQM as well but he said that because he had worked for [Organisation 1] he had not been able to be linked to any party openly. I put to the applicant that it was a little difficult to believe that the Mohajirs were the oppressed minority in Karachi: they had not been then and they were not now (David Khattak and Charles Recknagel, 'Pakistan: What's really behind the violence in Karachi?', *RFE/RL*, 22 July 2011, CX270491). The applicant said that this was just on paper but the reality was totally different.

65. I put to the applicant that the MQM had won the elections. The applicant said that this did not matter. He referred to the fact that Berlusconi had won the elections in Italy and now he had had to resign. He referred to the fact that the same thing had happened to Papandreou in Greece. I indicated to the applicant that I accepted that there would be areas of Karachi into which he would not be able to go because Karachi was divided up among these various ethnic groups ('Pakistan: Into the abyss', *The Economist*, 27 August 2011, CX271639) but I put to him that there would be plenty of areas to which he would be able to go because he was a Mohajir. The applicant said that as a human being you needed to go where you liked. I indicated to the applicant that the freedom to travel wherever you wanted was not protected by the Refugees Convention.
66. The applicant repeated that he had faced racism there because they had said that it was not his motherland. I noted that the applicant had said that his family had been called Mohajirs. The applicant said that the Mohajirs had come from India. He said that he and his family had had problems because they were Mohajirs. He said that they had been taunted and there had been racism: they had degraded everything. He said that when they called you something it meant that you were not appreciated. I asked him whether he had had any other problems apart from being called names. The applicant said that it was the same thing: they saw you as low class or as people who should not be there. He said that at work he had had no overtime and he had not been able to go to some of the officer joining parties.
67. I referred to the applicant's evidence that he had been President of the [Student Union] and I asked him if he had had problems because of this. The applicant said that he had changed his name to a Baluchi name but this mask had only lasted for a few days. He said that he had wanted to join their party. I noted that he had told me earlier that he had joined the PPP. The applicant said that this had been before he had joined the PPP. He said that he had been President of the Student Union for two years. He said that he had suffered from the same racism there. He said that some of them had known that he was from India.
68. I asked the applicant if he had had any other problems apart from racism. The applicant said that there had been daily living problems. He said that if he had been going from his home to the university or the college you never knew if you would be dead or alive. It was all a risky game there. He said that he had lived in Australia for 22 years and no one bothered about where he was from. He said that he had lived in [Location 2] and they had helped him: they had never asked him where he was from. He said that in Pakistan it was a different story. He said that they always had a different view. They did not think of you as a human being. He said that the national culture was just based on racism.
69. The applicant said that it had been after he had been President of the Student Union that he had become involved in the PPP. He said that their leader (Zulfikar Ali Bhutto) had been well-educated and a lawyer. He said that Mr Bhutto had been from Sindh but he said that otherwise he did not know much about him. The applicant referred to the problems he had faced in East Pakistan and the fact that his relatives had been slaughtered there. He said that

he had only been involved in the PPP for a short time. He said that he had been a bodyguard for Bhutto. He said that this had been when he had been small. I put to him that this suggested that it had been before he had been President of the Student Union and he agreed.

70. I noted that the applicant had also said that he had been involved in the MQM. The applicant said that his involvement had been underground because he had not wanted to show himself. He said that he had been scared. He said that he had not supported the MQM openly because he had known that they were not as strong as the other parties. I noted again that the MQM had been the dominant party in Karachi (Amnesty International, *Pakistan: Human rights crisis in Karachi*, February 1996, ASA 33/01/96, page 3). The applicant said that this had just been a show for a short time. I put to the applicant that this was not correct: the MQM was still the dominant party in Karachi (Shaheryar Mirza, 'Pakistan: Karachi's deeper problems', *Foreign Policy*, 23 August 2011, CX272742). The applicant repeated that it was a show for a short time. He said that they killed Mohajirs every time. He said that there were always bomb blasts in Karachi and it was the Mohajirs who travelled in the buses. He said that the other groups were responsible for the bomb blasts. He said that Karachi was the capital of all problems.
71. I put to the applicant that the MQM had won government in Karachi in 1987 and after the election in 1988 they had become part of the ruling coalition, both nationally and in Sindh (Amnesty International, *Pakistan: Human rights crisis in Karachi*, February 1996, ASA 33/01/96, page 3). The applicant said that the only thing he remembered was the PPP and General Zia. I put to the applicant that by the time he had left Pakistan General Zia had been dead. The applicant denied that he had been there. I put to him that he had been in Pakistan in 1989 because he had got an airport entry pass in 1989. The applicant said that this pass was valid until [a date in] December 1989 but if I saw his documents I would see he had been out for a long time.
72. I put to the applicant that I did not have his documents. These were the only documents I had and I was inclined to put more weight on them than on what he remembered now. The applicant repeated that these documents had been valid until 1989 but he had not been there when General Zia had died. I put to him that he had said different things to different people. I noted that he had a mental illness and this had obviously affected his recollection of things. I noted that I had to look at whether there was an objective basis for his fears. I put to him that the objective evidence before me suggested that he had been employed by [Organisation 1] from at least February 1981, if not before, until 1989, when he had left Pakistan and had come to Australia.
73. I noted that the psychiatrist had said that it appeared that the applicant had been suffering from schizophrenia since his mid-20's and that in the two years before he had left Pakistan he had become fearful for his life. I noted that at the Departmental interview the applicant had referred to the fact that he had believed that someone had been following him and had been wanting to kill him. The applicant said that this was very true. He said that he had always been scared. I put to the applicant that the psychiatrist had said that it did not appear that there had been any objective basis for these fears. The problems in Pakistan had not got worse before he had left. The applicant said that it was always worse there.
74. I put to the applicant that martial law, to which he had referred, had in fact ended in 1985 (Amnesty International, *Pakistan: Human rights crisis in Karachi*, February 1996, ASA 33/01/96, page 3). The applicant said that it was all the time. I put to him that after General Zia had died in a plane crash democracy had been restored and the PPP had won the elections

(Amnesty International, *Pakistan: Human rights crisis in Karachi*, February 1996, ASA 33/01/96, page 3). The applicant repeated that he had not been there.

