

**1201230 [2013] RRTA 326 (3 May 2013)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1201230

**DIAC REFERENCE(S):** CLF2011/172479

**COUNTRY OF REFERENCE:** Pakistan

**TRIBUNAL MEMBER:** Anthony Krohn

**DATE:** 3 May 2013

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies section 36(2)(a) of the *Migration Act* 1958, being a non-citizen in Australia in respect of whom the Tribunal is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol.

## STATEMENT OF DECISION AND REASONS

### SUMMARY OF CRITICAL FINDINGS

1. The applicant claims protection in Australia by the grant of a protection visa (“**the visa**”). He seeks this as a national of Pakistan who fears persecution in his country as a Shia Muslim, as the son of a prominent Shia, and as a person involved in the Imamia Students’ Organization (“**ISO**”), a Shia organisation.
  - ❖ has well founded fear of persecution for reason of religion, membership of a particular social group or groups, and political opinion, if he returns to his home area in Pakistan;
  - ❖ cannot reasonably and safely relocate to another part of Pakistan where he would be safe from persecution;
  - ❖ does not have a right to enter and reside in a third country.
2. The Tribunal therefore finds that the applicant meets a necessary criterion for the grant of a protection visa.

### CLAIMS AND EVIDENCE

3. The Tribunal has before it and has considered the material in its own file in this matter, and in the file of the department of the Minister for Immigration and Citizenship (“**the Minister**”) relating to the applicant. The Tribunal also has had regard to other material available to it from a range of sources, including material relating to the situation in Pakistan, referred to in these reasons.
4. The applicant was represented in relation to the application for the visa and the application to the Tribunal by his registered migration agent (“**the agent**”).
5. The following is a summary of the applicant’s claims and the evidence before the Tribunal.

#### **The applicant**

6. The applicant is a Shia and a national of Pakistan, born in Islamabad. (Minister’s department’s file, folios 59, 30-29.)<sup>1</sup>
7. The applicant is now in his 20s. He speaks, reads and writes Urdu, English and Punjabi. (Minister’s Department’s file, folio 30.)
8. The applicant is not a national or a citizen of any other country, nor does he have the right to enter and reside any country other than Pakistan. (Minister’s Department’s file, folio 29.)

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<sup>1</sup> He provided a certified copy of a Pakistani passport in his name, bearing the same date of birth as in his application for the visa. (Minister’s Department’s file, folios 59-41.)

### **The applicant's reasons for claiming protection**

9. The applicant set out briefly his reasons for applying for protection his application for the Visa. (Minister's department's file, folios 24 to 21.) The following is a summary of those:
- ❖ The applicant left his country to escape threats in Pakistan. (Minister's department's file, folio 24.)
  - ❖ He fears that if he returns to his country he “will be beaten again or killed. (Minister's department's file, folio 23.)
  - ❖ Lashkar-e-Jhangvi, an anti-Shia group, is the group whom he fears will harm him. (Minister's department's file, folio 22.)
  - ❖ Lashkar-e-Jhangvi will harm the applicant because he was a member of the ISO, and his father is an office bearer in a Shia organization, and Lashkar-e-Jhangvi want them to convert (to Sunni Islam). (Minister's department's file, folio 22.)
  - ❖ If the applicant returns to Pakistan, Lashkar-e-Jhangvi will continue to threaten him. They have already killed many members of his group (ISO). (Minister's department's file, folio 22.)
  - ❖ The Pakistani authorities will not protect the applicant. He has already asked them for protection, but they did not do anything. After that, there was an attack on the applicant's family, but still the authorities did nothing. The applicant's brother was shot at, but still the authorities did nothing. (Minister's department's file, folio 21.)

#### *Further statutory declaration*

10. The applicant supplemented his application for the visa by a further statutory declaration, dated November 2011, which repeated the main points of his claims, and saying that shortly after he had come to Australia, he had been advised that his family had been attacked again, and referring to his father's specific high office in a Shia organisation in Pakistan. (Minister's department's file, folios 101-100.)
11. The applicant said that he would not be able to be safe even if he were to relocate. The letter of support<sup>2</sup> he had received from the Shia organisation was of a kind rarely given unless warranted. (Minister's department's file, folio 101.)

