

1401675 [2014] RRTA 543 (9 July 2014)

DECISION RECORD

RRT CASE NUMBER: 1401675
COUNTRY OF REFERENCE: Pakistan
TRIBUNAL MEMBER: Filip Gelev
DATE: 9 July 2014
PLACE OF DECISION: Melbourne
DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act

Statement made on 09 July 2014 at 1:50pm

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

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants who claim to be citizens of Pakistan, applied to the Department of Immigration for the visas [in] March 2013 and the delegate refused to grant the visas [in] January 2014.
3. The applicants appeared before the Tribunal on 8 July 2014 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Pashto and English languages.
4. The applicants were represented in relation to the review by their registered migration agent.

RELEVANT LAW

5. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.

Refugee criterion

6. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
7. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the Regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). Examples of 'serious harm' are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
15. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Section 499 Ministerial Direction

16. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – 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. The Tribunal has taken into account the DFAT Thematic Report 'Shias in Pakistan', 18 December 2013

Member of the same family unit

17. Subsections 36(2)(b) and (c) provide as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen mentioned in s.36(2)(a) or (aa) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Regulations for the purposes of the definition. The expression is defined in r.1.12 of the Regulations to include spouse and children.

CONSIDERATION OF CLAIMS AND EVIDENCE

18. The issues in this case are as follows. First, whether the applicants are refugees. Secondly, if so, whether they can obtain state protection. Thirdly, if they cannot obtain state protection, whether the family can reasonably relocate within their country of nationality. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.
19. Based on the applicants' oral and written evidence and copies of the passports of the first, second and third named applicants sighted by the Tribunal, and a copy of the fourth applicant's birth certificate provided to the Department, the Tribunal finds that all applicants are nationals of Pakistan and has assessed their claims against that country for the purposes of s.36(2)(a).
20. The Tribunal accepts that the applicants are Shi's by religion and that they are Turi-Bangash by ethnicity.
21. The applicant parents were born in Parachinar in Kurram Agency, near the border with Afghanistan. Their first child was born in Pakistan while the first named applicant was in Australia. The fourth applicant was born in Australia and is also a Pakistani national by birth.
22. The first named applicant first came to Australia in July 2007 to study. In 2011 he briefly returned to Pakistan because his mother, who has [a medical condition], was particularly unwell. She urged him to get married and even though he was there for only about two months, he married the second named applicant [in] April 2011. At that time he travelled by plane to Parachinar because the roads were too dangerous.
23. He returned to Pakistan in September 2012 to accompany his wife to Australia. She travelled in a military convoy to Islamabad and from there they flew to Australia. The Tribunal accepts that the applicant was terrified for his safety and did not even travel to Parachinar to see his parents and the rest of his family. He only stayed in Pakistan for about 10 days.
24. Both the first and second named applicants submitted claims in Part C of the application form. The bases on which they both claimed to have a well-founded fear of persecution included not only their Shi'a religion and their Turi-Bangash ethnicity but also the following:
25. The first named applicant said he feared persecution for reasons of his being a former member of the Imamia Students Organisation, as an English teacher, as a member of his and

his wife's family. In terms of his own family, the applicant claimed that his father was a respected elder in the community, an owner of a religious (Shi'a) bookstore; one of his uncles was 'the manager' of Anjuman e-Hussaini, described by the applicant as a group of Shi'a elders. The Anjuman e-Hussaini attempted to negotiate with the Taliban and the local Sunnis in relation to various matters such as the use of local routes.