75. I referred to the fact that the applicant had said that he was a Bihari, meaning that his parents had come from the state of Bihar in India. I referred to the fact that he had said that his family had been displaced from what had been East Pakistan following the war which had resulted in the creation of Bangladesh. I put to the applicant, however, that his passport indicated that he had been born in Karachi. The applicant said that this was totally wrong. I put to him that, as I had said, I might put greater weight on these documents than on what he was telling me. The applicant said that sometimes the truth was different.
76. I put to the applicant that if he had been born in Dhaka, as he claimed, he would still have been a citizen of Pakistan, because at the time he had been born it had been part of Pakistan. There would therefore have been no reason at all for him to have changed his place of birth in his passport. The applicant said that they would not have made the passport for him if he had put that he had been born there. He said that this was more discrimination. I put to the applicant that if I were to believe his story he had been brought to West Pakistan by the government. The applicant said that it had not really been by the government. He said that they had escaped and many of his family had been dead.
77. I put to the applicant that he had said that he had been brought to West Pakistan in a C-130 as part of the government's airlift of people back to West Pakistan. The Government of Pakistan had recognised them as citizens of Pakistan which had been why they had brought them back there. The applicant said that they had paid for this. I put to the applicant that I did not believe this. (The repatriation of Bihari refugees from East Pakistan was carried out by the governments of Pakistan and Bangladesh under the auspices of UNHCR: see Sumit Sen, 'Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia - Part 2', *International Journal of Refugee Law*, Vol. 12, No. 1, 2000, pages 41-70 at pages 55-56.) The applicant said that everything happened in Pakistan. He said that they had stated that Osama bin Laden had been living in Afghanistan but he had been living in Pakistan. I put to the applicant that this did not appear to have anything to do with what he had said had happened to him.
78. I put to the applicant that he had told the psychiatrist originally that he was from Afghanistan or Pakistan and that he had left during the war between Afghanistan and Russia (see folio 3 of the Department's file CLF2010/81019). I put to him that he had told different people different things at different times. The applicant said that Afghanistan and Pakistan were the same: there was no border there. I asked the applicant if he understood that I might not put a great deal of weight on what he thought he remembered because he had told different people different things at different times. The applicant said that when he had talked to the psychiatrist he had not known much because he had been dosed with drugs.
79. I put to the applicant again that his passport - which was the only official document I had - indicated that he had been born in Karachi. The applicant said that in fact he had not been born in Karachi. He referred to the fact that he had taken an oath on the Bible. I put to the applicant that he was relying on his memory which might not necessarily be reliable whereas I was relying on his passport. The applicant said that sometimes documents could be faked. I put to the applicant that there would only be a reason for this document to have been faked if he had needed to get this document with a false place of birth for some reason. The applicant said that in Pakistan everything was possible with documents if you had the money.



80. I put to the applicant again that if he had been born in Dhaka he would still have been a citizen of Pakistan because at that time Dhaka had been part of Pakistan. The applicant said that when he had made the passport it had not been part of Pakistan. I put to him that at the time he had been born it had been. The applicant responded that at that time he had had no passport. I put to the applicant that lots of people from East Pakistan had been resettled in West Pakistan, as he claimed he had been, and the evidence suggested that they were well assimilated in Karachi (Haris Gazdar, 'Karachi, Pakistan: Between Regulation and Regularisation', in Marcello Balbo, ed, *International Migrants and the City*, UN-HABITAT, Venice, June 2005, pages 151-185 at page 156). The applicant responded that this was just what they said.
81. I put to the applicant that I might find that he was a citizen of Pakistan and not stateless, as he had claimed. I referred again to the fact that he had produced a passport issued to him in 1981 which indicated that the Government of Pakistan recognised him as a citizen of Pakistan. The applicant said that they had not treated him as a citizen of Pakistan. I put to him that it appeared that they had treated him as a citizen. The applicant said that he had not been treated the way a citizen should be treated. I put to the applicant that it appeared that he had actually been treated quite well: he had completed his education and he had completed a degree at [university]. The applicant said that it had all been upside down. He said that he had wanted to do a Masters degree in Political Science but he had not.
82. I put to the applicant that he had then been employed for at least eight years by [Organisation 1]. The applicant said that some people thought that this was heaven but it was not. I put to the applicant that he had said that he had obtained the passport in 1987 by paying a bribe. I put to him, however, that, as we had discussed, his passport had been issued in 1981 and it had stamps in it indicating that he had travelled on the passport in March 1981 and February 1984, returning to Pakistan on each occasion. I put to the applicant that this suggested to me that it was a genuine passport. The applicant said that he did not remember anything about that time or what he had been doing.
83. I noted that this had been one of the points I had been trying to make earlier: he did not necessarily remember everything that had happened which was why I might put greater weight on the documents. The applicant repeated that everything was possible if you paid money in relation to documents in Pakistan. I put to the applicant that I did not think that he had paid someone to put stamps in his passport saying that he had travelled overseas in 1981 and 1984. The applicant said that it was true that he had travelled at that time. I put to the applicant that this suggested to me that his passport was genuine, that the Pakistani authorities accepted it as genuine and that he had had no difficulty travelling on it. The applicant said that he understood. I put to the applicant that this made it difficult to accept that there was a real chance that he would be arrested on his return to Pakistan because his passport had been obtained through bribery. The applicant acknowledged this.
84. I referred to the applicant's evidence that his parents had been Christian, that they had gone to church occasionally and that they had celebrated the birth of Jesus. I asked the applicant if he himself had gone to church in Karachi. The applicant said that to be honest he had not been that much interested in religion because he had seen what religious people did in other places. He said that he had a problem because of his race, because he came from India, and this added another problem. He said that he had just wanted to escape from death and punishment. I asked the applicant how his family had celebrated the birth of Jesus. The applicant said that they had lit candles and they had had food and met people at his home. He said that his parents had never taken him to church.

