

1314596 [2014] RRTA 355 (28 April 2014)

DECISION RECORD

RRT CASE NUMBER: 1314596
COUNTRY OF REFERENCE: Pakistan
TRIBUNAL MEMBER: Andrew Jacovides
DATE: 28 April 2014
PLACE OF DECISION: Sydney
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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 applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant applied to the Department of Immigration for the visa [in] March 2013 and the delegate refused to grant the visa [in] September 2013. The applicant applied for review of the decision [in] October 2013.

THE APPLICANT'S CLAIMS

Evidence to the Department

3. The applicant stated in his protection visa application that he was a citizen of Pakistan; he was born in [a location] on[date]; he spoke English and Urdu; his religion was Islam; he had never married; he arrived in Australia [in] July 2003; he had [a number] years of education; he was a[occupation]; and he worked a manager at a [business] from 2010 until 2013. He submitted a copy of his Pakistani passport and articles relating to sectarian violence in Pakistan.
4. The applicant stated that he left Pakistan because of “terrorists, no law & order, no employment”. He stated that he was discriminated against because he was a Shia Muslim and at college he was threatened by Sunni extremists. He claimed that “due to Sunni activism” his father died and if he returned to Pakistan he would suffer a similar fate. The applicant claimed that he came to know that the police went to his home with “a report filed under” his “name”. He claimed that the government and the police support Sunni terrorists and he would die if he returned to Pakistan. He stated that before his father died from “mental stress”, as a Shia living in a predominantly Sunni community, he decided to save the applicant by sending him to Australia.
5. The applicant was interviewed by the delegate [in] September 2013. The Tribunal has listened to the interview. The applicant stated that he did not “believe in god”. He stated that he did not want to go back to Pakistan because he previously belonged to the Shia minority and even though he did not believe in god “they” were still after him. He stated that his family moved to Multan in 1996 or 1997 and in 2002 he went to a rally. He stated that there was a disturbance at the rally and he was detained by the police and placed in a cell with Sunni extremists. He stated that they spent several hours together exchanging insults. He claimed that his father secured his release by paying a bribe. The applicant stated that he was “hot headed” at the time. He claimed that after his release he returned to Karachi where he was living and working but a few weeks later someone shot at him and he fled to Quetta where he had relatives. He stated that he then decided to come to Australia.
6. The applicant stated that he had no involvement with the Shia community in Pakistan or Australia. He indicated that his mother and brother were living in Multan and he had a sister in Quetta. The applicant stated that his brother was threatened “a year or two ago” and “basically they were asking for” him again. The applicant was asked who asked about him. He stated that he did not know because he “did not ask” but it was the “same shit” as before. The applicant stated that they asked for “more money”. He stated that money set aside for the

applicant's education was given to "them" to save his brother. The applicant stated that it happened the first time in 2005. He stated that he did not go back for that reason. The applicant claimed that they confronted his brother at gun point in 2012 and asked for more money but his family was not in a position to comply. He stated that they did not contact the family again. The applicant stated that he did not know who was involved but they told his brother that they wanted the applicant to go back. He stated that they assumed that he had money.

7. The delegate asked the applicant why he did not apply for a protection visa sooner. The applicant stated that he had "no idea" why he did not lodge an application before and it was "basically [a] stupid" decision he made not to apply. He stated he was afraid that if he applied and he was not successful he would be forced to return to Pakistan. The delegate commented that the applicant told the officer who detained him that he was prepared to return to Pakistan. The delegate asked the applicant what had made him change his mind. The applicant stated that his mother told him not to return because the family did not have the financial resources to support him.