26. The second named applicant claimed that she was at risk of harm because she worked as a health worker, including administering [vaccines], something the Taliban oppose, because of her marriage to the first named applicant (who comes from a well-known family) and because of her own membership of a prominent family. Her father [works] as 'senior head clerk in Government [College]'. Her uncle [Dr A] ran a clinic where she worked as health worker. He was also a prominent member of the [Peoples Party Pakistan]. Another uncle [was in the armed forces]. A third uncle [is a senior police official] in Peshawar.
27. The second named applicant's statutory declaration of 10 October 2013 leaves the impression that the 'uncles' mentioned in the paragraph immediately above were actual uncles, that is, brothers of one her father. The statutory declaration discusses her father and uncles in 4 consecutive paragraphs and they all have the same last [name]. In the last of the four paragraphs, [8], it refers to 'my other uncle' (rather than 'another uncle') as if she has no other uncles apart from the ones discussed at paragraphs [4]-[8].
28. The delegate did not accept the claim that the second named applicant worked with [Dr A] or that he was her uncle. The independent country information which the delegate found indicated that [Dr A] had [other family members]. The delegate found that the applicants' evidence in relation to this issue was inconsistent with the independent information. The Tribunal has listened to the recording of the interview. While both applicants had obvious difficulties with that interpreter, both of them used some English words and seemed able to follow the questions the delegate asked.
29. The Tribunal finds that both applicants when they were asked about [Dr A's family]'s understood the question and their answers were interpreted correctly. Both applicants referred to [Dr A] having [children]. When the second named applicant was answering the question, the word 'two' was uttered in English. Both of them insisted that there was a gap between [Dr A] and his siblings. Only after the information that [Dr A] has [a sibling] was put to the second named applicant, she agreed with that.
30. After the delegate refused the application, both applicants further provided statutory declarations, dated 18 June 2014, in which they explained that [Dr A] was not a close relative of the second named applicant. He explained that elder male members are called 'uncle'.
31. The Tribunal considers that as it is customary for people to marry family members in Pakistan,¹ and the applicants come from a small village, it is not surprising that a man who lives in the same village ([Dr A]) as the second named applicant might be a distant uncle. However, neither applicant attempted to explain at the interview that the relationship was not a close one.

¹ S. Kingman, 'Health: Why cousins can be just too close: The Pakistani practice of marrying relations may be causing genetic disorders in children', 6 July 1993, accessed at <http://www.independent.co.uk/life-style/health-and-families/health-news/health-why-cousins-can-be-just-too-close-the-pakistani-practice-of-marrying-relations-may-be-causing-genetic-disorders-in-children-says-sharon-kingman-1483250.html> on 7 July 2014.

32. The Tribunal has analysed this minor issue in such detail because it formed the basis of the delegate's finding that the applicants were not credible witnesses. With some hesitation, the Tribunal has decided to give the applicants the benefit of the doubt. The Tribunal accepts that the applicants were using the word uncle in a more general sense than brother of one's parent.
33. The Tribunal accepted the totality of the applicants' evidence when it heard the second named applicant talk about her employment as a health worker. She said that she went to villages and taught women how to look after their babies and how to use condoms if they did not wish to get pregnant. In relation to [vaccinations], she described in a spontaneous and detailed manner how she would go to villages in a team of [women] and a driver. She said the older kids would only be administered a spoon of liquid, while the newborn babies under the age of one year would get both an injection and liquid (drops). She said that the side effect of the vaccine was a fever and they would dispense Panadol.

Well-founded fear of persecution

34. There is ample country information about the dire situation in the Federally Administered Tribal Areas (FATA), including Kurram Agency where the applicants are from. The violence started in 2007, soon after the first named applicant came to Australia. Clashes between Sunnis extremists on the one hand and Shi'as and the security forces on the other has continued with various levels of intensity for seven years. The December 2013 DFAT report states:

4.26 Overall, DFAT assesses that the situation in FATA remains very volatile and there is a high degree of generalised violence that can affect Shias. In the past there have been high levels of communal level violence between Sunnis and Shias. Peace agreements at various periods have reduced conflicts between the tribal and sectarian groups. However, militant sectarian outfits remain very active in the region and have attacked rival tribal/sectarian groups including Turi and Bangash Shias at a high rate of frequency.