#### *Other supporting evidence*

12. The applicant submitted various documents in support of the application for the visa, including:
- ❖ a copy attested by a notary of a document, apparently a certificate from the office of the Supreme Leader of Shia Muslims in Pakistan, stating that the applicant:

“belongs to a Shia community [details deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant]. Because of his religious activities, he is under serious threats by anti-Shia

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<sup>2</sup> Mentioned at the first dot point of paragraph 13 of these reasons.

elements, and he is advised to get political asylem abroad as soon as possible and not to return to Pakistan.”

(Minister's department's file, folio 31, sic.)

- ❖ a copy attested by a notary of a document, apparently a First Information Report (“**FIR**”) made by the applicant on a date in 2010 alleging that the applicant had been receiving daily threats to his life by people claiming to be from Lashkar-e-Jhangvi, and that a number of men came to his father's shop while his father and he were present, and smashed windows and goods to a significant amount, and also beat the applicant with clubs and fists, resulting in other people taking him to hospital for treatment; (Minister's department's file, folios 33-32.)
- ❖ a copy attested by a notary of a document, apparently a First Information Report (“**FIR**”) made by the applicant's father on a date in 2011, and an English translation, alleging that he had been receiving daily threats to his life by people wanting him to change his sect, and that on the previous day a vehicle had chased the applicant's father's vehicle and hit it and run it off the road. The applicant's father and members of his family in the car needed hospital treatment. They received a call at the hospital threatening that if they did not change their faith, they would be killed next time. (Minister's department's file, folio 35.)
- ❖ copies of medical notes of injuries and treatment of members of the applicant's family in hospital on the same date as the alleged attack on the family's car; (Minister's department's file, folios 99-93.)
- ❖ a copy attested by a notary of a newspaper article from Rawalpindi on a date in 2011, and an English translation, reporting an attack by gunfire on the applicant's [brother], referring to him by name and by relationship to both the applicant and their father, and identifying the applicant as an active member of a Shia religious organization. The article also referred to death threats by Lashkar-e-Jhangvi, made by letter and telephone against the applicant's family; (Minister's department's file, folios 40-36.)
- ❖ a copy attested by a notary of a document, apparently a further FIR made by the applicant's father in 2011, and an English translation, relating to the same attack by gunfire on the applicant's [brother]; (Minister's department's file, folios 98-97.)
- ❖ a certified copy of a Pakistani passport in his name, bearing the same date of birth as in his application for the visa; (Minister's Department's file, folios 59-41.)
- ❖ a further certificate on letterhead from the ISO certifying that the applicant had been a “sincere member” of the ISO for a number of years, “and worked very hard during his stay with the Organization”; (Minister's Department's file, folio 132.)

### **Application for the visa**

13. The applicant applied for the visa a number of months after his arrival in Australia, while still the holder of a student visa. (Minister's department's records, extract at folio 132 of the Tribunal's file.)

14. The delegate interviewed the applicant in connection with the application for the visa. (Minister's department's file, folios 137-133, 103.)

**The delegate's reasons for refusing to grant the visa**

15. [In] January 2012, a delegate ("**the delegate**") of the Minister for Immigration and Citizenship ("**the Minister**") refused to grant the visa to the applicant. (Minister's department's file, folios 149-134.)

16. The delegate said in part:

"Although the applicant has not provided any independent evidence to support that his father does currently hold [a particular position] for [a particular Shia organization], as the applicant came across as credible at interview... I am therefore prepared to accept that his father is currently occupying this role.

However, I am not prepared to accept that the applicant's father and/or the applicant hold such a significant profile because of their involvement with [a particular Shia organization] that it has made either of them, specific targets of serious harm by the Lahkar-e-Jhangvi group, or like organizations throughout Pakistan. As the [particular officer] of [a particular Shia organization], the applicant's father would have been responsible...since [years earlier]. I therefore find it incredibly implausible that the applicant and/or his father did not come to the attention of Lashkar-e-Jhangvi or other extremist groups prior to ...2010...

17. The delegate did not accept that the applicant held a high profile in the ISO.
18. The delegate did not accept that the applicant or his family would be particular targets, although there was generalised anti Shia violence in Pakistan.