85. The applicant said that he had a bullet in his leg. He offered to show me the injury. I indicated to him that this would serve no purpose because I was not a doctor and I would not be able to tell anything about how it had been caused or what had caused it. The applicant said that he had been going from the city to his home and the army had asked why he was going because there was a curfew. He said that he had been shot. He said that this had been a long time ago, when martial law had still been in force.
86. I referred to the fact that the applicant had said that he feared that if he returned to Pakistan now he would be shot and killed. I asked him who he feared would want to shoot him or kill him if he returned to Pakistan now. The applicant said that he feared whoever was in government or the government officials - the police, the army and the secret service - and the other races. He said that he believed that the police, the army and the secret service would want to shoot him or kill him because they would be scared that he would bring some changes. He said that they had not dealt with Osama bin Laden but they would deal with him because he was an easy target. He said that anyone could do anything to him because he came from India. He said that he could be identified as coming from India by his face and his dress.
87. I put to the applicant that, as we had discussed, the Mohajirs were the largest ethnic group in Karachi (David Khattak and Charles Recknagel, 'Pakistan: What's really behind the violence in Karachi?', *RFE/RL*, 22 July 2011, CX270491). The applicant said that Karachi was just a small city. I put to him that it was a very large city with a population of nearly 18 million people (David Khattak and Charles Recknagel, 'Pakistan: What's really behind the violence in Karachi?', *RFE/RL*, 22 July 2011, CX270491). The applicant said that not all the people who lived in Karachi were Mohajirs. I put to him again that they were the largest ethnic group in Karachi. The applicant said that this was just on paper. He referred to the Memons. I noted that the Memons also came from India. The applicant said that they were rich and they had guns and they protected themselves very well. He said that some of the Mohajirs were poor and they were a very easy target. He said that they could not protect themselves.
88. I put to the applicant that the MQM was very powerful in Karachi and it had its own armed gangs ('Pakistan: Into the abyss', *The Economist*, 27 August 2011, CX271639). The applicant denied this. He said that this was just in the papers, in the media, and they were all run by the government. He said that they showed others were more strong and bad but they did not show themselves. He said that Karachi was not run by the Mohajirs at all. I put to him again that the government was (David Khattak and Charles Recknagel, 'Pakistan: What's really behind the violence in Karachi?', *RFE/RL*, 22 July 2011, CX270491). I indicated to him that I accepted that there was ethnic violence in Karachi and that people were killed. I noted that it had got worse recently (Zofeen Ebrahim, 'Pakistan: Violence killing the poor', *IPS*, 16 August 2011, CX272257). The applicant said that this was happening all the time.
89. I put to the applicant, however, that it was difficult to accept that there was a real chance that he would be shot and killed because he was a Mohajir or because of his real or perceived association with the PPP or the MQM if he returned to Karachi now. The applicant said that he knew that he would be harmed. I noted that I had to look at the risk that this would happen. I put to him that despite the fact that there was a lot of violence and that over 1,000 people were being killed each year, it was a city of nearly 18 million people so the chance of any one person being killed in this sort of violence was very small ('Pakistan: Into the abyss', *The Economist*, 27 August 2011, CX271639; David Khattak and Charles Recknagel, 'Pakistan: What's really behind the violence in Karachi?', *RFE/RL*, 22 July 2011, CX270491). The applicant said that it was not.

90. I referred to the fact that the applicant had been employed by [Organisation 1] for eight years. The applicant said that this had just been luck. I indicated to the applicant that I had to look at whether there was a real chance that something would happen to him. The applicant said that we were all governed by our own fears. I indicated to him that I accepted that he had fears but that, as I had explained to him, I had to look at whether his fears had a real, objective foundation. I noted again that there were 18 million people living and working in Karachi (David Khattak and Charles Recknagel, 'Pakistan: What's really behind the violence in Karachi?', *RFE/RL*, 22 July 2011, CX270491). The applicant said that there should be no fighting or blowing up of bombs or racism or discrimination there. I put to the applicant that unfortunately there was violence in Karachi but what I had to look at in the context of that violence was whether there was a real chance that he would be shot or killed and as I had said I had difficulty in accepting that there was such a real chance. The applicant suggested that this was because I was seeing this from far away. I put to the applicant again that the chance of any individual being killed was very small.
91. I indicated that I accepted that the violence affected people in other ways, for example by preventing people from going to work ('Pakistan: Into the abyss', *The Economist*, 27 August 2011, CX271639; Zofeen Ebrahim, 'Pakistan: Violence killing the poor', *IPS*, 16 August 2011, CX272257), but I put to him that these circumstances would not bring him within the definition of a refugee because they affected everyone living in Karachi. The applicant repeated that they discriminated against people from India. I put to the applicant once again that the Mohajirs were the largest ethnic group in Karachi (David Khattak and Charles Recknagel, 'Pakistan: What's really behind the violence in Karachi?', *RFE/RL*, 22 July 2011, CX270491). The applicant said that this information might be wrong. I put to him that the information available to me also indicated that for a long time the Mohajirs had dominated the private sector in Karachi (DFAT cable IS45262, dated 25 September 1994, CX43330). The applicant responded that this was just what they said.
92. I put to the applicant that he must have grown up speaking Urdu because he had grown up in Karachi and he had worked for [Organisation 1]. I put to him that it was difficult for me to accept that he had forgotten how to speak Urdu during the 20 years for which he had lived in Australia. The applicant confirmed that he claimed that he no longer spoke any language other than English.
93. I noted that the applicant's representatives had referred to information about attacks on Christian communities in two places in Punjab in 2009. I put to him that, according to the US State Department, the National Assembly had adopted a unanimous resolution condemning the killings and the Punjab Minorities Affairs Minister had registered a case against the people who had done this. The police had arrested 42 individuals in connection with the first incident and 54 individuals in connection with the second incident. The provincial government in Punjab had initiated a program to construct new houses for members of the Christian community who had lost their homes in the violence and the reconstruction program had been continuing at the end of 2010 (US State Department, *International Religious Freedom Report July-December 2010* in relation to Pakistan, Section II, Status of Government Respect for Religious Freedom - Abuses of Religious Freedom).
94. I put to the applicant that I might conclude on the basis of the information to which I had referred that the Government of Pakistan met international standards in relation to the protection which it provided to Christians. The applicant said that he did not believe this. He said that the reality was totally different. He said that the Government of Pakistan did not meet any international standards. He said that they did not even know the meaning of

