

1311760 [2014] RRTA 270 (31 March 2014)

DECISION RECORD

RRT CASE NUMBER: 1311760
COUNTRY OF REFERENCE: Pakistan
TRIBUNAL MEMBER: Angela Cranston
DATE: 31 March 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 who claims to be a citizen of Pakistan, applied to the Department of Immigration for the visa [in] December 2012 and the delegate refused to grant the visa [in] July 2013. A copy of the claims and evidence is at annexure 1.

CONSIDERATION OF CLAIMS AND EVIDENCE

3. 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.
4. 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).
5. The applicant has stated that his father was a shia preacher who was shot in front of a Imam Bargah mosque [in] 1999. He stated in his application that due to his father's profile, he faced many problems and received threatening calls. At hearing he did not repeat the claim that he had been receiving threatening calls but stated Shias were being killed in Sialkot on a daily basis.
6. The Tribunal has been unable to locate any news report that states that a shia preacher was shot in front of a Imam Bargah mosque [in] 1999. Be that as it may, the Tribunal accepts that it may have occurred. However, the applicant has also stated that he has subsequently received threatening calls and that Shias are being killed in Sialkot on a daily basis.
7. As previously noted the applicant did not repeat the claim that he had been receiving threatening calls after his father was killed in 1999 at hearing and the Tribunal doubts it is true. In reaching this conclusion the Tribunal has considered the translated undated letter stating that the applicant has been warned and the translated undated letter from [name deleted] but as stated, the applicant did not repeat this claim at hearing. Even if the applicant received calls after his father's death, that does not seem to have caused the applicant serious harm in the past as he has not claimed anything happened as a result of these calls and he continued to remain in Sialkot and according to his application and initial testimony at hearing, he stayed in the same house since birth.

8. Even if the applicant received calls, the Tribunal still needs to assess whether there is a real chance of serious harm to him in Sialkot in the reasonably foreseeable future for these reasons
9. The Tribunal has had regard to the voluminous country material submitted by the applicant. The Tribunal accepts that sectarian groups are targeting Shias in Pakistan and are active in Punjab. However, the material submitted has identified one attack against Shia in Sialkot ten years ago, that is it identified a suicide bomb attack on a Shia mosque in September 2004 in which 30 people were killed and over 70 injured. This attack was reportedly in retaliation for the killing of a LeJ member and the arrest of other terrorist suspects.
10. The DFAT Thematic Report on Shias in Pakistan dated 18 December 2013 does not identify any Shia attacks in Sialkot.
11. As discussed with the applicant at hearing, the Tribunal only located one report of possible extremist or sectarian violence in Sialkot against Shia since 2004.
12. The adviser was given a further opportunity to provide evidence of sectarian violence directed against Shia in Sialkot and identified a further report of a Shia being killed on 3 April 2013.
13. The adviser has suggested that because Sufi (Sunni) shrines in Sialkot have been attacked, and because there is a report militants have come from Sialkot and because a Shia person was attacked in April 2013, it is not far-fetched or implausible that the violence may spread to Sialkot and that it would not be reasonable for the applicant to go to Sialkot.
14. In the Tribunal's respectful opinion, this is conjecture. The lack of any reports of sectarian violence in Sialkot other than the attack identified some ten years ago in 2004 and the attack on one Shia on 3 April 2013 does not indicate to the Tribunal that the Shia community in Sialkot has been or is being targeted by sectarian extremist in the last decade.
15. The Tribunal finds the lack of country information indicating that Shia are targeted in Sialkot does not support the applicant's claims that Shia were or are being killed on a daily basis in Sialkot. In reaching this conclusion the Tribunal has considered the letters from [named people] who are both located in Australia. These letters talk about the general situation in Pakistan and do not shed light on the situation in Sialkot. Given the lack of country information in support of any suggestion that the applicant is at danger in Sialkot because he is Shia, the Tribunal is not persuaded by these letters.
16. Even if the applicant received calls after his father's death, the Tribunal is not satisfied that anything has happened as a result of these calls. In addition, given the lack of country information indicating that Shia are targeted in Sialkot the Tribunal does not accept that the applicant will be targeted by Sipah-e Saba or any other militant group in Pakistan because they want to convert him or because he or his father have been involved in Shia religious events or organisations or because Sipah-e-Saba think he will become a preacher or because he is Shia or because he is seen as holding views against the Taliban's religious ideologies. The Tribunal finds that the applicant does not face a

real chance of serious harm in Sialkot in the reasonably foreseeable future for these reasons.