**Additional material before the Tribunal**

*Submission to the Tribunal*

19. [In] May 2012, the tribunal received a submission from the agent, supported by various reports about the situation in Pakistan, including reports from the Tribunal's own Country Advice section, the Refugee Documentation Centre (Ireland), the Immigration and Refugee Board (Canada) and the U.S. Department of State. These reports refer chiefly to attacks on Shias in places including Rawalpindi, but also to the Shia organization of which the applicant claimed his father was an important office holder, the ISO, and Lashkar-e-Jhangvi. (Tribunal's file, submission at folios 121-116; other references at folios 115-66.)
20. Those reports confirm, amongst other things, the existence of the Shia organization of which the applicant claimed his father was a member, the existence of the ISO as a Shia student group with both religious and political aspirations and influence, and the persistent, long running, widespread sectarian violence between Sunni extremists and Shias across Pakistan.

*Evidence at the hearing*

21. [In] May 2012, the applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Urdu and English languages. The agent was present at the hearing.
22. The following were the main points of the applicant's evidence and arguments at the hearing.
23. The applicant's evidence at the hearing was consistent with his written material already before the Tribunal.
24. The applicant rehearsed the details of the members of his family.
25. The applicant repeated the evidence in his application for the visa that he was Shia, and had been involved in the ISO.
26. The applicant said that the beginning of trouble for him and his family had been in 2010, arising from his father's holding office in a Shia organization. The applicant mentioned the incident in 2010 when he had been attacked and beaten with sticks. He had reported this attack to the police.
27. The applicant said that he used to go with his father to attend meetings.
28. The applicant mentioned the attack on the family's car in 2011.
29. The applicant said that Lashkar-e-Jhangvi were responsible for the attacks. The attack on the car was a direct, targeted attack, not an accident.
30. The applicant mentioned the attack by shooting against his brother.
31. The applicant said that his father's organization (which he named) was both religious and a political organization.
32. The applicant had been responsible for checking people coming to meetings at an Imam Bargha (Shia mosque).
33. The applicant referred to some of the history of the organization for which his father worked. It is a legal organization.
34. The applicant is committed to the same group as his father.
35. If he returns to Islamabad, the applicant is afraid that he will be seen as a person coming from overseas, and a target because he will be thought to have money.
36. The applicant is afraid that he will be hunted, threatened and killed if he returns.
37. There is risk for high profile people.
38. The most recent attack on the applicant's family (before the hearing) was the one in August 2011. His father has two security guards provided by the police.

39. The applicant's father has been threatened by telephone that he should change his religion, or "they" will find him and kill him. His father has a lot of information. His father works in a business; the shop is in the name of a relative.
40. If the applicant goes to any part of Pakistan, he will be hunted, found and killed. He mentioned recent attacks on Shias. He will be a particular target because he is Shia, and because if he relocates, for example to Lahore, he will continue to be involved in Shia activities. He will be involved in the public celebrations, for example of Muharram and the public self flagellation which is a typical Shia ritual. These are public, and therefore easy targets.
41. The applicant has a relative in Karachi, but Karachi is worse than Islamabad.
42. Wherever he went in Pakistan, he would be involved in religious activities and in the ISO. He was a student and worked as a volunteer with others in the ISO as a scout, checking security outside an Imam Bargha, being there for half a day on Fridays. As a result, the applicant is known. As well as security, the applicant and his colleagues provide facilities and food. For the whole of his life, he will be involved in such work in the Shia community. He and his colleagues work at the Imam Bargha, or elsewhere, if needed, for example taking part in a protest. He mentioned a planned protest in Australia against the killing of Shias, which he might not attend because of an injury. If he is able to go, he will tell the Pakistani High Commission to stop the killing of Shias and the target killings of Shias. If he does this it will be to support the Shia people, not for the sake of his protection application.
43. The applicant has done courier work for his father, delivering documents relating to his father's office in the Shia organization for which he works.
44. The applicant said that after being attacked in 2010, he was laid up in bed until he left Pakistan.
45. The applicant came to study in Australia. He did not immediately apply for the protection visa because he thought there might be a change in circumstances.
46. The applicant said that he was next in line for his father's position in the Shia organization in Pakistan. He said that his father's position was prominent in Islamabad-Rawalpindi.

#### **Other material relating to Pakistan**

47. The Tribunal has a wealth of reports available to it relating to the situation of Pakistan.<sup>3</sup> In a report dated 21 September 2011, Amnesty International relevantly said in part:

##### **Failure to protect Shi'a Muslims in Pakistan leaves many at risk**

**The killing of 29 Shi'a Muslims in Pakistan's Balochistan province** highlights the failure of Pakistani authorities to address sectarian violence across the country, Amnesty International said today.

On Tuesday, 26 Shi'a pilgrims on their way to Iran were lined up in front of their bus and shot dead in Mastung, Balochistan.