Evidence to the Tribunal

8. The applicant attended a hearing with the Tribunal on 17 April 2014. He submitted two statements, one from his brother and another from his mother with both statements dated 12 April 2014.
9. The applicant's brother's repeated information provided by the applicant relating to the rally in 2002, when the applicant was arrested, and then being shot at in Karachi by "unidentified people" some weeks later. He stated that after the applicant fled from Pakistan in 2003 his family was "threatened constantly" by persons seeking to find him. The applicant's brother stated that in 2005 he was "harassed at gunpoint and threatened to be killed for being Shia" so his father "lost almost all of his retirement fund" which he was saving for the applicant's education. He stated that his father died from a heart attack in July 2012 after an incident when members of the applicant's family were beaten. The applicant's brother stated that his business failed due to sectarian violence.
10. The applicant's mother claimed that the applicant had to quit working in Pakistan because of "security concerns" relating to his activities "for the betterment of [the] Shia community". She stated that she and her husband concealed from the applicant the harassment and difficulties they were suffering in Pakistan. The applicant's mother stated that "being followers of Shia sect and this phenomenon of sectarian hatred has caused a lot of physical, emotional, mental and financial harm" to the applicant's family.
11. The applicant stated in his oral evidence that he did not know who was threatening his family and seeking money from them. He stated that the family did not tell him what was going on because he was the "baby" of the family and they wanted to protect him. The Tribunal commented that it was difficult to determine the exact nature of his claims, and whether they related to the refugee or complementary protection criteria, because he seemed to have only vague evidence to provide. The applicant stated that he had spoken to his brother but no details were provided. He stated that he did not know who was harassing members of his family. He stated that his mother told him what was happening but she did not give him details. The Tribunal commented that it found it difficult to believe that the applicant had details regarding these matters. He stated that he suspected Sunni extremists, the same persons who were detained with him in 2002, but he was not sure who was involved. The

Tribunal commented that the applicant's evidence was so vague that it found it difficult to believe that any of the incidents he described actually took place. The applicant stated that his family did not tell him what was going on because they wanted to protect him.

12. The Tribunal commented that the applicant's delay in seeking protection raised further doubts regarding the credibility of his claims. The applicant stated that he made a big mistake by not applying sooner. The Tribunal commented that it may find that he did not apply for over ten years after he arrived in Australia because nothing happened to him or his family and he did not need or qualify for protection. The applicant stated that it was an error on his part that he did not apply sooner.
13. The applicant stated that he was afraid to return to Pakistan because he anticipated that he would be killed. He stated that he did not have to live in Pakistan because it was already decided that he would be marrying his cousin in [another country] and migrating there but just being in Pakistan, even for a short time, placed him at risk of harm. The Tribunal asked the applicant if he intended to marry his cousin and move to [the other country]. The applicant stated that it was 50 per cent chance that he would.
14. The applicant stated that the other reason he did not wish to return to Pakistan was that he would not be able to find work and he will have to sit at home doing nothing. He stated that his family could not afford to support him.
15. The Tribunal referred to information from external sources relating to sectarian, political, and insurgent violence in Pakistan:
 - UK Home Office 2013, *Pakistan: Country of Origin Information (COI) Report*, 9 August <<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/pakistan/report-09082013.pdf?view=Binary>> Accessed 14 August 2013;
 - Freedom House 2013, *Freedom in the World – Pakistan*, 10 June <<http://www.freedomhouse.org/report/freedom-world/2013/pakistan>> Accessed 6 August 2013;
 - US Department of State 2013, *International Religious Freedom Report for 2012 – Pakistan (covering January to December)*, 20 May <<http://www.state.gov/documents/organization/208650.pdf>> Accessed 27 May 2013;
 - Human Rights Commission of Pakistan 2013, *State of Human Rights in 2012*, March <<http://hrqp-web.org/hrqpweb/wp-content/pdf/AR2012.pdf>> Accessed 9 April 2013;
 - Human Rights Watch 2013, *World Report 2013: Country Summary Pakistan*, 31 January <<http://www.hrw.org/world-report/2013/country-chapters/pakistan>> Accessed 8 February 2013;
 - Asian Human Rights Commission 2012, *The State of Human Rights in Pakistan in 2012*, August <<http://www.humanrights.asia/resources/hrreport/2012/ahrc-spr-008-2012.pdf/view>> Accessed 22 March 2013;
 - Amnesty International 2012, *Amnesty International Annual Report 2012 – Pakistan*, 24 May <<http://www.unhcr.org/refworld/docid/4fbe391b5f.html>> Accessed 24 May 2012;
 - UN High Commissioner for Refugees 2012, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan*, 14 May <<http://www.unhcr.org/refworld/pdfid/4fb0ec662.pdf>> Accessed 17 May 2012;