democracy. He referred again to shootings, bombings and killings. I referred to the fact that the PPP was currently in power in Pakistan ('Pakistan' in *Political Handbook of the World Online Edition*, 2010). The applicant said that the President, Asif Ali Zardari, was just a puppet.

95. I put to the applicant that local brands of Risperidone were available in Pakistan for less than \$US5 a month (Saeed Farooq, Zahid Nazar, Javaid Akhtar, Muhammad Irfan and Sher Naeem, 'From DOTS to STOPS - Public Health Intervention for Schizophrenia in low and middle income countries', *Journal of Pakistan Psychiatric Society*, Volume 5, Number 2, July-December 2008, downloaded from [http://www.jpaps.com.pk/display\\_articles.asp?d=194&p=art](http://www.jpaps.com.pk/display_articles.asp?d=194&p=art), accessed 13 November 2011). I noted that the applicant's representatives had referred to suspicion of people who were mentally ill in Pakistan but it appeared on the basis of the evidence before me that his illness is controlled with Risperidone. The applicant said that he did not think that these tablets controlled his life.
96. I put to the applicant that the evidence before me indicated that he had been engaging in bizarre, delusional behaviour which had been why he had been referred to the psychiatrist. He had been prescribed Risperidone which he was still taking now and that drug was controlling his delusions (see the letters from the Case Manager and the psychiatrist referred to above at folios 1 and 102 of the Department's file CLF2010/81019). The applicant said that he did not know about this. He said that he believed that people were still trying to kill him. I put to the applicant that the psychiatrist had said that that he did understand the nature of his problems, that he understood that he was mentally ill (see the letter from the psychiatrist referred to above at folio 102 of the Department's file CLF2010/81019). The applicant said that sometimes doctors had their own problems. I asked him if he understood that he had a mental illness. He responded: 'If the doctor says so, I can't object.'
97. I put to the applicant that it was the psychiatrist who had said that the applicant's symptoms were controlled by Risperidone (see the letters from the psychiatrist referred to above at folios 3 and 102 of the Department's file CLF2010/81019). The applicant repeated that he did not think that his life was controlled by these tablets. I indicated to the applicant that I had to look at how he might behave if he went back to Pakistan. The evidence suggested the Risperidone controlled his mental health problems. The applicant said that he still had a problem. He said that he was taking Risperidone on his doctor's instructions. He said that his problem was the racism and discrimination in Pakistan.
98. I noted that we had talked about this but I also had to look at what problems he would have because of his mental illness. The applicant said that he could not sleep at nights but he said that he had not talked to the psychiatrist about this. I indicated that he should talk to his doctor about this. I put to him again that it appeared that his symptoms were reasonably well controlled by Risperidone. The applicant said that he could not object to what the doctor said. I put to him that I might conclude that there was not a real chance that he would be identified as being mentally ill if he went back to Pakistan. The applicant said that he knew he had problems.
99. I noted that it was true that the services which were available here for mental illness were not available in Pakistan. I put to the applicant, however, that this in itself did not bring him within the terms of the definition of a refugee. I put to him that it would be necessary for me to find that he would be singled out or treated differently, for one of the five Convention reasons, from the rest of the population in relation to the provision of mental health services. The applicant said that the problem was race and the second was religion.

100. I noted that we had already talked about race and religion. I noted that the applicant's representatives had submitted that because he would be returning from a Western country he would be viewed as a Westerner. I noted that they had referred in this context to travel advice issued by the Australian Department of Foreign Affairs and Trade suggesting that Western interests and persons were being targeted for kidnapping, assassination and terrorist attacks in Pakistan. I put to the applicant that this did not suggest that Pakistani citizens returning to Pakistan from Western countries would be singled out. The applicant referred to what had happened to Benazir Bhutto. I put to him that I did not think that his circumstances were comparable to those of Benazir Bhutto. There were reasons why she had been a target which did not apply in his case. The applicant responded: 'Of course, why not?' He said that his family had faced racism and discrimination before the Bhutto family had faced any problems. He said that his family individually had faced more problems than Benazir Bhutto.
101. I referred to the fact that at the Departmental interview the applicant had also said that he would be perceived as bringing European culture to Pakistan because he had lived for a long time in Australia. I put to the applicant that it was a little difficult to accept that there was a real chance that he would be perceived as bringing European culture to Pakistan just because he would be returning from Australia. The applicant said that European culture was the best culture. I asked him if there was something he thought he would do which would attract people's attention if he returned to Pakistan. The applicant said that he had no ability and no power to do anything. He said that maybe they would shoot him or they would put him in gaol and kill him.
102. I put to the applicant that it was a little difficult to accept that he would be arrested and put in gaol if he went back to Pakistan. The applicant said that they had no records. He said that if they killed a person they did not go to a judge or the High Court or the Supreme Court because there was no system there. He said that thousands of people were being killed and anyone could do anything. I put to the applicant that there was effective monitoring of what was going on and what was going on in Karachi was well-reported. I gave the applicant's representative time to make further written submissions.