17. For the reasons given above, 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).

Complementary protection

18. 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).
19. The Tribunal is satisfied that the applicant's receiving country is Pakistan.
20. For the reasons set out above, the Tribunal does not accept that there are substantial grounds for believing the applicant faces a real risk of significant harm from Sipah-e Saba, or the Taliban, any other militant group or the government in Pakistan because of his actual or perceived religious profile or because of his religion or involvement in religious activities or because he is seen as holding views against the Taliban's religious ideologies in Sialkot.
21. The Tribunal is not satisfied that there are substantial grounds for believing that the applicant faces a real risk of significant harm as a necessary and foreseeable consequence of him being removed from Australia and returned to Pakistan.
22. The Tribunal **is not** satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
23. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

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

Angela Cranston
Member

ATTACHMENT 1 – CLAIMS AND EVIDENCE

25. In his application the applicant stated as follows:

I am Shia and from a family which for a long time involved in promoting the tenants of Shia Islam. My father was a Shia preacher and whenever he used to go to Shia mosques and other places to preach Shia Islam, he used to take me with him. Due to that I also started involving in Shia activities. I was more interested in helping the Shia community and providing logistical support during our festivals in protecting Shia mosques. Due to my father's profile, my family is considered as one of the known Shia family in our locality. My father used to take me to other parts of Pakistan to preach Shia Islam. I started my Shia Islam studies at [a] Imam Bargah Shia Mosque in Sialkot in [a named district]. Due to my Islamic studies at Imam Bargah, I started actively involved with the mosque activities. My father and I used to go to the Imam Bargah mosque every day for prayers. The society considered that my father was grooming me to take his place as a preacher. Due to my father's activities, our family received threats from the fundamentalist Saudi Islamic groups in Pakistan. Despite the threats, my father continued to preach's Shia Islam.

After I completed my school, I joined Imamia Islamic organisation, a Shia organisation became a general secretary of that organisation.

[In] 1999, I went to Imam Bargah mosque with my father for evening prayers. After the prayer, when my father was coming out of the Imam Bargah mosque, five Sunni Islamic fundamentalists fired on my father in front of the mosque and killed him. I was inside mosque at the time of the killing. When I heard the gunshots, I ran outside and saw my father was in a pool of blood. After his killing, Sipah-e-Saba claimed responsibility for that. Because my father was shot and I saw him in a pool of blood, I was really shaken by the incident. Even now, if I remember the incident, I used to get depression and nervous.

Due to my father's profile as a Shia preacher, we faced many problems even after the death of my father. The Sunni Islamic fundamentalists think that I will also become a preacher sooner or later. Though I do not have such an intention, but due to my Shia religious activities for my work promoting Shia Islam, the Sunni fundamentalists think that I will become a preacher.

As a result of that, I started receiving threatening calls. The Sunni fundamentalists thought that if they forced me to convert my religion and become a Sunni and then they can influence the other Shias in our areas to convert to Sunni Islam. Due to the Shia fundamentalists it threatened need to convert my religion. I did not accept the offer despite their pressure I continued with my religious activities.

I fear I will face series harm if I go back to Pakistan due to my religious belief and my firm stand not to convert my religion. I fear due to my Shia religious belief, I will be targeted and killed in Pakistan. Recent country information indicates that Sunni fundamentalists and Taliban target and kill Shia communities throughout Pakistan. I fear I cannot get state protection from police or other authorities because the Sunni fundamentalists have influence among the authorities. I fear even if I move to other

parts of Pakistan, I will not be able to survive safely because the Islamic fundamentalist and Taliban have presence throughout Pakistan.

