

**1314103 [2014] RRTA 532 (9 July 2014)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1314103  
**COUNTRY OF REFERENCE:** Pakistan  
**TRIBUNAL MEMBER:** Giles Short  
**DATE:** 9 July 2014  
**PLACE OF DECISION:** Sydney  
**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

Statement made on 09 July 2014 at 6:37pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

## STATEMENT OF DECISION AND REASONS

### INTRODUCTION

1. [The applicant] is a citizen of Pakistan. He claims that he gave speeches to Shia religious gatherings criticising Sunni terrorist groups and that as a result he received threats from these terrorist groups and he believed that he was being followed. His application for a protection visa was refused by a delegate of the Minister for Immigration and he has applied to this Tribunal for review of that decision. A summary of the relevant law is set out at Attachment A. The issues in this review are whether [The applicant] has a well-founded fear of being persecuted for one or more of the five reasons set out in the Refugees Convention in Pakistan and, if not, whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of his being removed from Australia to Pakistan, there is a real risk that he will suffer significant harm.

### CONSIDERATION OF CLAIMS AND EVIDENCE

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

##### *[The applicant]’s original application*

2. [In the applicant’s] original application he said that he had attended school in [Town 1] in the [Punjab] until 2003 and that he had had attended college in the nearby city of [Town 2]. He said that he had completed a [qualification] in 2008 before coming here as a student in January 2009. He said that he had lived at the same address in [Town 1] from 2002 until he had left Pakistan in January 2009.
3. In his answers to questions 42 to 48 on Part C of the application form (seeking his reasons for claiming protection) [The applicant] said that he was a Shia Muslim and that he had been actively involved in a Shia Muslim religious political organisation which he did not name. He said that a radical group, the Sipah-e-Sahaba, had accused them of being for Iranian state funding of Shia extremist groups. He said that many members of this Shia organisation had been killed by Sunni Muslim terrorists affiliated with the Tehrik-e-Taliban Pakistan (TTP) and that he himself had had a serious threat from them. He also said that he had been attacked and badly bashed by the Sipah-e-Sahaba when he had been giving a speech in a mosque and that this had been followed by a series of threats from this group.
4. [The applicant] said that mosques were being bombed and Shias were being killed in targeted killings. He said that because of his involvement in a Shia political group he had received serious threats to his life from the Sipah-e-Sahaba which he said was now known as the Lashkar-e-Jhangvi (LeJ) or the ‘Punjabi Taliban’. He said that his life would be in danger if he returned to Pakistan. He said that the Taliban had a strong network in all big cities, that the Sipah-e-Sahaba had joined the Taliban and that they were known as the ‘Punjabi Taliban’. He said that he had exposed the Taliban in his speeches and in social media. He said that there was no protection available from the authorities because the majority of the police were Sunni and they were corrupt. He said that the police were involved in many cases in which Shia Muslims had been killed.

*[The applicant]'s evidence at the Departmental interview*

5. [The applicant] was interviewed by the primary decision-maker in relation to his application [in] July 2013. [The applicant] said that he was sure that everything in his original application was correct and that there were no mistakes he wished to correct. He said that he had been helped by a friend from India in filling out the application form but that the application form was in his own handwriting. He said that he had met this friend at a party held by a friend of his from Pakistan. He said that he had met this friend through chatting on Yahoo Messenger on the internet and when he had gone to this friend's city in Pakistan they had met and his friend had shown him the sights.
6. [The applicant] said that he had been [studying] in Australia but he had not finished his studies because he had not been able to meet the course requirements to pass the course. He said that he had not been able to concentrate properly on his studies in his first semester because he had been jobless and he had been ill.
7. [The applicant] said that the Shia political organisation in which he had been involved in Pakistan was the Imamia Students Organisation (ISO). He said that his main purpose in coming to Australia had not been to study but to get rid of the problems he had been suffering in Pakistan. He said that he was a 'secular type' person. He said that personally he was not Shia and his parents were not Shia. He said that he was a Sunni Muslim. He said that when he had come to know about the sufferings of the Shia people he had started giving speeches and these speeches had made him an icon. He said that 'the rivals' - who he said were the LeJ who he said had not been a part of the TTP at the time but who had now joined hands with the TTP to share their power - had taken him as a threat. He said that he had started getting telephone calls. He said that his brother in Pakistan who was [Senior Police Officer] was still getting threats and had been bashed two times. [The applicant] said that his friends and the people who he had taken a stand for had been Shia but he personally was secular although he said that his religion was Islam.
8. The primary decision-maker put to [The applicant] that in his original application he had said that he belonged to the Shia sect. [The applicant] said that he 'belonged' to them although he personally was not a Shia Muslim. He repeated that he had taken a stand for them. He said that the gathering to which he had belonged was the Shia sect. He said that the Shia people had accepted him even though he was a Sunni Muslim because he had taken a stand for them. He said that he had great, great speaking skills. He said that he had witnessed attacks on Shia Muslims in Lahore in 2006 and in his own town, [Town 1], in around 2007 although he said that he was not one hundred per cent sure of this. He said that their whole religious convoy had been attacked and this had been in the news. He said that this had been on the tenth day of the month of Muharram in the Muslim religious calendar. He said that the convoy had been attacked by police. [The applicant] said that he had not mentioned only Shias in his speeches but everyone.
9. Asked the name of the founder of the ISO [The applicant] said that it was Sayed Abbas Ali Shah but he then said that this man had not been the founder because the ISO was very old. He said that Sayed Abbas Ali Shah had been the leader but he did not know who was the leader of the ISO now. He then said that this man's name might be Shah or Rizvi. He said that he had not been 'very deep down with these guys': he said that his point had been to protect them. He said that he had been 'kind of' a member of this organisation. He said that they had thought that he was a member but he had not been a member. He said that the ISO did not have links to other organisations or that if they had links he did not know about them.