- Human Rights Commission of Pakistan 2011, *Perils of faith: Report of HRCP Working Group on Communities Vulnerable because of their Beliefs*, December <<http://www.hrcp-web.org/pdf/Perils%20of%20faith.pdf>> Accessed 5 February 2012; and,
 - Minority Rights Group International 2012, *State of the World's Minorities and Indigenous Peoples 2012 – Pakistan*, 28 June, UNHCR Refworld <<http://www.unhcr.org/refworld/publisher,MRGI,PAK,4fedb3f42,0.html>> Accessed 2 July 2012.
16. The Tribunal commented that the above information indicates that religious minorities have attracted the adverse interest of religious extremists in Pakistan and some members of those religious minorities have faced serious and sometimes life-threatening harm in Pakistan. The Tribunal commented that the United Nations High Commissioner for Refugees advised that members of religious minorities may, depending on their individual circumstances, “be in need of international refugee protection”.
 17. The Tribunal commented however, that despite the poor security situation in Pakistan, the above information did not support the applicant’s claim that Shia Muslims were at risk of harm. It commented that persons who participated in sectarian violence, those who attended religious activities, and those who were politically active, may face an increased risk of harm under certain circumstances. The Tribunal commented that the Shia community of Pakistan was estimated to be in excess of 25 million people and despite the increase in sectarian violence only a small percentage of that Shia population has been harmed for reasons of religion.
 18. The Tribunal referred to a report by the Department of Foreign Affairs and Trade, *DFAT Country Information Report: Pakistan*, 29 November 2013, and commented that DFAT has similarly advised that the Shia community constitutes a significant minority in Pakistan. The Tribunal commented that DFAT advises that numerically only a small number of Shia Muslims have been harmed in sectarian violence and mostly it was those who lived in the border regions, those who were active in religious and political activities, or those who were otherwise involved in some activity which attracted the adverse interest of Sunni extremists.
 19. The Tribunal asked the applicant if he was involved in any activity, such as religious or political activities, which would elevate his profile and attract the adverse interest of extremists in Pakistan. The applicant stated that he did not believe in god, he was not involved in religious or community activities, and he has never been involved with politics. The Tribunal commented that he did not appear to have the profile of a person who would be a person of interest to Sunni extremists or anyone else in Pakistan. The applicant stated that once a person is “on their list” they are always at risk. He stated that he thought he was on such a list because of the incident in 2002.
 20. The Tribunal commented that as the applicant was not involved in any activity which would be of interest to Sunni extremists, the chance that he would be harmed for being a Shia Muslim was remote. The applicant stated that he understood what the Tribunal was telling him but he was still afraid to return to Pakistan.

THE DELEGATE’S DECISION

21. The delegate found that the applicant’s claim that he was a person of interest to Sunni extremists was not credible. He found that the applicant did not face a real chance of persecution for being a Shia Muslim.

THE TRIBUNAL'S FINDINGS

22. The issue in this case is whether the applicant will be face harm in Pakistan because of his religion or any other reason.
23. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of 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

24. 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).
25. 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.
26. 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.
27. A key element in determining refugee status is whether the applicant's fear of persecution for a Convention reason is 'well-founded' 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.
28. The 'well-founded fear' aspect of the definition has a subjective and an objective element.¹ The subjective element of "well-founded fear" concerns the state of mind of the applicant. Nevertheless, for a fear to be well-founded there must also be a factual basis for that fear. In *Chan v MIEA*, the court found that a well-founded fear "requires an objective examination of the facts to determine whether the fear is justified".² It was further noted that whilst "there must be a fear of being persecuted, it must not all be in the mind; there must be a sufficient

¹ *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 and *Minister for Immigration and Ethnic Affairs v Guo & Anor* (1997) 191 CLR 559

² *Chan v MIEA* (1989) 169 CLR 379 per McHugh J at 429

foundation for that fear”³ and that the Convention, “in speaking of ‘well-founded fear of being persecuted’, posits that there should be a factual basis for that fear”.⁴ A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation.⁵