26. The applicant appeared before the Tribunal [in] March 2014 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Punjabi and English languages.
27. The applicant was represented in relation to the review by his registered migration agent. The representative attended the Tribunal hearing.
28. The applicant confirmed that his application was correct but he could not remember if it had been translated back to him. The Tribunal noted that there was a statement from an interpreter saying that it had been translated back to him.
29. The applicant stated he came to Australia [in] November 2012. He stated in Australia he had [worked]. He stated in Pakistan he grew [crops] and had done that after and before his father had died. He had not done any other work in Pakistan.
30. The applicant stated he was born in Sialkot and had lived in the same house since birth. His mother currently lived in that house. He stated he was married in 2005 but did not know where his wife was because there were problems and so there was no contact, that is their life was in danger from Sipah-e-Sahaba. The Tribunal asked if he lived with his wife in Sialkot. He stated sometimes he lived in the house he had mentioned and sometimes he lived with his in-laws and then if it got bad he would move somewhere else. The Tribunal put to him this wasn't in his application and his earlier answer had been that had been living in the same place his entire life. The applicant stated the Tribunal had asked if he had lived in this house and he said yes.
31. The applicant stated he came to Australia because the situation in Sialkot was bad and his father had been threatened and had died in 1999. The Tribunal asked if anything happened since 1999. He stated the situation was bad and they used to beat up the Shias in Sialkot. He stated there was a bomb blast in 2004 that had affected him. The Tribunal asked if there were any other incidents. He stated whenever there was a gathering they would come and disturb the gathering. He stated he did not want to fight with them.
32. The Tribunal put to the applicant that he could find no information about a mosque being targeted in 1999. The applicant stated his father was shot. He stated he did not know if it had been reported.
33. The Tribunal put to him that it had to think about whether he would be targeted or whether he would suffer harm if he went back to Sialkot. The Tribunal indicated it was not sure if he would be harmed if he went back to Sialkot. He stated Shias were being killed over there on a daily basis. The Tribunal put to him that the only incident it could find was the 2004 incident.
34. The Tribunal put to him that it had researched the situation in Sialkot and the country information did not suggest that Shia were having a difficult time in Sialkot. The Tribunal indicated it had found information about the incident in 2004 but other than

that it had found no information that suggested Shisa had been targeted in Sialkot. He stated that when some people were praying people would come and kill them and then run away.

35. The Tribunal put to the adviser that it could not find any information about a Shia mosque being attacked in 1999 and the only incident it had found was in 2004. The Tribunal indicated it needed to think about whether there was real chance that the applicant would suffer harm if he went back to Sialkot. The adviser stated that Shia would suffer and if there was any agreement between the government and the Taliban and relocation was an issue. He stated the Taliban and Islamic extremists continued to consider Shia as infidels and Shia faced real persecution in Pakistan.
36. The adviser stated that maybe the internet online in 1999 was not that big in Pakistan. He also stated that there was a terrorist attack by Sipah-e-Sahaba on three Sufi shrines in Sialkot on 3 January 2014.
37. The adviser indicated that he wanted until [date] March 2014 to submit further country information and the Tribunal agreed not to make a decision before then.
38. [In] March 2014 the Tribunal received a letter from the adviser that submitted the following:

The Refugee Documentation Centre of Ireland, 2 April 2013 reported on current conditions in Lahore

Jafria News noted that 11 Shia men were martyred in 20 days across Pakistan in the ongoing Shia target killing by SSP, LeJ and TTP Terrorists

Shititeneews, a shia worshiper was shot martyred in Sialkot by Wahabi terrorists, 4 April 2013

Shia Post, Takfiri Terrorists Attack 3 Shrines of Great Saints in Sialkot, 3 Jan 2014.