10. [The applicant] said that he had given a very big speech at a religious festival at which both Shias and Sunnis had been together. He said that he had tried to prove that killing someone because they had a different religion was not good. He said that he had criticised the LeJ which he said had been founded by Haq Nawaz Jhangvi and had come into existence just to kill Shia people. He said that its network was growing by leaps and bounds. He said that he had given this speech in [Town 1] but he also said that he had given a speech in Lahore. He said that the speech in [Town 1] had been at a big intersection in the town and he had given his speech from a stage. He said that this had been right after the tenth of Muharram but he then said that it had been between the 10th and the 27th. He then said that he did not remember the exact date but he said subsequently that it had been in 2007. He said that there was no video recording of this speech but there were many people who knew that he had delivered this speech. He said that there had been a report in the [newspaper], not about his speech but about the fact that he was under threat. He said that this had only been two or three lines on the back page.
11. [The applicant] said that he had given the speech in Lahore in 2006, before the speech in [Town 1]. He said that this speech had been at a Shia religious event but he said that there had been many Sunnis there too. He said that he had approached someone whom he had known in the ISO in Lahore and it had been agreed that he could give this speech. He said that the religious event had been in an open place or at an intersection. He said that the people who had been gathering there had only stayed there for five or ten minutes but in those ten minutes he had given his speech. He said that he had given this speech from a dais on a stage. He said that he did not know the location but it had been close to [a named location]. He said that there had been 700 or 800 people there and they had been going somewhere else but he did not know where they had been going. He said that this religious event had been in the month of Muharram but he said that he had no idea of what time of year this had fallen in 2006. He said that he had been a student at the time, studying for 'some kind of [diploma]'.
12. [The applicant] said that he had not been in contact with the ISO since he had come to Australia. He said that his brother who was [Senior Police Officer] had been stationed in [Town 3] last time they had talked but before that he had been in [Town 1]. He said that the people who had been looking for him had bashed his brother because they had not been able to find him. He said that his brother had joined the police in 2005. He said that the first time his brother had been attacked had been six or seven months after he had come here and the second occasion had been only three months before the date of the interview. He said that on the first occasion his brother had received a message saying that he had been attacked because he had allowed a truck of alcohol to the Christians. [The applicant] said that he thought that people from the LeJ had been responsible but he was not sure. He said that he did not know the reason for the second attack. He said that his brother was a very strict police officer and this might be the reason.
13. [The applicant] said that he had [siblings living in other countries]. He said that [another sibling] was [in the military]. He said that [his sibling] had been in the [military] for [a number of] years. He said that his parents were still living in [Town 1]. [The applicant] said that he had been requested to go to political rallies because he could give very good speeches in Urdu. He said that he had not been involved in any other activities with the ISO. He said that if he had joined the ISO his speeches would not have been taken seriously. He said that if he had joined a Sunni organisation the Shia Muslims would not have listened to him. The primary decision-maker referred to [The applicant]'s claim that he had exposed the Taliban in

his speeches and in social media. [The applicant] said that he had used social media only once. He said that there had been a kind of video on YouTube which he had had to delete and he had had to block that account. He said that he had been afraid that his rivals had downloaded this video.