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<sup>3</sup> See the summaries and extracts of reports at folios 142-133 of the Tribunal's file.

Another three people were killed as they tried to bring victims of the attack to a hospital in Quetta, the provincial capital.

**Lashkar-e Jhangvi, an anti-Shi'a extremist group, claimed responsibility for the killings.**

"Attacks such as these have occurred countrywide this year and have increased in Balochistan. These are not random killings but demonstrate the deliberate targeting of the Shi'a by armed groups," said Amnesty International's Asia-Pacific director Sam Zarifi.

"Armed clashes between Sunni and Shi'a militant groups have regularly occurred in past decades, **but recent attacks have predominantly targeted unarmed Shi'a Muslims in their homes, shops or while travelling**, and even in their places of worship," said Sam Zarifi.

"Alarming, an increasing number have been Shi'a pilgrims, like yesterday's victims. **These attacks prove that without an urgent and comprehensive government response, no place is safe for the Shi'a,**" Sam Zarifi said.

"The Muslim holy month of Moharram, which starts at the end of November, is particularly significant for Shi'as and the potential for sectarian violence and targeting of Shi'as is very high. Pakistani authorities must ensure they are prepared to protect all their citizens regardless of religious affiliation."

This year, Amnesty International has recorded details of at least 15 attacks specifically targeting Shi'a Muslims across the country, from Quetta in the west and Khurram tribal agency on the north-west border with Afghanistan, to the heartland province of Punjab and the city of Karachi in the south.

**"Successive governments have failed to address the increasingly explicit threats faced by Shi'a Muslims from groups like Lashkar-e Jhangvi, operating openly in the Punjab and Karachi and apparently striking their victims at will in Balochistan and other parts of the country."**

**"For too long the Pakistan government and its security forces have abdicated their responsibility to defend everyone in the society from this deadly form of discrimination."**

"Continued failure to address sectarian violence will only exacerbate the general breakdown in law and order in Pakistan. Only urgent steps to protect the rights of all people and bring the perpetrators to justice in fair trials consistent with international standards will stem the slide."

(Emphasis added.)



48. Reports by the U.S. State Department also give a grim picture of widespread sectarian violence with many attacks by extremist Sunni groups against Shia targets.<sup>4</sup>

## FINDINGS AND REASONS

### The question for the Tribunal – is the applicant a refugee?

49. The applicant claims protection in Australia by the grant of a protection visa (“**the visa**”).
50. Section 36(2)(a) of the *Migration Act* 1958 (“**the Act**”) provides that a criterion for a protection visa is to be a non-citizen in Australia in respect of whom the Minister<sup>5</sup> is satisfied Australia has protection obligations under the Refugees Convention<sup>6</sup>.
51. Australia is a party to the Refugees Convention and, generally speaking, has protection obligations in respect of people who are refugees within the meaning of Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.”

52. Does the applicant meet this definition of a refugee?

### Credibility

53. The Tribunal notes that the delegate’s reasons did not raise any question about the truthfulness or credibility of the applicant.
54. The Tribunal finds that the evidence of the applicant was clear, detailed, internally consistent and consistent with information known from various sources about the situation of Shias in Pakistan and attacks on them by Sunni extremists. The Tribunal finds that the applicant’s oral evidence was given to the tribunal clearly, unhesitatingly, responsively and in detail.
55. The Tribunal has no concerns about the credibility of the applicant's evidence.
56. The Tribunal finds, by reference to the applicant's oral evidence at the hearing and all the material before it, that the applicant is an honest and reliable witness, and it accepts as truthful and reliable his account of his own experiences and observations.

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<sup>4</sup> See *Country Reports on Human Rights Practices for 2011*, published in 2012, and *International Religious Freedom Report* for 2011, also published in 2012, extracts at folios 142-138.

<sup>5</sup> Or the Tribunal, in the case of an application to the Tribunal for review of a decision by the Minister or the Minister’s delegate. See section 415 of the Act.

<sup>6</sup> A fuller name of this treaty is the 1951 *Convention relating to the Status of Refugees* as amended by the 1967 *Protocol relating to the Status of Refugees*, but for the sake of brevity referred to in these reasons as “**the Refugees Convention**”, or “**the Convention**”.