35. Some of the recent incidents of violence in Kurram Agency include the deaths of seven people when a vehicle struck an improvised explosive device in early June 2014² and two soldiers were killed by militants on 10 June 2014.³ The total number of people killed in bomb blasts across Pakistan in June 2014 alone was 90. Another 115 people were injured.⁴
36. It has been reported that a massive 570,000 people were displaced in ongoing Pakistan army operations in North Waziristan.⁵ The applicant claimed that many of the Internally Displaced Persons were Taliban or Taliban supporters and their movement would only destabilise areas outside of North Waziristan, including Kurram Agency. There is some country information in support of the claim that militants were having their hair and beards trimmed so as not to be

² 'Bomb kills seven people in Kurram Agency: Officials', *The Express Tribune*, 3 June 2014, accessed at <http://tribune.com.pk/story/716849/bomb-kills-seven-people-in-kurram-agency-officials/> on 7 July 2014.

³ 'Two levies soldiers killed in Kurram Agency attack', *The News*, 10 June 2014, accessed at <http://www.thenews.com.pk/Todays-News-2-255209-Two-Levies-soldiers-killed-in-Kurram-Agency-attack> on 7 July 2014.

⁴ J. Bhatti, '90 killed, 115 injured in 24 bomb attacks in Pakistan in June', *Xinhua News*, accessed at http://news.xinhuanet.com/english/world/2014-07/01/c_133452812.htm on 7 July 2014.

⁵ 'Over 570k displaced in Pakistan army operation: Official', *Press TV*, 4 July 2014, accessed at <http://www.presstv.ir/detail/2014/07/05/369970/570k-displaced-in-pak-army-operation/> on 7 July 2014.

identified as Sunni militants.⁶ Accordingly, the Tribunal accepts that there is a risk of a further deterioration in the situation in Kurram Agency.

37. While ordinarily the fact that a protection visa applicant has returned twice to his or her country of nationality after coming to Australia would raise serious credibility concerns, the Tribunal accepts that this is not the case in the present matter. The Tribunal accepts that in 2011 he did not leave the house in his village and that he was able to get in and out of the area safely because he travelled by plane. It was too dangerous to travel on the roads. The Tribunal further accepts that in 2012 the first named applicant only went back to Pakistan to assist his wife to leave the country. He was there for a short time, some 10 days, and he did not go to Parachinar. He was caught in an impossible position because he knew that he would be taking a personal risk by going back, but his wife and first born child, whom he had not even met, were stuck behind in Kurram Agency.
38. Based on the applicant's own oral and written evidence and the country information the Tribunal finds that the applicants face a real chance of being subjected to significant physical harassment or ill-treatment or threat to their lives if they were to return to Kurram Agency and FATA now or in the reasonably foreseeable future. The Tribunal finds that the applicants fear 'serious harm' pursuant to s.91R(1)(b) of the Act.
39. Based on the claims and evidence as a whole, for the purposes of s.91R(1)(a) of the Act, the Tribunal finds that the essential and significant motivation for the persecution feared by the applicants would be their Shi'a religion.
40. The Tribunal also finds that the harm feared by the applicants from extremist Sunni groups such as the Taliban would be directed against them intentionally for reasons of their religion. Accordingly, the Tribunal is satisfied that the persecution the applicants fear involves systematic and discriminatory conduct. The Tribunal finds that the applicants meet the requirements of section 91R(1)(c) of the Act.
41. The Tribunal found the applicants to be the epitome of refugees: driven from their homes by religious conflict, separated from their families, taken out of their village in rural Pakistan to a country that to some extent would always be foreign to them. In Pakistan both applicants worked and contributed to the community to the best of their abilities. They worked in education and health, and did what they could to achieve peace in their home area. The senseless but systematic violence instigated by Sunni extremists caused the first named applicant to decide to remain in Australia rather than return to Pakistan as he had previously planned. .