14. [The applicant] said that he had made a First Information Report (FIR, the initial report in relation to a criminal case in Pakistan) in relation to the fact that he was being threatened. He then said that he had gone to a police station but the police officer had told him that it would be useless to report the threats because he did not know who was making threatening calls and they did not have the equipment to trace these calls. He said that he had received three threatening telephone calls and one very short text message. He said that the callers had said that they were the guardians of the true teachings and that they asked for help from God. He said that this indicated that they were from the LeJ. He said that he had no idea how they had obtained his telephone number. He said that he had been chased by a black car on two occasions. He then said that this had happened many times. He said that he thought that they had not killed him because they had been trying to find out if he had links with some other ISO members.
15. [The applicant] said that if he returned to Pakistan they would take revenge on him for what he had done before he had come here. He said that if he went back there they might think that he was going to start the same thing again. He said that giving speeches was a big thing for them. He also suggested that he might be at risk of kidnapping by the TTP as the family member of a police officer and [a military] officer. He said that one day in Lahore he had been sitting in a gathering with about 15 of his friends and talking about religion. He said that this had nothing to do with his case but he still wanted to mention it. He said that a policeman who had come had beaten them and he himself had been hit four or five times on his back. He said that he believed that this policeman had been crazy.
16. The primary decision-maker referred to the fact that [The applicant] had said in his original application that he had been attacked and badly bashed by the Sipah-e-Sahaba when he had been giving a speech in a mosque. [The applicant] said that he had written this but he did not remember it. He said that there had been two speeches and he had been bashed by a policeman. He said that what he had told the primary decision-maker at the interview was the truth. He said that many things had happened and it had been twisted in his mind. He said that the Sipah-e-Sahaba was the same thing as the LeJ. He said that at the moment they had joined hands with the TTP and they were known as the 'Punjabi Taliban'.

*[The applicant]'s evidence at the hearing before me*

17. At the hearing before me [The applicant] confirmed that he had been assisted by a friend in filling out the application form for a protection visa. He said that he himself had written the answers on the form but his friend had explained some of the questions to him. He said that all the answers in the application form were correct and complete. I asked him what members of his immediate family he had living in Pakistan. He said that he had his parents, [and siblings]. He said that his parents still lived in [Town 1]. He said that his oldest [sibling] was in [another country] and that his brother who lived in Pakistan was [a Senior Police Officer]. He said that this brother was unmarried and still lived with his parents. He said that he did not know where his brother was currently stationed but a few months previously he had been in [Town 3]. He said that two of his [siblings] were also still living with his parents and one was married and lived in [Town 3]. He said that he was not sure if

this sibling was still in [Pakistan]. He then said that he had another [sibling] in Pakistan who was [in the military]. [Further details of the applicant's family composition and location].

18. [The applicant] said that he was a Sunni Muslim but he did practise his religion much. He said that he had practised his religion in Pakistan. He said that he had gone to the mosque once a week and he had fasted for Ramadan although not for all of it, only for 15 to 20 days. He confirmed that he had attended school in [Town 1] and that he had then attended college in [Town 2]. He said that he had commuted to [Town 2] daily from his home in [Town 1] but sometimes at examination times he had stayed in a hostel in [Town 2]. He said that the highest level of education he had completed in Pakistan had been his Intermediate (Year 12) in [a stated subject]. I referred to the fact that he had said in his application that he had completed a [different course] in 2008 while he had still been in Pakistan. [The applicant] said that he had done two diplomas: one had been a four month course in [Town 1] in around 2004 or 2005 and the other had been a one year course in [Lahore] in around 2007 or 2008. He said that he had gone to Lahore for the classes and he had stayed with relatives there. He said that when he had been studying for this diploma he had spent more time in Lahore than in [Town 1].
19. [The applicant] said that he had come to Australia to study for a [qualification] which would have led to a [degree]. He said that he had ceased studying at the end of his first semester, six months after he had arrived in Australia. He said that he had been doing nothing since then: he had just been sitting and waiting for money from home. He said that he had tried to get his student status back but he had not been able to do so. He said that he had applied to the Migration Review Tribunal for review of the decision cancelling his student visa but he had been [unsuccessful]. [The applicant] said that he had not returned to Pakistan after this because when he had come here his purpose had not been to study: his purpose had been to get rid of that bad environment. He said that when he had come here he had had no idea about protection visas. He said that he had not returned to Pakistan because of the danger and that at least he was safe here. He said that a friend had told him about protection visas and then he had applied for such a visa.
20. [The applicant] said that he had not told the migration agent who had represented him before the MRT that he would be in danger if he returned to Pakistan nor had he sought advice about how he could remain lawfully in Australia after he had withdrawn his application to the court. He said that he had had to give his representative \$200 or \$300 and he had not been able to afford this. I put to him that he was saying that he had had enough money sent from overseas to support himself and this suggested that he could have obtained advice. [The applicant] said that the money he was being sent was hardly enough. I put to him that he was saying that it was dangerous for him to return to Pakistan but the first time he had said this had been when he had made his application for a protection visa in February 2013 by which time he had been in Australia for four years. [The applicant] agreed that he had remained in Australia unlawfully, without a visa, and he confirmed that he had not sought advice about how he could remain here lawfully. He said that he had had no idea about anything.
21. I put to him that he could speak English which put him in a much better position than many applicants who appeared before the Tribunal. [The applicant] reiterated that he had not known anything. I put to him that he appeared to have made no inquiries. [The applicant] said that when he had applied to the MRT for review he had been represented and his English had not been as good as it was now. He said that he had not discussed his problems with his representative or with his friends because he had feared that he would be sent back home. I put to him that this would only have happened because he had not applied: if he had applied