## **Nationality**

57. The applicant claimed to be a citizen of Pakistan and of no other country. There is no evidence to the contrary.
58. The Tribunal notes that the applicant entered Australia travelling on a Pakistani passport in his own name.<sup>7</sup>
59. The Tribunal finds by reference to the applicant's own evidence and claims about his citizenship, and by reference to the certified copy of his passport, that the applicant is a citizen of Pakistan and of no other country.

## **No right to enter and reside in a third country - no bar under section 36(3)**

60. The Tribunal finds by reference to the applicant's evidence, his claims in his application for the visa, and to other evidence before it, that the applicant has claimed to have no right to enter and reside in any other country than his country of nationality, and that there is no evidence to the contrary.
61. The Tribunal finds, by reference to the findings set out above, that the applicant does not have a right to enter and reside in any other country than his country of nationality, and that therefore he is not barred by section 36 (3) of the Act from being a person in respect of whom Australia has protection obligations.

## **Applicant outside country of nationality**

62. The Tribunal finds by reference to the material before it including the applicant's own evidence and the records of the Minister's department that the applicant is outside his country of nationality. (Minister's department's movement records, an extract of which appears at folio 132 of the Tribunal's file.)

## **The applicant's claims to fear persecution**

63. The Tribunal finds, by reference to the material before it, including the evidence and submissions by and on behalf of the applicant, that he has claimed to fear harm in the form of threats, assault, serious injury or death, at the hands of Lashkar-e-Jhangvi or other Sunni extremists.

## **Serious harm – Section 91R(1)(b)**

64. The Tribunal finds that the applicant's fear of harm, in the form of threats, assault, serious injury or death is a fear of serious harm of kinds which fall within the meaning of section 91R(2) (a), (b) or (c) of the Act, and, therefore, within the meaning of section 91R(1)(b) of the Act.

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<sup>7</sup> Certified copy of a Pakistani passport in his name, bearing the same date of birth as in his application for the visa. (Minister's Department's file, folios 59-41)

**Does the applicant fear persecution for a reason under the Convention? – Would a reason or reasons under the Convention be the essential and significant reason for the harm the applicant fears? - Section 91R(1)(a)**

*(1) Fear of harm for reason of religion*

65. The Tribunal finds, by reference to all the material before it, that the applicant fears harm for the sake of his religion, as a Shia Muslim.

*(2) Fear of harm for reason of membership of a particular social group – the applicant's family*

66. The Tribunal finds, by reference to all the material before it, that the applicant fears harm for the sake of being a member of his father's family, by reason of his father's prominence as an office bearer of a Shia organization of both religious and political character.

*(3) Fear of harm for reason of membership of a particular social group – member of the ISO*

67. The Tribunal finds also, by reference to the material before it, that the applicant's evidence raises the claim that the applicant fears harm because of membership of a particular social group, namely members of the ISO.

*(4) Fear of harm for reason of membership of a particular social group – persons returning from Western countries*

68. The Tribunal finds also, by reference to the material before it, that the applicant's evidence raises the claim that the applicant fears harm because of membership of a particular social group, namely persons returning from Western countries.

*(5) Fear of harm for reason of political opinion*

69. The Tribunal finds, by reference to all the material before it, that the applicant fears harm for the sake of his real or imputed political opinion as opposed to the Taliban and Sunni extremists, inferred from his profile as a Shia, because of his membership of his father's family, and because of his work for the ISO.

**Would the persecution feared by the applicant involve systematic and discriminatory conduct? – Section 91R(1)(c)**

70. The Tribunal has found, by reference to the material before it, that the harm the applicant fears would be directed against the applicant for reason of religion, membership of a particular social group or groups, or political opinion. The Tribunal therefore finds that the harm he fears would involve systematic and discriminatory conduct and therefore meets the requirements of section 91R(1)(c) of the Act.

**Conclusion – the applicant's claims satisfy section 91R(1)**

71. The Tribunal's findings, set out above, that the applicant meets the requirements of section 91R(1)(a), (b) and (c) mean that the applicant's claims satisfy the requirements of section 91R(1) of the Act.

72. It follows from section 91R(1) of the Act that the Tribunal can regard the harm feared by the applicant as “persecution” for the purpose of determining whether he has “well-founded fear of persecution”, and so meets the definition of a refugee in Article 1A(2) of the Convention.