Availability of state protection

42. In this case, the harm that the applicants fear is from Sunni extremists, that is, non-state agents. Harm from non-state agents may amount to persecution for a Convention reason if the motivation of the non-State actors is Convention-related, and the State is unable to provide adequate protection against the harm. Where the State is willing but not able to provide protection, the fact that the authorities, including the police, and the courts, may not be able to provide an assurance of safety, so as to remove any reasonable basis for fear, does not justify an unwillingness to seek their protection: *MIMA v Respondents S152/2003* (2004)

⁶ 'Taliban get makeovers to hide from security forces', *Newsweek Pakistan*, 7 July 2014, accessed at <http://newsweekpakistan.com/taliban-get-makeovers-to-hide-from-security-forces/> on 8 July 2014.

222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [28]. In such cases, a person will not be a victim of persecution, unless it is concluded that the government would not or could not provide citizens in the position of the person with the level of protection which they were entitled to expect according to international standards: *MIMA v Respondents S152/2003* (2004) 222 CLR 1, per Gleeson CJ, Hayne and Heydon JJ, at [29].

43. The applicant husband claims that the authorities in Pakistan are unable and unwilling to protect him. He said that they unwilling to provide protection to Shias,⁷ while his wife said that they did not have the capacity to protect her, because they are increasingly influenced by the Taliban.⁸ Their uncontested evidence speaks for itself: in 2012, after travelling to Pakistan, the first named applicant could not go to Parachinar to meet his relatives and to accompany his wife and newborn child on their journey to Australia.
44. Without a military convoy neither applicant dared to go into or out of Kurram Agency. However, as they pointed out, the convoy itself attracts attacks by Sunni extremists. The second named applicant gave a brief description of the trip out of Parachinar to Islamabad in 2012. She said that she was very scared of the Taliban. She became teary and visibly distressed.
45. Country information indicates that law enforcement authorities are unable to protect members of religious minorities, including Shi'as and that Sunni militant groups, such as the banned Lashkar-e Jhangvi, operate with impunity.⁹ The DFAT report advises:
 - 5.1 Pakistan's laws and Constitution provide for state protection of people's property, lives and religious beliefs and places. Capacity of state authorities is highest in major urban centres and well-protected cantonments, which offer a higher degree of state protection.
 - 5.2 Broadly, DFAT assesses that there is a willingness by Pakistani authorities to protect Shias...
 - 5.4 However, Pakistani authorities face capacity constraints. A lack of resources limits the federal and provincial governments' ability to protect the Shia community at all times and in all places, given that the population is large and dispersed. DFAT has also observed that while Pakistan has made efforts to capture and prosecute members of sectarian outfits, conviction rates remain low. Investigations remain hampered by the absence of credible evidence, witness protection programs and trained authorities. Witnesses are known to withdraw testimonies due to death threats and intimidation. Judges and prosecutors are also often threatened during trial proceedings.
 - 5.5 Attacks by the TTP and other militants against police and security forces in some parts of Pakistan limit governments' ability to exercise effective control and enforce the law. This is particularly so in FATA and in rural areas of Khyber Pakhtunkhwa, Balochistan and some parts of Karachi.
46. Despite some brave pronouncements from security officials that the latest anti-insurgency operation is 'the beginning of the end' for the Taliban,¹⁰ such an outcome seems highly unlikely considering the long history of failed attempts to eradicate militants in Pakistan.

⁷ Part C of the application, folio 11, at question 48.

⁸ Part C of the application, folio 62, at question 48.

⁹ United Nations High Commissioner for Refugees 2012, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan*, HCR/EG/PAK/12/02, 14 May, p.40 <<http://www.unhcr.org/refworld/docid/4fb0ec662.html>>

¹⁰ 'The beginning of the end', *Newsweek Pakistan*, 1 July 2014, accessed at <http://newsweekpakistan.com/the-beginning-of-the-end/> on 8 July 2014.

47. Based on the country information and the applicants' evidence, the Tribunal finds that the state of Pakistan cannot meet the level of protection which citizens are entitled to expect as discussed in *MIMA v Respondents S152/2003* (2004) 222 CLR 1. It follows that the Tribunal finds that the applicants face a real chance of serious harm for reasons of their religion if they return to Parachinar, Kurram Agency or anywhere in FATA.