29. The applicant claims to be a citizen of Pakistan. The Tribunal has considered the evidence he provided in support of this claim, including his Pakistani passport, and it accepts that the applicant is a citizen of Pakistan.
30. The applicant claims that he faces serious and possibly life-threatening harm from Sunni extremists because in 2002 he was placed in prison with Sunni extremists and he exchanged insults with those persons. He claims that his family in Pakistan has been targeted by unknown persons seeking to extort money from the family and those persons have demonstrated an interest in the applicant. The applicant claims that he does not know who is involved but he suspects that it is the same Sunni extremists he insulted in 2002. The applicant claims that being a Shia Muslim places him at risk of harm in Pakistan. He claims that he will not be able to obtain work and his family cannot support him. The applicant claims that the police went to his house seeking to find him.
31. The Tribunal accepts that the applicant is a Shia Muslim. It accepts that security and economic conditions remain poor in Pakistan and that there has been an increase in sectarian violence. The Tribunal will consider the applicant’s claims relating to these issues later in the decision.
32. The Tribunal does not accept the applicant’s claim that he is or ever has been a person of particular adverse interest to Sunni extremists or that the applicant’s family in Pakistan has been targeted by extremists because the applicant’s involvement in a demonstration during 2002. The Tribunal is not satisfied that the applicant is a person of interest to persons seeking to extort money from his family or that the authorities went to his house seeking to find him. The Tribunal finds that these claims were contrived by the applicant to enhance his protection visa application.
33. The Tribunal does not consider it appropriate to take an overly stringent approach to questions of credibility but neither does it consider it appropriate to accept all claims uncritically.⁶ The Tribunal noted the *Handbook on Procedures and Criteria for Determining Refugee Status*, which suggests that it is “frequently necessary to give the applicant the benefit of the doubt... [but only after]... all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts”.⁷

³ *Chan v MIEA* (1989) 169 CLR 379 per Dawson J at 396

⁴ *Chan v MIEA* (1989) 169 CLR 379 per Dawson J at 412

⁵ *MIEA v Guo* (1997) 191 CLR 559 at 572

⁶ *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 per Beaumont J at 451; *Minister for Immigration and Ethnic Affairs v Guo & Anor* (1997) 191 CLR 559 at 596; *Prasad v Minister for Immigration and Ethnic Affairs* (1985) 6 FCR 155 at 169-70; *Kopalapillai v Minister for Immigration and Multicultural Affairs* (1998) 86 FCR 547 at 558-9; see also *Minister for Immigration and Multicultural Affairs v Rajalingam* (1999) 93 FCR 220 per Sackville J (with whom North J agreed) at 241

⁷ United Nations High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status*, 1992, Geneva, paragraphs 203 and 204.