he would not have had this fear. I put to him that the fact that he had delayed for four years cast doubt on whether he had a genuine fear of returning to Pakistan. [The applicant] repeated that he had had no money and that he would have had to pay a representative. He said that he could not have gone on his own to the Department because he had had no idea how to submit his case. He repeated that he had finally applied when a friend had told him about protection visas and had helped him to fill out the form. I put to him that he had been [studying] and the Department had a website with all this information on it which anyone could access. [The applicant] said that he had only been studying [certain basic courses]. He said that he was not a website designer. I put to him that one did not have to be a website designer to access information on the internet.

22. [The applicant] said that anything could happen to him if he returned to Pakistan. He said that he could be caught by previous evils or he could be killed walking along the road. He said that the LeJ people had spotted him already and he was in their account. He said that he believed that they had his picture, that they had spotted his family and that they knew where he belonged. He said that he had delivered speeches which had not been in their favour: he had taken a stand and he had delivered two or three speeches saying that they should not be killing the Shia people. He said that he had logically proved that what the LeJ people had been doing was wrong and against the teachings of any religion, giving citations and proofs like the surahs and the acts of the Prophet. He said that he had done a lot of study and he had studied what the different sects of Islam said. He said that the LeJ people had taken him as a threat.
23. [The applicant] said that he had delivered speeches in 2006 and 2007. He said that the speech in 2006 had been in Lahore. He said that he had just been visiting Lahore to see his relatives and people whom he had known from [Town 1] who had gone to study in Lahore. He said that he had given this speech to a Shia gathering. He said that he had requested that the students who belonged to the ISO allow him to speak. He said that he had seen the killings of the Shia people in [Town 1] in 2005 and he had wanted to do as much as he was able to stop this. I put to him that at the Departmental interview he had said that he had witnessed the killing of Shia people in Lahore in 2006 and in [Town 1] in 2007. [The applicant] repeated that he had seen the killings in 2005 and he had delivered speeches in 2006 and 2007. He said that a whole Shia religious convoy had been attacked by the police in [Town 1] in 2005. He said that the police had given the reason that the Shia Muslims had not been going according to the plan and that they had to provide the Shia Muslims with security. He said that there had been some arguments and then there had been a big fight. He said that people had been badly injured and one person had been killed. He confirmed that he claimed that this had been done by the police. He said that he had no evidence of this.
24. I put to [The applicant] that at the moment I was not aware of any independent evidence which supported his claims that he had given speeches or that there had been an attack on a Shia religious convoy in [Town 1] in 2005 or indeed that he had been in danger in Pakistan. I put to him that what he had said at the Departmental interview had been inconsistent with what he had said in his application for a protection visa (which he had said he had filled out himself) and what he was telling me at the hearing was inconsistent with what he had said at the Departmental interview. He had said at the Departmental interview that the attack on the convoy in [Town 1] had been in the month of Muharram in 2007 but now he was saying that it had been in 2005.
25. [The applicant] said that he had given the speech in Lahore at an intersection close to [a named location] in Lahore. He said that his speech had only lasted for between seven and ten

minutes and that he had criticised the LeJ. He said that at that time they had heard the news that the LeJ had been about to shake hands with the TTP or that they were transforming themselves into the TTP to share their power. He said that the TTP had been more famous than the LeJ. He said that the LeJ used to call themselves the 'Punjabi Taliban' so he had had to criticise those people as well.