Relocation

48. The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country: *Randhawa v MILGEA* (1994) 52 FCR 437 per Black CJ at 440-1. 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.
49. A person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of 'practicable', to expect him or her to seek refuge in another part of the same country. What is 'reasonable' in this sense must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country. However, whether relocation is reasonable is not to be judged by considering whether the quality of life in the place of relocation meets the basic norms of civil, political and socio-economic rights. The Convention is concerned with persecution in the defined sense, and not with living conditions in a broader sense: *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51, per Gummow, Hayne & Crennan JJ, Callinan J agreeing.
50. The Tribunal observes that the level of generalised violence across Pakistan fluctuates from year to year but remains persistently high. The applicants' identity cards, distinctive accents and appearance, their Shi'a names, and their religious practices as Shi'a Muslims would all identify them as Shi'a Muslims.
51. The DFAT report on Shias states:
- 5.6 Freedom of movement throughout Pakistan is guaranteed by section 15 of the Constitution. Because of Pakistan's size and diversity, internal relocation offers a degree of anonymity and the opportunity for victims to seek refuge from harassment or violence. In most cases, there are options available for members of ethnic and religious minorities, including Shias, to be able to relocate to areas of relative safety elsewhere in Pakistan. DFAT has observed, in practical terms, internal relocation of Shias occurs with relative frequency due to family connections and employment opportunities.
- 5.7 In particular, many large urban centres are home to mixed ethnic, religious and sectarian communities and offer greater opportunities for employment, access to services and a higher degree of state protection than other areas. Internal relocation is most successful in these conditions, but can be hampered by a lack of financial resources....
- 5.8 Military operations in FATA and parts of Khyber Pakhtunkhwa have displaced a large number of people who have been resettled in tented villages and in other provinces. It is also common for displaced families to temporarily resettle with relatives or live in urban areas.
52. The Tribunal accepts the argument that because the applicants are Turi-Bangash Shi'as they face an increased risk of harm, more than other Shi'as who belong to established

communities in big cities, because the Taliban single them out due to the protracted and ongoing Shi'a-Sunni fighting in FATA.

53. The Tribunal accepts the applicants' representative submissions that the applicants will find it very difficult to be relocated because of the following factors:
- (a) While the applicants have lived in Australia, they have never lived outside of Kurram Agency in Pakistan
 - (b) There are [very young children] in the family
 - (c) The applicants' extended families live in Parachinar and elsewhere in Kurram Agency and they have no family outside of Kurram Agency
 - (d) Their families do not have the financial resources to support the applicants outside of Kurram Agency
 - (e) The second named applicant's English and Urdu are very limited. She speaks Pashtu which is not widely spoken in Pakistan outside of the tribal areas.
54. The Tribunal accepts the first named applicant's evidence that his work experience teaching English for about 18 months will not be particularly useful for him if he were to relocate to a big city in Pakistan because English is widely spoken and there are much better qualified teachers than he.
55. The Tribunal asked the applicant whether he could work in [a named field], which was the degree he completed in Australia. He said that in Pakistan [people in that industry] are self-taught and to get a job in that industry one needed to know people. As he has no connections outside of Kurram Agency he would find it impossible to get a job. Having a diploma from Australia would be meaningless. In Australia he worked as a [occupation] and [occupation] and therefore he could not show any prospective employers that he has learned on the job.
56. The applicants would therefore face the prospect of being destitute and unable to subsist.
57. In all the circumstances of the case, the Tribunal concludes that it would not be reasonable for the applicants to relocate within Pakistan.
58. For the reasons given above the Tribunal is satisfied that the applicants are persons in respect of whom Australia has protection obligations. Therefore the applicants satisfy the criteria set out in s.36(2)(a).

DECISION

59. The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act.

Filip Gelev
Member