#### **Post-hearing submission from the applicant's representatives**

103. In a submission dated [in] December 2011 the applicant's representatives referred to the applicant's claims. They reiterated the claims that the applicant no longer spoke any languages other than English and that he would be likely to be viewed as a Westerner if he returned to Pakistan. They referred again to the travel advice issued by the Australian Department of Foreign Affairs and Trade in this context. They also submitted that the applicant's status as a returned failed asylum seeker would also be likely to place him at risk of serious harm but they referred to no further evidence in support of this submission.
104. The applicant's representatives referred to the applicant's claim in the statement accompanying his original application that he had an open religion. They submitted that he was predominantly Christian in his views and they referred to the fact that he attended [Workshop D] in [Suburb 3]. They submitted that Christians in Pakistan suffered systematic discrimination and harassment, including violent attacks, and many faced imprisonment without trial on blasphemy charges. They referred once again to the attacks on Christian communities in Punjab in 2009. They submitted that the applicant's Islamic name coupled with his lack of knowledge of local languages could result in a perception that he had rejected the Islamic religion. They submitted that those perceived to be Christians were attacked, arrested and discriminated against with little or no protection of their rights by the State.

105. The applicant's representatives submitted that mentally ill persons were identifiable as an ostracised and stigmatised part of society and therefore formed a particular social group. They referred in this context to *Denissenko v Haskett and Minister for Immigration and Ethnic Affairs* [1996] FCA 1513 in which they submitted the Federal Court had found that the applicant was a member of a particular social group of persons suffering from schizophrenia. However in reality the Tribunal (differently constituted) had found in that case that 'people diagnosed as suffering from the mental illness of schizophrenia' were members of a particular social group for the purposes of the Convention and this finding was not challenged in the Federal Court.
106. The applicant's representatives also referred to *SZMZD v Minister for Immigration & Anor* [2009] FMCA 554 in which they submitted Emmett FM had found that 'the evidence before the Tribunal and not the applicant's subjective fear alone, resulted in his membership of a particular social group of persons with mental disabilities in Bangladesh' However in reality Emmett FM stated (in dismissing the application) that the Tribunal (differently constituted) had 'considered whether the Applicant had a subjective fear of persecution either by reason of any political opinion imputed to him, as claimed in his protection visa application, or as a member of a particular social group of mentally impaired and disabled persons in Bangladesh' and that the Tribunal's finding that the applicant did not genuinely hold any fear of harm on either basis had been open to it on the evidence and material before it (at [118] and [119]).
107. The applicant's representatives referred to general information about schizophrenia. They also referred to a survey of 294 medical students and doctors in Lahore which found that just over half held negative attitudes towards people with schizophrenia, depression and drug and alcohol disorders, a result which the authors of the study said was similar to the results of a similar survey in the UK (Farooq Naeem, Muhammad Ayub, Zahid Javed, Muhammad Irfan, Fayyaz Haral and David Kingdon, 'Stigma and Psychiatric Illness. A Survey of Attitude of Medical Students and Doctors in Lahore, Pakistan', *J Ayub Med Coll Abottabad*, 2006;18(3), downloaded from <http://www.ayubmed.edu.pk/JAMC/PAST/18-3/11Farooq.pdf>).
108. The applicant's representatives also referred to a media report stating that there were no exact numbers of the mentally ill in Pakistan, 'due largely to the associated stigma', and that even at leading institutes of mental health, there were continued reports of patient mistreatment or a failure to provide adequate care ('Pakistan: Millions lack access to mental care', *IRIN*, 8 November 2007, downloaded from <http://www.irinnews.org/report.aspx?reportid=75204>).
109. The applicant's representatives also submitted that if the applicant returned to Pakistan he would be likely to suffer a denial of a capacity to earn a livelihood of any kind where the denial threatened his capacity to subsist. They referred in this connection to information suggesting that employment quotas for people with disabilities were not enforced and that families cared for most individuals who had physical and mental disabilities. They also quoted from an article in the Journal of the Pakistan Medical Association noting that there were very few examples where mentally ill people were able to sustain meaningful employment in Pakistan and that public institutions for chronically ill psychiatric patients presented a gloomy picture (Amin A Muhammad Gadit, 'Abuse of mentally ill patients: are we ignoring the human rights principle?', *JPMA*, Vol. 58, No. 9, September 2008, downloaded from [http://www.jpma.org.pk/full\\_article\\_text.php?article\\_id=1505](http://www.jpma.org.pk/full_article_text.php?article_id=1505)).
110. The applicant's representatives submitted that if the applicant returned to Pakistan his treatment would be disrupted and without access to family or other support networks he

would be unlikely to avail himself of medical care. They submitted that the applicant would be perceived as a person suffering from mental illness, either because he would not continue to take his medication or because, despite taking that medication, he presented as a person suffering mental illness. They submitted that the applicant therefore had a well-founded fear of being persecuted for reasons of his membership of the particular social group of persons diagnosed with schizophrenia if he returned to Pakistan.

111. The applicant's representatives referred to *Prahastono v Minister for Immigration and Multicultural Affairs* (1997) 77 FCR 260 as authority for the proposition that 'when conducting an assessment of whether or not an applicant meets the requirements provided under the *Migration Act 1958* (the "Act") for enlivening Australia's obligations, a decision maker must take into account the personal attributes of the applicant' However what Hill J in fact said in that case (at 270) was that it did not follow that every behaviour which engendered fear in an applicant was persecution so that 'if the conduct complained of is not, without reference to its impact upon the applicant for refugee status, persecution, it will not become so if it produced in that person fear'. The applicant's representatives submitted that the applicant's subjective fear of harm based upon his religion and imputed political opinion together with the objective fear resulting from his membership of a particular social group met the requirements of the Act. However, as referred to above, what is required is both a subjective fear and an objective basis for it: see *Chan*, referred to above, at 396 per Dawson J.