26. [The applicant] confirmed that he claimed that the second speech he had delivered had been in [Town 1] in 2007. He said that he had delivered this speech from a stage in an open area at the end of the bazaar and it had been quite a long speech, more than 30 minutes. He said that this speech had also been delivered to a Shia religious gathering but he had not had to approach the ISO again because the people in [Town 1] had already known him. He said that they had known that he could deliver speeches and some of them had known that he had delivered a speech in Lahore the previous year. He said that they had invited him to give this speech. He said that although he had not approached the ISO the people who had invited him had been members of the ISO. He said that the members of the ISO in [Town 1] who had heard the speech he had given in Lahore had told their organisation and their management had contacted him to deliver the speech in [Town 1]. [The applicant] said that in this speech he had talked about humanity and he had said that the killing of anyone on the basis of differences in religion was not right. He said that he had proved this from the citations. I gave [The applicant] the opportunity to expand upon what he claimed he had said but he repeated that his basic point had been humanity by which he said he meant that we should not hurt or kill anyone because of their religion. He said that he had given citations from each sect in favour of humanity. He said that although this had been a Shia religious gathering there had been members of other Muslim sects there as well like Sunnis. He said that even among the Sunnis there were different schools like the Barelvis and Deobandis. He said that these people had not been attending to listen but to note the big points in what was said and then to prove these points wrong in their own literature.
27. [The applicant] said that he had again criticised the LeJ and the TTP. He said that one of his friends had shown him videos of the TTP slaughtering people which his friend had got from the internet. He said that these had been the only two big speeches he had made but there had been a lot of discussions among groups of people. I referred to his evidence in his application for a protection visa that he had exposed the Taliban in his speeches and in social media. [The applicant] said he had only used social media once. He said that YouTube had been very young at the time and one of his friends had recorded a discussion with him and had put this on YouTube. He said, however, that his friend had removed this after three or four days. He said that he had in fact told his friend to remove it. He confirmed that this had not been a video of one of his speeches: it had just been a discussion he had had with this friend. He said that neither of his two major speeches had been on the internet.
28. [The applicant] said that after he had delivered his first speech in Lahore in 2006 he had received one text message and some threatening telephone calls. He said that he had also been bashed by a policeman. He said that when he had been discussing these things with his friends this policeman had approached them and had asked them what they were doing and had then beaten him on his back. He said that the scars were still there. I put to him that he had said at the Departmental interview that this incident had had nothing to do with his case: he had said that the policeman had been crazy. [The applicant] said that he had told the policeman that they had been discussing religion and humanity and then the policeman had started beating him. I put to him that if he kept changing his evidence I might not accept that he was telling the truth. [The applicant] said that he was confused about many incidents.



29. [The applicant] said that after he had delivered his second speech in [Town 1] in 2007 he had received threatening telephone calls and then after that two armed people on a motorbike had followed him for a maximum of a week in [Town 1] just to know about his links. He confirmed that these people had not harmed him. He said that he thought that they had not believed that he had been doing this on his own: they had been trying to find out who his leader was or who was encouraging him. He said that he had gone to the police station and had filed a case in relation to these people following him. He confirmed that (contrary to his evidence at the Departmental interview) the police had in fact taken his report. He said that this was in their records. He said that if he were given time he could obtain documents to support his claims. He repeated his claim that his name had been mentioned in the [newspaper]. I put to him that I had not been able to find any reference to him or to the attack on a Shia religious convoy in [Town 1] which he had claimed he had seen. I put to him that if a religious convoy had been attacked and people had been killed and injured then I would have expected it to be reported. [The applicant] said that this had happened in front of his eyes. I put to him that he had changed his evidence with regard to when this had happened: he had said at the Departmental interview that it had been in 2007 but he had said at the hearing before me that it had been in 2005.
30. [The applicant] said that after the week in which he had been followed in [Town 1] he had reduced his movements by which he said he meant that he had not left his home. I put to him that at this time he had still been going to college and then in 2008 he had gone to Lahore to study. [The applicant] said that he had restricted his movements as much as he could. He said that he had not gone out unnecessarily. He said that nothing further had happened before he had left Pakistan to come to Australia in January 2009. He then said that nothing major had happened and when I asked him if anything had happened he said that he did not remember.
31. I asked [The applicant] why he feared that he would have problems if he went back to Pakistan now. He said that they had a list of people and once someone was in their list they were not out. I put to him that if this were true they had had ample opportunity to do something about it before he had left Pakistan. [The applicant] said that maybe they had been waiting. He said that he had not given them the chance. I put to him that according to his own evidence he had been moving around: he had gone to Lahore, for example. I put to him that even if I were to accept all of his claims there was nothing to suggest that he had been in any danger from these people. [The applicant] repeated his evidence that he had received threatening telephone calls after he had delivered the speech in 2007. He suggested that they had not done anything because he had filed a case against them but he said that now they were much more powerful and they would come for him. He said that they had their agents everywhere.
32. I put to [the applicant] that I had difficulty in accepting that he was telling the truth about the speeches he claimed he had delivered. I put to him that I had difficulty in accepting that someone like him, a Sunni Muslim, would have been invited by the ISO to give a speech at a Shia religious gathering either in Lahore or in [Town 1]. [The applicant] said that they had not cared who he was and that it had been in their favour that they had had a neutral person giving them a kind of favour. I put to him that he had said that all that had happened as a result of his giving these speeches had been that he had received one text message, some threatening telephone calls and that he had believed that two people on a motorbike had followed him for about a week. [The applicant] referred to his evidence that his brother had

been beaten after he himself had come to Australia. He said that they had still been looking for him.