34. The Tribunal finds that if the applicant had attracted the adverse interest of Sunni extremists in Pakistan, before he came to Australia in 2003, or at any time since he arrived in Australia, he would have applied for a protection visa. The Tribunal does not accept that extremists were targeting his family, and seeking to find the applicant, but his family concealed that information from him in the belief that they were protecting him. The Tribunal has formed the view that if the applicant left Pakistan under the circumstances he described, and his family subsequently suffered targeting for any of the reasons provided, the applicant would have known about it and sought to obtain protection in Australia. The Tribunal finds that the applicant did not apply for a protection visa for almost ten years after he arrived in Australia because he and his family were not targeted and he did not need or qualify for protection. The Tribunal finds that the claims relating to extremists and other unknown persons seeking to harm the applicant and his family were contrived to enhance the protection visa application.
35. The Tribunal further finds that the related claims, regarding unknown persons seeking to extort large sums of money from the applicant's family were also contrived by the applicant to enhance his protection visa application. The information provided by the applicant regarding these claims was vague. He did not appear to have any details regarding the perpetrators and he claims that the family concealed the information from him because he was the youngest in the family and they were seeking to protect him. However, the Tribunal has formed the view that the applicant was unable to provide details regarding these claims because he had no details to provide and none of the incidents he described took place. It finds that if indeed the applicant and his family were targeted for extortion or any other reason, and they were seeking to protect him from being subjected to similar harm, they would have forewarned the applicant and given him all the information he needed so he could seek protection in Australia. The Tribunal does not accept as credible the applicant's claim that he and his family were targeted by unknown persons seeking to extort money from them.
36. The applicant stated in his initial written statement that he had attracted the adverse interest of the police in Pakistan and that they visited his house seeking to find him. He did not raise the issue again and when discussing his claims with Tribunal at the hearing he did not indicate that he was a person of particular or adverse interest to the authorities in Pakistan. The Tribunal finds that this claim was fabricated by the applicant to enhance his application. He appears to have subsequently forgotten about it and did not provide any evidence in support of it. The Tribunal does not accept as credible the applicant's claim that he is a person of interest to the authorities in Pakistan.
37. The Tribunal has considered the statement provided from the applicant's brother and his mother in Pakistan. It finds however, in view of the above findings regarding the credibility of the applicant's main claims, that the documentary evidence provided in support of those claims was contrived by the applicant to enhance the application. It does not accept as credible the information provided in those statements or that the authors submitted an accurate account of the applicant's circumstances.
38. The Tribunal has considered the applicant's claim that he faces harm and disadvantage in Pakistan for being a Shia Muslim. Information from external sources referred to above, and discussed with the applicant at the hearing, indicates that there has been an increase in sectarian violence in Pakistan and that some discrimination does exist against Shia Muslims. The above information from external sources further indicates that security conditions remain poor in certain parts of Pakistan and that state protection can be inadequate. However, the Tribunal has formed the view that the discrimination against the Shia community is not of such nature or extent as to constitute persecution for Convention purposes. It further finds

that a relatively small number of the total Shia community are subjected to harm for reasons of religion. It finds that those targeted are most commonly persons who are active in the Shia community, particularly those who attend religious and political activities, and persons living in certain parts of the country, particularly the border regions, where sectarian violence is more prevalent. The Tribunal is not satisfied that the applicant is involved with or implicated in any activity which will make him a person of particular interest to Sunnis or extremists in Pakistan or that he is at risk of being discriminated against to such an extent as to constitute persecution for Convention purposes. The Tribunal is not satisfied that there is a real chance that the applicant will suffer persecution in Pakistan for being a Shia Muslim. It finds that the chance of the applicant being harmed for reasons of religion is remote and it is not satisfied that the applicant's fear in this regard is well-founded.

39. The Tribunal has considered the applicant's claim that security and economic conditions remain poor in Pakistan and that he is fearful to return there. The Tribunal accepts that there are security and economic difficulties which the entire population of Pakistan is facing. It finds however that these conditions apply to the entire population and not specifically to the applicant for any of the reasons he provided. The Tribunal is not satisfied that the applicant faces a particular risk of harm for the reasons provided. It finds that the harm he anticipates is the same harm which all citizens of Pakistan face.
40. Accordingly, the Tribunal is not satisfied that there is a real chance that the applicant will be subjected to persecution by Sunni Muslims in Pakistan for reasons of religion or any other Convention reason.

Complementary protection criterion

41. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia 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 applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
42. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
43. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.
44. The Tribunal has considered whether 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 under the complementary protection criterion. However, in view of the above findings that the applicant is not at risk of harm in Pakistan for any of the reasons provided, the Tribunal is not satisfied that he is at risk of significant harm for the reasons provided.

45. The Tribunal has accepted that some discrimination exists against the Shia Muslims Pakistan. However, the Tribunal is not satisfied by the evidence it has that the discrimination which the applicant may face in Pakistan will be of such nature or extent as to constitute significant harm. The Tribunal is therefore not satisfied that the applicant is at risk of suffering discrimination in Pakistan, relating to his Shia Muslim religion, which will amount to significant harm.
46. The Tribunal has accepted that security and economic conditions remain poor in Pakistan. It finds that those conditions affect the entire population in Pakistan and it is not satisfied the applicant faces a particular risk of harm for any of the reasons provided.
47. Accordingly, the Tribunal finds that there is no real risk that the applicant will suffer significant harm under the complementary protection criterion for the reasons provided.

CONCLUSIONS

48. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
49. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

DECISION

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

Andrew Jacovides
Member