## **Assessment of the applicant’s claims for protection**

### **1. Situation in Pakistan**

73. In making the following observations and findings, the Tribunal refers in particular to the additional information available to it, from various sources independent of the applicant, concerning the situation in Pakistan. (Tribunal’s file, folios 102-88.)
74. The Tribunal finds, by reference to a wealth of material, that various Sunni extremist groups have made many violent - and frequently lethal - attacks against Shia Muslims across Pakistan, including Peshawar, Lahore, Islamabad – Rawalpindi, and Karachi, and that there have been particular targets of attack amongst leading, professional or well educated Shias.<sup>8</sup>
75. The Tribunal finds that the organization for which the applicant’s father works is a prominent and well known Shia organization.
76. The Tribunal finds that the ISO is also a prominent and well known Shia organization.
77. The Tribunal finds that the organization for which the applicant’s father works and also members of the ISO have been targets of attack by the Laskar-e-Jangvi and other Sunni extremists.

### **2. The applicant’s profile**

78. The Tribunal finds by reference to the material before it, including the applicant's evidence and the general material relating to the situation in Pakistan, that the applicant is a committed Shia, active as an ordinary volunteer in the ISO for a number of years, with weekly work on the external security of an Imam Bargha.
79. The Tribunal finds by reference to the material before it, including the applicant's evidence and the general material relating to the situation in Pakistan, that the applicant’s father is the holder of the office claimed by the applicant in the political and religious Shia organization claimed by the applicant.
80. The Tribunal finds by reference to the material before it, including the applicant's evidence and the general material relating to the situation in Pakistan, that the applicant and his family have suffered the various attacks he claimed, including the applicant being attacked and beaten savagely with sticks in 2010, leaving him injured; the applicant’s family’s car being attacked and run off the road in 2011, the applicant’s brother being shot at in the road in 2011. In making these findings, the Tribunal has relied (as did the delegate) especially on the consistency of the applicant’s evidence, rather on the written evidence in the form of FIR’s and newspaper reports.

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<sup>8</sup> See e.g. the reports mentioned at folios 178-176 of the Tribunal’s file, relating to attacks against Shias across Pakistan.

81. The Tribunal finds that there had been a pattern of threats made against the applicant's father, threatening dire consequences if he did not convert from the Shia faith. The Tribunal finds that the attack on the applicant (in his father's shop) was clearly personally directed, whether for religion alone or for religion together with his relationship to his father, his involvement in the ISO and his imputed political profile. For these reasons the Tribunal finds that the attacks on the applicant's brother and on the family in their car were also targeted attacks, and not random or generalised violence.
82. The Tribunal finds that the applicant's father has not suffered earlier or worse injury or attack because he some measure of security in the form of two bodyguards.
83. The Tribunal finds that the applicant's commitment to his Shia faith, and to being an active and public volunteer in his Shia community, is genuine and continuing. The Tribunal finds by reference to the material before it, including the applicant's evidence, that while in Australia the applicant has continued to practice his Shia faith, that he has done so out of a genuine religious conviction and not for the purpose of strengthening his application for the visa.
84. The Tribunal accepts also that while in Australia the applicant desired to attend a demonstration against the persecution of Shias in Pakistan, and that if he was able to do so, he took part in the demonstration, not in order to strengthen his application for the visa but part of a genuine conviction that he should do what he could to assist Shias who were suffering persecution and lack of protection in Pakistan.<sup>9</sup>
85. The Tribunal finds that because of the applicant's commitment to his faith and the Shia cause, if he returns to Pakistan he will again be involved in public and visible work as a Shia for the Shia community.

### **Member of a particular social group**

86. The applicant's claims raise question of whether certain groups exist as particular social groups within the meaning of the Convention and whether the applicant belongs to them.

#### *The applicant's family*

87. The applicant claims to be at risk because he is a member of his father's family. As noted above, it is well established that a family can be a particular social group, providing that it is not so constituted by the harm feared by the applicant or by harm not for a reason under the Convention. (See *Applicant A v. Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225, and also in *Applicant S v. Minister for Immigration and Multicultural Affairs* (2004) 217 CLR 387.) In the present matter, the Tribunal is satisfied by all the evidence before it that the applicant's family is prominent independent of the harm aimed at the applicant's father or the applicant himself, although they have already attracted harm and threats of harm for reason of one or all of the following: their religion, the applicant's father's office in a Shia organization and the applicant's involvement in the ISO.
88. The Tribunal therefore finds that the applicant's family is a particular social group within the meaning of the Convention.

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<sup>9</sup> The Tribunal is therefore not required by section 91R(3) of the Act to ignore the applicant's practice of his faith, or his attendance at the demonstration, in Australia.