33. I put to [the applicant] that at the Departmental interview he had said that his brother had been attacked on two occasions, that the first occasion had had to do with a delivery of alcohol to the Christians and that he did not know the reason for the second occasion but that he thought that it might have been because his brother was a strict police officer. [The applicant] said that the second attack had been because of him. He said that they had left no note to say why they had beaten his brother on this second occasion but that it was his belief that they had beaten his brother because of him. I put to [the applicant] again that they had had ample opportunity to attack him before he had left Pakistan if this had been what they had wanted to do. [The applicant] said that maybe they had been trying to find out who his leader was and then to assassinate all the chain. He repeated that he claimed that the men on the motorbike had been armed but that they had not killed him. He said that he had not seen them after he had made the report to the police. He said that he did not know what the police had done but this case was still there. He repeated that he could produce this report if he were given time.
34. I put to [the applicant] that he had made no mention of this FIR in his original application and that indeed the claims he had made in his original application (which he had said he had written himself) bore no relation to the claims he had made subsequently. I put to him that this suggested to me that these claims were an invention. I put to him that his friend had presumably suggested the claims that were in his original application that he was a Shia Muslim, that he had belonged to the ISO and that the Sipah-e-Sahaba had beaten him up. [The applicant] denied that he had said that he was a Shia Muslim. I put to him that he had said in his original application that he was a Shia Muslim. I gave him until [May] 2014 to produce the FIR, the report in [the newspaper] and any other documents which he wanted to produce. [The applicant] said that he had seen the report in [the newspaper] himself. In the event [the applicant] did not produce any further material to the Tribunal after the hearing nor did he contact the Tribunal to seek additional time to produce any material.
35. I referred to the claim he had made at the Departmental interview that he might be at risk of kidnapping by the TTP as the family member of a police officer and [a military] officer and I asked him if he had evidence that the TTP was targeting family members of police officers and [military] officers. [The applicant] said that there was 'heaps of evidence' of this. I indicated to him that I was not aware of it. [The applicant] undertook to provide the Tribunal with evidence that they had kidnapped family members of [military] officers. I indicated that I would look at any evidence he produced but I put to him that I considered his fear in this regard to be far-fetched. I put to him that he had told me that his parents were still living in [Town 1] and that he had [siblings] living in [Pakistan]. I put to him that it might be difficult for me to accept that there was a real chance or a real risk that he would be kidnapped by any extremist group because he was the family member of a police officer or [a military] officer.

### *Conclusions*

36. As I put to [the applicant] in the course of the hearing before me, I have difficulty in accepting that he is telling the truth about the problems he claims to have had in Pakistan. He has said that he filled out his application form for a protection visa himself although he has said that he was helped by a friend who he said at the hearing before me had explained some of the questions to him. As I put to him, the claims which he made in his original application bear no relation to the claims he has made subsequently. In that application he said that he

was a Shia Muslim whereas he has since said that he is in fact a Sunni Muslim. He said that he had been involved in the ISO in Pakistan and that he had been threatened by the Sipah-e-Sahaba as a result whereas he has since said that he only gave two speeches to Shia religious gatherings organised by the ISO and that he was threatened by the LeJ as a result. He said that he had been attacked and badly bashed by the Sipah-e-Sahaba when he has giving a speech in a mosque but he has since said that he was in fact bashed by a policeman when he was talking to a group of friends in Lahore. As I put to [the applicant], what this suggests is that the claims in his original application were an invention.

37. As I put to [the applicant], there are further inconsistencies between his evidence at the Departmental interview and at the hearing before me. At the Departmental interview he said that he had witnessed attacks on Shia Muslims in Lahore in 2006 and in his own town, [Town 1], in the month of Muharram in 2007 when a Shia religious convoy had been attacked by the police but at the hearing before me he said that this incident had been in 2005. He said that he had no evidence of this although, as I put to him, if a Shia religious convoy had been attacked by the police and people had been injured and killed as he claims I would expect this to have been reported. At the Departmental interview he said the incident in which he claimed that he had been bashed by a policeman had nothing to do with his case but at the hearing before me he claimed that the policeman had started beating him after he had told the policeman that they had been discussing religion and humanity. At the Departmental interview he said that he did not know the reason why his brother who is a police officer had been attacked on a second occasion after he himself had left the country but that it might have been because his brother was a very strict police officer. At the hearing before me he said that it was his belief that they had beaten his brother on this second occasion because of him.
38. As I put to [the applicant], I consider that there are other problems with his evidence. It is difficult to accept that, as a Sunni Muslim, he would have been invited to address Shia religious gatherings in Lahore and [Town 1] in 2006 and 2007 as he has claimed. At the Departmental interview he said that he had great, great speaking skills and that he could give very good speeches in Urdu. At the hearing before me he said that they had not cared who he was and that it had been in their favour that they had had a neutral person giving them a kind of favour. However he has described the gatherings at which he spoke as specifically Shia religious gatherings (although he has said that Sunni Muslims were also present). He has not suggested that these were, for example, political gatherings at which there might have been some advantage to having a broad range of people denouncing the violence against Shia Muslims in Pakistan. Despite being given the opportunity to expand upon his evidence with regard to what he had said at these gatherings [the applicant] was unable to do so and I do not accept on the evidence before me that he has great speaking skills as he claims.
39. [The applicant] has claimed that he fears that he will be killed if he returns to Pakistan but the only things which he claims happened to him as a result of delivering these speeches are that he received one text message and a number of threatening telephone calls and that he believed that he was being followed by armed people on a motorbike for around a week in [Town 1]. As I put to him, he remained in Pakistan for at least a further year after this and during this time he has said that he completed a one year course [at] a college in Lahore which does not suggest that he restricted his movements as he claimed at the hearing before me. I consider that if terrorists like the LeJ or the TTP had really wanted to harm him they had ample opportunity to do so before he left the country.
40. As I put to [the applicant], I also consider it relevant that he only applied for a protection visa over four years after he arrived in Australia. [The applicant] said at the hearing before me

that he had not known anything about protection visas until his friend had told him but, as I put to him, he appears to have made no attempt to find out how he could remain here lawfully after he ceased studying. As I put to him, I consider that his delay in applying for a protection visa is relevant to whether his claimed fear of returning to Pakistan is genuine. At the hearing before me [the applicant] said that he could provide evidence in support of his claims, in particular a copy of the First Information Report which he claimed to have made to the police and a copy of the report in the [newspaper] which he said he had seen himself and which he said reported the fact that he had been threatened. I gave him time to produce these documents but as referred to above he did not produce any further material to the Tribunal after the hearing nor did he contact the Tribunal to seek additional time to produce any material.

41. For the reasons given above I do not accept that [the applicant] is telling the truth about the problems he claims to have had in Pakistan. I do not accept that he gave speeches to Shia religious gatherings in Lahore in 2006 and [Town 1] in 2007 at which he criticised the LeJ, the TTP or the 'Punjabi Taliban' nor that as a result of giving these speeches he received a threatening text message and telephone calls nor that he was followed for about a week by armed men on a motorbike. I do not accept that, as he claimed in his original application, he exposed the Taliban in his speeches and in social media nor that, as he said at the hearing before me, a friend recorded a discussion with him and put this on YouTube but that he told his friend to remove it after three or four days. I do not accept that [the applicant] was beaten by a policeman in Lahore either because he was talking to a gathering of friends about religion and humanity, as he claimed at the hearing before me, or because the policeman was crazy as he said at the Departmental interview. I accept that [the applicant]'s brother who is [Senior Police Officer] may have been attacked on two occasions as he has claimed but I do not accept that these attacks had anything to do with [the applicant] having given speeches to Shia religious gatherings as he has claimed.
42. Having regard to the view I have formed of [the applicant]'s credibility I do not accept that, if he returns to Pakistan now or in the reasonably foreseeable future, there is a real chance that he will make speeches or otherwise criticise terrorist groups like the Sipah-e-Sahaba, the LeJ, the TTP or the 'Punjabi Taliban', nor do I accept that he will be prevented from making such speeches or criticising these groups because of his fear of being persecuted as a result. I do not accept that there is a real chance that [the applicant] will be persecuted for reasons of his real or imputed political opinion or religious beliefs opposed to the activities of the Sipah-e-Sahaba, the LeJ, the TTP or the 'Punjabi Taliban' if he returns to Pakistan now or in the reasonably foreseeable future. Since I accept that [the applicant] is a Sunni Muslim I do not accept that there is a real chance that he will be persecuted in the context of the violence against Shia Muslims in Pakistan if he returns to that country now or in the reasonably foreseeable future.
43. I accept that [the applicant] has a brother who is a police officer and [another sibling] who is [a military] officer but, as I put to him, I am not aware of evidence that the TTP is targeting family members of police officers and [military] officers. [The applicant] undertook to produce such evidence but as referred to above he did not produce any further material to the Tribunal. As I put to him I consider that his fear of being kidnapped by the TTP for these reasons is far-fetched. I do not accept that there is a real chance that [the applicant] will be kidnapped or otherwise persecuted by the TTP or any other terrorist group because of his family relationship with a police officer and [a military] officer if he returns to Pakistan now or in the reasonably foreseeable future. For the reasons given above, therefore, I do not

accept that [the applicant] has a well-founded fear of being persecuted for one or more of the five Convention reasons if he returns to Pakistan now or in the reasonably foreseeable future.