## **Background**

112. The US State Department said in its most recent report on religious freedom in Pakistan that:

'During the reporting period there were reports of societal abuses or discrimination based on religious affiliation, belief, or practice. Citizens continuously used blasphemy laws to harass religious minorities and vulnerable Muslims and to settle personal scores or business rivalries. Relations among religious communities remained tense. Violence against religious minorities and between Muslim sects continued. Most believed a small minority was responsible for attacks; however, discriminatory laws and the teaching of religious intolerance created a permissive environment for such attacks. Police often refused to prevent violence and harassment or refused to charge persons who committed such offenses. Conversion to minority religious beliefs generally took place in secret to avoid societal backlash.' (US State Department, *July-December 2010 International Religious Freedom Report* in relation to Pakistan, Section III, Status of Societal Actions Affecting Enjoyment of Religious Freedom)
113. A response regarding apostasy to the UK Border Agency from the British High Commission in Pakistan, dated 9 January 2009, stated that, although apostasy was not illegal, people who changed their faith were regularly charged with blasphemy and insulting Islam. The UK Border Agency has also reported that public opinion surveys conducted in Pakistan by the Pew Research Center in 2009 and 2010 recorded that 76 and 78 per cent of respondents were in favour of the death penalty for people leaving Islam (UK Border Agency, *Pakistan - Country of Origin Information Report*, 29 September 2011, paragraphs 19.53, 19.56 and 19.58).
114. A Foreign and Commonwealth Office official at the British High Commission in Islamabad stated in a letter to the UK Border Agency dated 2 March 2011 with regard specifically to converts to Christianity that:

‘We consulted internally with our Political Section, who deal with humanitarian and human rights issues. In short, it is difficult to corroborate the real situation, as this is a frequently hidden problem; our view is that converts would probably not want to draw additional attention to themselves. However, we have ascertained the following anecdotal evidence from our dealings with external contacts in Pakistan:-

Firstly, in our opinion it would be difficult for Christian converts to live freely and openly in Pakistan, as converts over and above being Christian. It is our view that people who are known to have converted to Christianity suffer serious discrimination, for example in the workplace or by the authorities. It is far more difficult for people in Pakistan who are known to have converted to Christianity, than it is for people who were born Christian.

We understand that it would be rare for someone to convert to Christianity, or at least to do so openly, in Pakistan. It is therefore something of note for the community, with potential repercussions.

Our Political Section considered that internal relocation may be possible, in theory, as there were Christian communities in many urban areas such as Rawalpindi, and across Punjab and Sindh provinces. Due to the anonymity afforded by moving to an urban area, it may be feasible to relocate and not reveal the fact of the conversion. However, our view was also that the Christian communities were themselves becoming increasingly isolated from other communities. Therefore whilst it may be more difficult to socially exclude and harass a Christian who lives in a larger Christian community, it does not necessary preclude that harassment.’ (UK Border Agency, *Pakistan - Country of Origin Information Report*, 29 September 2011, paragraph 19.162)

115. The Australian Department of Foreign Affairs and Trade (DFAT) advised in 1997 that:

‘A Muslim who has genuinely converted to Christianity would be likely to face adverse treatment in Pakistan in the form of ostracism, discrimination (eg in employment), harassment and, only in extreme cases, violence. This treatment would in most cases be meted out by the converted person's family, neighbours and religious activists. At a local level, a person who has converted to Christianity would be unlikely to receive meaningful protection from law enforcement authorities or government if he/she became the target of adverse treatment.’ (DFAT cable IS2986, dated 16 December 1997, CX26877)

## **FINDINGS AND REASONS**

116. I accept that, as stated in the two letters from the psychiatrist referred to above, the applicant is suffering from a psychotic illness or schizophrenia characterised by marked disordered thinking and persecutory and bizarre delusions. As I indicated in the course of the hearing before me, I understand from the psychiatrist’s letters that the applicant’s illness is controlled by Risperidone. The psychiatrist said in his letter dated [in] September 2010 that the applicant had insight into having a mental illness and he appeared to demonstrate this insight at the Departmental interview, saying that he had come to Australia because in his mind someone had been following him and wanting to kill him. However at the hearing before me he said that he believed that people were still trying to kill him.

117. It is difficult to evaluate the applicant’s evidence. While he was adamant at the hearing that he was telling the truth and while he referred to the fact that he had taken an oath on the Bible, he also said that he did not remember things. As I put to the applicant, it appears that



he has told different people different things at different times about his history. He told the psychiatrist originally that he was from Afghanistan or Pakistan and that he had left during the war between Afghanistan and Russia (see folio 3 of the Department's file CLF2010/81019). The applicant said that when he had talked to the psychiatrist he had not known much because he had been dosed with drugs. However, as I put to the applicant, this leads me to put more weight on the documents he has produced than on his own evidence.