### *Membership of the ISO*

89. The Tribunal finds, by reference to the reports about the ISO, that it is a prominent organization, well known in Pakistani society, independently of the harm aimed at it or suffered by some of its members.
90. The Tribunal therefore finds that the ISO is a particular social group within the meaning of the Convention.
91. The Tribunal finds, by reference to the applicant's evidence, that he was for a number of years a member of the ISO.

### *Returnees from the West*

92. The tribunal is not, however, satisfied by reference to the material before it that persons returning from foreign countries are distinguished within Pakistani society as a particular social group.

### **Assessment of the applicant's claims**

93. The Tribunal has therefore considered the applicant's claims to fear harm, namely to fear harm in the form of threat, assault, injury or death at the hands of the Lashkar-e-Jhangvi or allied Sunni extremists, for the following reasons:
  - (1) his religion as a Shia;
  - (2) his membership of a particular social group, namely his family;
  - (3) his membership of a particular social group, namely the ISO;
  - (4) his membership of a particular social group, namely people who have returned from abroad;
  - (5) his political opinion, as opposed to the Taliban and Sunni extremists because of his profile as a Shia, because of his family relationship to his father, and because of his involvement in the ISO.

### **What if the applicant returns to his home area of his country of nationality?**

94. The Tribunal finds that if the applicant returns to his home area in Islamabad-Rawalpindi, he will return to visible and public worship as a Shia, and also involvement in the works of the ISO, supporting the local Shia community, perhaps as in the past in external security at an Imam Bargha, and perhaps in assisting his father's political and religious Shia organization as a courier or otherwise.
95. The Tribunal finds that if the applicant returns to his home area in Islamabad-Rawalpindi, and engages in such conduct, there is a real chance that he will again attract the attention of the Lashkar-e-Jangvi or other Sunni extremists and be assaulted as he was in 2010 and suffer similar, or more severe injury, sufficient to amount to persecution within the meaning of the Convention.

96. The Tribunal finds that there is a real chance this will happen to the applicant either because he is a Shia, or because of his membership of his father's family, or because of his involvement in the ISO, or because he is regarded as a political opponent of the Lashkar-e-Jangvi and their Sunni extremist allies.

*Conclusion - Real chance the applicant will suffer persecution in his home area*

97. It therefore follows and the Tribunal finds that if he returns to his country of nationality in the foreseeable future and if he goes to his home area of his country, he has well founded fear of persecution by Sunni extremists as follows:

- ❖ for reason of religion as a Shia;
- ❖ for reason of membership of a particular social group of his family;
- ❖ for reason of membership of a particular social group of members of the ISO;
- ❖ for reason of political opinion as opposed to Sunni extremists, inferred from:
  - being Shia;
  - his family;
  - involvement in the ISO.

**Could the applicant reasonably relocate and live safely in another part of his country?**

98. The Tribunal has found that the applicant has a real chance of suffering persecution if he returns to the area where he and his family lived before he left his country of nationality.
99. Depending upon the circumstances of the particular case, it may be reasonable for a person to relocate in the country of nationality or former habitual residence to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution. The principles discussed by the court in *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437, per Black CJ at 440-1, require the Tribunal to determine whether he can, reasonably in all the circumstances, live safely and free from a risk of such harm by resettling and living in another part of his country.
100. In determining this question, the Tribunal has been mindful of the judgement in *MZYLH v Minister for Immigration & Anor* [2011] FMCA 888 (17 November 2011), where the court was dealing with a case where there was evidence that the applicant was a person who was suffering from severe depression and severe post-traumatic stress disorder. The court said at [137]-[138]:

***137. The Tribunal is required to consider the practical realities facing a person in determining whether it is reasonable to expect them to relocate. Those practical realities are not limited to matters related to persecution for a Convention reason:***

- *A well founded fear of persecution for a Convention reason having been shown, a refugee does not also have to show a Convention reason behind every difficulty or danger which makes some suggestion of relocation unreasonable.*[146]

*138. The issue is not whether the Applicant might be denied treatment for his mental illness for a Convention reason but whether he could relocate within Pakistan and maintain himself given the state of his health. As Branson J said in NAIZ, the approach set down in Randhawa requires the Tribunal to consider the practical realities facing the Applicant to consider how, in a practical sense, he could reasonably be expected to relocate.[147]”*

(Emphasis added.)