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

44. Having regard to my findings of fact above I do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of [the applicant] being removed from Australia to Pakistan, there is a real risk that he will suffer significant harm from terrorist groups like the Sipah-e-Sahaba, the LeJ, the TTP or the 'Punjabi Taliban' or from the police. I do not accept in particular that there are substantial grounds for believing that, as a necessary and foreseeable consequence of [the applicant] being removed from Australia to Pakistan, there is a real risk that he will be kidnapped or will otherwise suffer significant harm from the TTP or any other terrorist group because his brother is a police officer and [another sibling] is [a military] officer. Since I accept that [the applicant] is a Sunni Muslim I do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of [the applicant] being removed from Australia to Pakistan, there is a real risk that he will suffer significant harm in the context of the violence against Shia Muslims in Pakistan.
45. I do not accept on the evidence before me that there are substantial grounds for believing that, as a necessary and foreseeable consequence of [the applicant] being removed from Australia to Pakistan, there is a real risk that he will be arbitrarily deprived of his life, that the death penalty will be carried out on him, that he will be subjected to torture, that he will be subjected to cruel or inhuman treatment or punishment or that he will be subjected to degrading treatment or punishment as defined. Accordingly I do not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of [the applicant] being removed from Australia to Pakistan, there is a real risk that he will suffer significant harm as defined in subsection 36(2A) of the Migration Act.

## **CONCLUSIONS**

46. For the reasons given above I am not satisfied that [the applicant] is a person in respect of whom Australia has protection obligations. Therefore [the applicant] does not satisfy the criterion set out in paragraph 36(2)(a) or (aa) of the Migration Act for a protection visa. There is no suggestion that he satisfies subsection 36(2) on the basis of being a member of the same family unit as a person who satisfies paragraph 36(2)(a) or (aa) and who holds a protection visa. Accordingly, [the applicant] does not satisfy the criterion in subsection 36(2) for a protection visa.

## **DECISION**

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

Giles Short  
Senior Member

## ATTACHMENT A - RELEVANT LAW

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

### Refugee criterion

49. 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.
50. 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.’

51. 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.
52. 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.
53. 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.’
54. ‘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)
55. 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.

56. 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.’
57. 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)

### **Complementary protection criterion**

58. An applicant for a protection visa who does not meet the refugee criterion in paragraph 36(2)(a) of the Act may nevertheless meet the complementary protection criterion in paragraph 36(2)(aa) of the Act, set out above. The Full Court of the Federal Court has held that the ‘real risk’ test imposes the same standard as the ‘real chance’ test applicable to the assessment of ‘well-founded fear’ in the context of the Refugees Convention as referred to above (see *Minister for Immigration and Citizenship v SZQRB* [2013] FCAFC 33 at [246] per Lander and Gordon JJ with whom Besanko and Jagot JJ (at [297]) and Flick J (at [342]) agreed). ‘Significant harm’ for the purposes of the complementary protection criterion is exhaustively defined in subsection 36(2A) of the Act: see subsection 5(1) of the Act. A person will suffer ‘significant harm’ if they will be arbitrarily deprived of their life, if the death penalty will be carried out on them or if they will be subjected to ‘torture’ or to ‘cruel or inhuman treatment or punishment’ or to ‘degrading treatment or punishment’. The expressions ‘torture’, ‘cruel or inhuman treatment or punishment’ and ‘degrading treatment or punishment’ are further defined in subsection 5(1) of the Act.

### **Ministerial direction**

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



## Credibility

60. As Beaumont J observed in *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 at 451, ‘in the proof of refugeehood, a liberal attitude on the part of the decision-maker is called for’. However this should not lead to ‘an uncritical acceptance of any and all allegations made by suppliants’. As the Full Court of the Federal Court (von Doussa, Moore and Sackville JJ) observed in *Chand v Minister for Immigration and Ethnic Affairs* (unreported, 7 November 1997):
- ‘Where there is conflicting evidence from different sources, questions of credit of witnesses may have to be resolved. The RRT is also entitled to attribute greater weight to one piece of evidence as against another, and to act on its opinion that one version of the facts is more probable than another’ (citing *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 281-282)
61. As the Full Court noted in that case, this statement of principle is subject to the qualification explained by the High Court in *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 576 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ where they observed that:
- ‘in determining whether there is a real chance that an event will occur, or will occur for a particular reason, the degree of probability that similar events have or have not occurred for particular reasons in the past is relevant in determining the chance that the event or the reason will occur in the future.’
62. If, however, the Tribunal has ‘no real doubt’ that the claimed events did not occur, it will not be necessary for it to consider the possibility that its findings might be wrong: *Minister for Immigration and Multicultural Affairs v Rajalingam* (1999) 93 FCR 220 per Sackville J (with whom North J agreed) at 241. Furthermore, as the Full Court of the Federal Court (O’Connor, Branson and Marshall JJ) observed in *Kopalapillai v Minister for Immigration and Multicultural Affairs* (1998) 86 FCR 547 at 558-9, there is no rule that a decision-maker concerned to evaluate the testimony of a person who claims to be a refugee in Australia may not reject an applicant’s testimony on credibility grounds unless there are no possible explanations for any delay in the making of claims or for any evidentiary inconsistencies. Nor is there a rule that a decision-maker must hold a ‘positive state of disbelief’ before making an adverse credibility assessment in a refugee case.