118. As I put to the applicant, his passport indicates that he was born in Karachi. The applicant has said that this is not true and he has referred to the ease with which fraudulent documents can be obtained in Pakistan. However, as I put to the applicant, if he had been born in Dhaka in [year deleted: s.431(2)] as he claims, he would still have been a citizen of Pakistan because at that time Dhaka was part of Pakistan. There would therefore have been no reason for him to have obtained a passport stating that he had been born in Karachi if that were not in fact true.
119. Moreover, the applicant claimed in his statement accompanying his original application that he had obtained his passport in 1987 by paying a bribe. However, as I put to the applicant, his passport was issued in 1981 and it has stamps in it indicating that he travelled using the passport in March 1981 and February 1984, returning to Pakistan on each occasion. When I raised this with the applicant initially in the course of the hearing before me he said that he had travelled as indicated by his passport but he said subsequently that he did not remember anything about this time or what he had been doing. After I put to him that I did not think that he had paid someone to put stamps in his passport saying that he had travelled overseas in 1981 and 1984 he said that he had travelled at that time.
120. I find on the basis of the applicant's passport that he is a citizen of Pakistan, born in Karachi in [year deleted: s.431(2)] as indicated in his passport. I find that the passport is a genuine passport and that the applicant used it to travel overseas in 1981 and 1984, returning to Pakistan on each occasion. I find that, as indicated in the passport, the applicant was employed by [Organisation 1] at the time the passport was issued in 1981. I find that he was still employed by [Organisation 1] as [Occupation B] in 1989 as indicated by the Airport Entry Pass 1989 which he likewise produced to the Department.
121. I accept that, as the psychiatrist said in his letter dated [in] September 2010, the applicant left Pakistan because he became fearful for his life despite there being no apparent objective basis for that fear. Much of the applicant's evidence is confused or does not accord with the objective evidence. He has variously claimed that he was associated with the MQM, the PPP and even with a Baluchi political party. At the hearing before me he claimed that he had been a bodyguard for Zulfikar Ali Bhutto but he would have been aged just [age deleted: s.431(2)] when Prime Minister Bhutto was imprisoned following the coup by General Zia ul-Haq on 5 July 1977 which makes this claim inherently implausible. The applicant initially agreed that the Mohajirs were the largest ethnic group in Karachi but he subsequently suggested that this might be wrong. He also denied that the MQM was the dominant political group in Karachi although the independent evidence indicates that it won control of the local government there in 1987 and that it continues to control the city now (Amnesty International, *Pakistan: Human rights crisis in Karachi*, February 1996, ASA 33/01/96, page 3; David Khattak and Charles Recknagel, 'Pakistan: What's really behind the violence in Karachi?', *RFE/RL*, 22 July 2011, CX270491).
122. In the statement accompanying his original application the applicant said that his parents had probably been Christian and that they had gone to church occasionally but that they had not

publicised their religion because of the potential dangers they would have faced because of their religion. At the Departmental interview he said that he thought that his parents had probably been Christian because they had always talked about Jesus. He said that they had celebrated the birth of Jesus. He said that religion was very secret over there. At the hearing before me, when I asked the applicant how his family had celebrated the birth of Jesus, he said that they had lit candles and they had had food and met people at his home. He said that his parents had never taken him to church. He said that he had not gone to church in Karachi. He said that to be honest he had not been that much interested in religion because he had seen what religious people did in other places.

123. I do not accept that the applicant's parents were Christian. I do not accept that, if they had been Christian, they would not have taken their children to church. I accept that since the applicant became homeless he has been cared for by Christian organisations in Australia. As referred to above he was greatly assisted by [Location 2], a men's crisis service operated by the [Suburb 3] Mission (part of the Uniting Church of Australia). I accept the applicant's evidence (supported by the letter from [Dr C] which was submitted to the Department) that he has been attending services at [Dr C]'s [Workshop D] in [Suburb 3] and [Church 5], also in [Suburb 3]. I accept that, as [Dr C] said, the applicant has 'a general belief in God the creator with a Christian slant' and that his beliefs are best described as non-denominational. I accept the applicant's evidence that he has been baptised by both [Dr C] and [Pastor E] and that he has in fact been baptised many times because new pastors like to baptise people.
124. It is relevant in this context that subsection 91R(3) of the Act requires me to disregard conduct engaged in by an applicant for refugee status in Australia unless I am satisfied that the applicant has engaged in the relevant conduct otherwise than for the sole purpose of strengthening their claim to be a refugee (see *Minister for Immigration and Citizenship v SZJGV* (2009) 238 CLR 642). However I think it plain from the evidence before me that the applicant became involved with Christian organisations before he had any idea of applying for refugee status. Indeed it appears that it was the people caring for him at [Location 2] who helped him to obtain assistance through the Community Assistance Support (CAS) Program in order to make such an application. I do not consider that the applicant has engaged in his conduct in Australia in attending Christian services and being baptised for the sole purpose of strengthening his claim to be a refugee. I am not therefore required to disregard his conduct in Australia in attending Christian services and being baptised in assessing his application for a protection visa.
125. There are significant imponderables involved in assessing what may happen if the applicant returns to Pakistan now or in the reasonably foreseeable future. The psychiatrist said in his letter dated [in] September 2010 that he was complaint with his medication but as his representatives noted in their submission dated [in] December 2011 it is unclear from the applicant's evidence at the hearing before me whether he will continue to take his medication if he is not told by a psychiatrist to do so. While the medication which the applicant takes, Risperidone, is readily available in Pakistan, the applicant said that he did not believe that his life was controlled by the tablets and, as referred to above, his evidence called into question the extent to which he does have insight into his mental illness.
126. I do not agree with the applicant's representatives that the applicant will necessarily be perceived as a person suffering from a mental illness. On one level he can appear quite lucid and capable of rational thought. For example, when I put to him that, if he had been born in Dhaka, he would still have been a citizen of Pakistan because at that time Dhaka had been part of Pakistan, he said that when he had obtained his passport it had not been part of

Pakistan. When I put to him that at the time he had been born it had been, he responded that at that time he had had no passport. The applicant also referred in the course of the hearing to various current events such as the killing of Osama bin Laden and the resignations of Berlusconi and Papandreou.

127. I consider that a person having a conversation with the applicant might not necessarily realise that he was suffering from a mental illness. This has implications for the assessment of the applicant's case because, while appearing quite lucid, he can also make statements which may appear thoughtless and insensitive. For example, he said at the hearing before me that his family individually had faced more problems than Benazir Bhutto. Bearing in mind that, as discussed at the hearing, her father was hanged and she herself was assassinated, it is not difficult to conclude that such sentiments might be thought offensive by supporters of the PPP in Karachi. It is apparent, in other words, that the applicant does not always realise the significance or impact of what he is saying.
128. I consider that this lack of awareness is relevant in assessing the risk to the applicant if he returns to Karachi now or in the reasonably foreseeable future. It is well-established that the Tribunal cannot impose an expectation on an applicant that they will behave in a particular way. As Gummow and Hayne JJ said in *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs* (2003) 216 CLR 473 at [78]:

‘The central question in any particular case is whether there is a well-founded fear of persecution. That requires examination of how *this* applicant may be treated if he or she returns to the country of nationality.’ (original emphasis)
129. In the present case I consider that the applicant's lack of awareness of the impact of what he says may place him at risk in two ways. First, in the context of the current violence in Karachi, when the city is divided into warring fiefdoms guarded by gunmen associated with the political parties representing the interests of the different ethnic groups in the city (‘Pakistan: Into the abyss’, *The Economist*, 27 August 2011, CX271639; Zofeen Ebrahim, ‘Pakistan: Violence killing the poor’, *IPS*, 16 August 2011, CX272257; David Khattak and Charles Recknagel, ‘Pakistan: What's really behind the violence in Karachi?’, *RFE/RL*, 22 July 2011, CX270491), I consider that there is a real chance that the applicant may be killed for reasons of his imputed political opinion on the basis of some unguarded remark such as that referred to above about Benazir Bhutto.
130. If this were the only problem which the applicant faced I would have to consider whether he could relocate to some place in Pakistan other than his former home in Karachi. However I consider, secondly, that the applicant will also be at risk because he will be perceived as a Christian convert in Pakistan. I consider that, given the warm welcome he has found from Christian groups here, the applicant will also gravitate to such groups in Pakistan. I consider that he will continue to attend Christian services even if, as [Dr C] said, his beliefs are best described as non-denominational and he has ‘a general belief in God the creator with a Christian slant’ rather than a deeper understanding of Christian beliefs.
131. While I consider that the applicant will have a mixture of motives for continuing to attend Christian services I consider that he will be perceived by others in the community as a convert to Christianity. For the reasons given above I do not accept his claim that his parents were Christian. Moreover, even if I were to accept that claim, the applicant said that he himself had not gone to church in Karachi. Since the vast majority of people in Pakistan are Muslims, and the natural assumption (in the absence of evidence to the contrary) is that a

person is Muslim, I consider that there is at least a real chance that the applicant will be perceived by other members of the community as a convert from Islam to Christianity.

132. I consider that this perception will be reinforced if people are aware that the applicant has spent over 20 years living in what is perceived to be a Christian country and I consider that there is a real chance that the applicant himself may tell people that he has been living in Australia for the last 20 years because, once again, I consider that he does not always realise the significance or impact of what he is saying. I likewise consider that the perception that the applicant has turned away from Islam will be reinforced if the applicant makes unguarded statements as he did at the hearing before me about what religious people have done. I consider that the perception that the applicant is a convert from Islam to Christianity is likely to arise for these reasons wherever the applicant goes in Pakistan.
133. Having regard to the independent evidence referred to above, I consider that there is a real chance that, if the applicant returns to Pakistan now or in the reasonably foreseeable future, he will be charged with blasphemy or physically harassed as a result of his perceived conversion. I accept that the police often refuse to prevent violence or harassment for reasons of religion or refuse to charge persons who commit such offences (UK Border Agency, *Pakistan - Country of Origin Information Report*, 29 September 2011, paragraphs 19.53, 19.162; US State Department, *July-December 2010 International Religious Freedom Report* in relation to Pakistan, Section III, Status of Societal Actions Affecting Enjoyment of Religious Freedom).
134. The High Court has said in this context that '[n]o country can guarantee that its citizens will at all times, and in all circumstances, be safe from violence'. It has said that the state is obliged 'to take reasonable measures to protect the lives and safety of its citizens, and those measures would include an appropriate criminal law, and the provision of a reasonably effective and impartial police force and justice system' (per Gleeson CJ, Hayne and Heydon JJ in *Minister for Immigration and Multicultural Affairs v Respondents S152/2003* (2004) 205 ALR 487 at [26]). Having regard to the independent evidence regarding the failure of the police to provide effective protection for Christian converts who may be threatened with violence or harassed, I consider that the Government of Pakistan does not meet international standards (as referred to in *Respondents S152/2003*, cited above, at [26] and [27] per Gleeson CJ, Hayne and Heydon JJ) with regard to the protection it provides to Christian converts. I conclude, therefore, that there is a real chance that the applicant will be persecuted for reasons of his perceived conversion to Christianity if he returns to Pakistan now or in the reasonably foreseeable future.
135. I consider that the persecution which the applicant fears involves 'serious harm' as required by paragraph 91R(1)(b) of the Migration Act in that it involves a threat to his liberty or significant physical harassment or ill-treatment. I consider that the applicant's perceived religion is the essential and significant reason for the persecution which he fears, as required by paragraph 91R(1)(a). I further consider that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves his selective harassment for a Convention reason, namely his perceived religion. For the reasons given above I consider on the basis of the independent evidence that there is no part of Pakistan to which the applicant could reasonably be expected to relocate where he would be safe from the persecution which he fears.
136. For the reasons given above I do not accept that the applicant was born in Dhaka as he has claimed. I do not accept on the basis of the evidence before me, therefore, that the applicant

is a national of Bangladesh. Likewise, while I accept that the applicant's parents moved from India to what became Pakistan at the time of Partition, I do not accept on the basis of the evidence before me that the applicant (who I have found was born in Pakistan in [year deleted: s.431(2)]) is a national of India. There is nothing in the evidence before me, therefore, to suggest that the applicant has a legally enforceable right to enter and reside in any country other than what I have found to be his country of nationality, Pakistan. I therefore find that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act (see *Applicant C v Minister for Immigration and Multicultural Affairs* [2001] FCA 229; upheld on appeal, *Minister for Immigration and Multicultural Affairs v Applicant C* (2001) 116 FCR 154).

## **CONCLUSIONS**

137. I find that the applicant is outside his country of nationality, Pakistan. For the reasons given above, I find that he has a well-founded fear of being persecuted for reasons of his perceived religion if he returns to Pakistan now or in the reasonably foreseeable future. I find that he is unwilling, owing to his fear of persecution, to avail himself of the protection of the Government of Pakistan. It follows that I am satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Consequently the applicant satisfies the criterion set out in paragraph 36(2)(a) of the Migration Act for the grant of a protection visa.

## **DECISION**

138. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies paragraph 36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.