*Could the applicant safely and reasonably resettle?*

101. Any consideration of projected resettlement of the applicant is concerned with his particular circumstances. The Tribunal finds that the applicant is committed to his Shia faith and to the ISO, and is a continuing and committed supporter of his father’s work for the Shia cause.
102. The Tribunal finds, by reference to his evidence, that the applicant has remained committed to his Shia faith while in Australia, attending a mosque regularly. It finds that the applicant has satisfied it that he has engaged in this conduct because of his genuine religious commitment and therefore otherwise than for the purpose of strengthening the person’s claim to be a refugee within the meaning of the Refugees Convention as amended by the Refugees Protocol.<sup>10</sup>
103. The Tribunal finds also by reference to the applicant's evidence that if he returns anywhere in Pakistan, he will again be involved in activities in support of other Shias, for example by involvement as a volunteer at an Imam Bargha, or in the ISO, and that as a result he will be an additional risk of identification and persecution by Sunni extremists.
104. The Tribunal therefore considers that in all the circumstances of the applicant it is not reasonable to expect him to relocate anywhere else in Pakistan, because he will continue to face a real chance of serious harm in the foreseeable future as a perceived opponent of the Lashkar-e-Jhangvi and its allies, wherever he goes.
105. In making this finding, the Tribunal refers also to the evidence of attacks upon Shias across Pakistan by the Taliban or other Sunni extremists, for example, as noted in the various reports mentioned or quoted in these reasons, in Quetta, Lahore, Islamabad and Rawalpindi.

*Relocation not a means to safety*

106. It follows from these findings, and the Tribunal finds, that the applicant cannot move and resettle in a part of his country of nationality where he would not have a real chance of persecution for a reason under the Convention.

*Conclusion*

107. It follows from the findings set out above, and the Tribunal finds, that the applicant has a well founded fear of persecution in relation to his country of nationality as a whole.

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<sup>10</sup> The Tribunal is therefore not required by section 91R(3) of the Act to ignore the applicant’s practice of his faith in Australia.



## **State protection**

108. The Tribunal finds, by reference to the ample material available, that the government and authorities of the applicant's country of nationality are not able and willing to provide the level of protection which its citizens are entitled to expect according to international standards. (See *Minister for Immigration and Multicultural Affairs v Respondents S152/2003* [2004] HCA 18; (2004) 222 CLR 1 at [27]- [29].)
109. The Tribunal finds, by reference to the reports from the various sources mentioned above, that there is a high level of violence against Shias, and against people perceived by the Taliban as its opponents, across the whole of Pakistan. As the U.S. State Department has noted, even the Supreme Court of Pakistan, acting on its own motion, has been critical of the failure of the authorities of state to give protection to its citizens.<sup>11</sup>
110. The Tribunal concludes from these circumstances that the first applicant's unwillingness to rely on the protection from the authorities of his country of nationality is therefore justified for the purposes of Article 1A(2) of the Convention.

## **CONCLUSIONS**

### **Well founded fear of persecution for reasons under the Convention**

111. The Tribunal finds, by reference to the applicant's evidence and the other material concerning the situation in the applicant's country of nationality, that in his home area of his country of nationality the applicant has well founded fear of persecution for reason of religion (as a Shia), membership of a particular social group or groups (as a member of his family and as a member of the ISO) and political opinion (as opposed to Sunni extremists, inferred from his profile as a young male Shia, because of his membership of his family, and because of his membership of the ISO).

#### *Not reasonable to relocate*

112. The Tribunal also finds that it is not reasonable (or indeed possible), in all the applicant's circumstances, for him to relocate to a part of his country where he would not have well founded fear of persecution.
113. The Tribunal therefore finds that the applicant has well founded fear of persecution for a reason or reasons under the Convention in relation to his country as a whole.
114. The Tribunal is therefore satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in section 36(2)(a) for a protection visa.

### **No determination of claim for complementary protection**

115. As the Tribunal has found that the applicant satisfies the criterion set out in section 36(2)(a) for a protection visa, it is not necessary for the Tribunal to find whether he meets the criteria for complementary protection pursuant to section 36(2)(aa), and the Tribunal does not do so.

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<sup>11</sup> In its *Country Reports on Human Rights Practices for 2011*, published in 2012, extract at folio 101 verso of the Tribunal's file.

## **DECISION**

116. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies section 36(2)(a) of the *Migration Act* 1958, being a non-citizen in Australia in respect of whom the Tribunal is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol.