

0902754 [2009] RRTA 675 (31 July 2009)

DECISION RECORD

RRT CASE NUMBER:	0902754
DIAC REFERENCE(S):	CLF2009/11654
COUNTRY OF REFERENCE:	Pakistan
TRIBUNAL MEMBER:	George Haddad
DATE:	31 July 2009
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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 and Citizenship 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, arrived in Australia [in] October 2008 as the holder of a student visa and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] February 2009. The delegate decided to refuse to grant the visa [in] March 2009 and notified the applicant of the decision and his review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] April 2009 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to 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).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to 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.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: 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.
14. 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. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. 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.
16. 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 persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. 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.

17. 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.
18. Whether an applicant is a person to 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.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file and the RRT file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

The protection visa application

20. The applicant sets out his claims in the protection visa application which may be summarised as:
 - He left Pakistan because he wished to join his wife who was studying and held a student visa in Australia. He has supported her financially since she arrived in Australia and she has taken all his savings. On his arrival she denied that they were married and she withdrew her support of his visa application in connection with her student visa.
 - He fears that if he were to return to Pakistan, his wife's family has threatened his family in Pakistan and made a false report about the applicant to authorities in Pakistan. In addition, he used to be a member of the Pakistan Muslim League Q who do not support the current government and this would increase the chance of his persecution by the authorities.
 - In reply to the question: "who do you think may harm/mistreat you if you go back?" the applicant's answer is "I will be killed". In reply to the subsequent question: "why do you think this will happen to you if you go back?" the applicant's reply is "Because my wife and her family has lied and bribed the authority about our marital status and use my involvement in the Pakistan Muslim League Group Q as a reason to persecute me" (sic).
 - The applicant stated that the authorities cannot and will not protect him because his wife's family have bribed the authorities.
21. In conjunction with his protection visa application, the applicant submitted a short written statement bearing the same date as the receipt for the protection visa application charge which states as follows:

I, [name] of [address], hereby stated that I have requested [name] (MARN [number]) of [organisation] to lodge an application for Protection Visa on my behalf. I understand that I will receive an unfavourable decision for my Protection Visa application to the Department of Immigration and Citizenship. The purpose of the lodgement of this visa is to obtain Ministerial discretion at the later stage (sic).

22. The applicant provided a certified copy of the English version of a marriage certificate between him and [name deleted in accordance with s431(2) of the Migration Act as it may identify the applicant] registered [in] August 2008. He also provided certified copies of untranslated documents. Only the date and wet stamp at the signature block are in English; the date shown is [in] 4/2008 and the wet stamp states “[name], President Pakistan Muslim League Youth Wing, Rawalpindi (illegible)”.

The review application

23. The applicant lodged the application for review [in] April 2009 along with a letter from his migration agent, [name deleted: s431(2)] of [organisation deleted: s431(2)], stating that submissions and other material will follow as soon as possible.
24. By letter dated [in] May 2009, the Tribunal advised the applicant that it has considered the material before it but was unable to make a favourable decision on the basis of the material alone. In the same letter, the Tribunal invited the applicant to appear before the Tribunal to give evidence and present arguments [in] June 2009.
25. The Tribunal received a submission dated [in] May 2009 and attached documents in support of the review. The submission argues that the applicant held a prominent leadership position in the Pakistan Muslim League (Q) as [Position A] of the Youth Wing Rawalpindi PP3 and that the applicant’s claim is specifically about persecution directed at him personally by the opposition group. The submission details the applicant’s role and responsibilities as [Position A] and his past experience of being bullied and harassed. It submits that the applicant went into hiding when there was an election and he departed Pakistan from Lahore rather than Islamabad. It submits that in December 2008, while the applicant was in Australia, members of the Pakistan People’s Party (PPP) went to his family home and intimidated and assaulted his brother causing him injury. They demanded that his family ask the applicant to return to Pakistan His family left the family home and relocated in Gujar Khan. The PPP found the applicant’s family in Gujar Khan and shot his brother in the foot. His brother reported the incident to the police but the police took no action.
26. The submission goes on to discuss the reasons for the applicant’s student visa cancellation and the dispute he had with his wife. It states that he and his wife have known each other since 2003 and were married in August 2006 without their parents’ consent as in their parents’ eyes the marriage would not be acceptable for a number of reasons. Families arrange marriages in a way to ensure the inheritance and any property stays within the family and in the case of the applicant and his wife they belong to different sects of Islam. The applicant is a Sunni and his wife belonged to the Al Hadiths Sect.
27. The submission argues that the applicant is unable to return to Pakistan because he left on the assumption that he had a happy marriage and a plan to settle in another country. He sold his printing business and converted all of his assets into cash which he has given to his wife. He has effectively burnt his bridges and would not be able to re-establish himself economically. He is also considering proceedings in the Family Court of Australia to recover some of the monies he has given to his wife and would be unable to do so if he were to return to Pakistan.
28. The supporting documents attached to the submission include:

- A First Information Report (FIR) and its English translation. The FIR is dated [in] September 2008 and refers to police responding to a call to attend to a procession by members of the PML (Q) in Lal Kurti, Rawalpindi. The report refers to the applicant by name and records that he has violated section 16 MPO of the law (RRT file folio 60).
- An untranslated document (RRT file folio 59).
- Three membership/identity cards and English translations referring to the applicant and PML(Q) (RRT file folios 56, 57 and 58).
- A letter in English dated [deleted: s431(2)] 7/09 titled "Certificate". The letterhead states "Tehsil Nazim Gujar Khan District Rawalpindi". It states that "[the applicant's father] alone with his family is living in [location] Gujar Khan City and he been migrated from La Kurti Rawalpindi". The letter is signed "Tehsil Nazim" (RRT file folio 55).
- A letter in English on a letterhead of "[organisation] LAW ASSOCIATE" – "District Bar Association Rawalpindi". It bears the reference number [deleted: s431(2)] and is dated [deleted: s431(2)] 3/09. The letter is addressed to: "[the applicant] son of [name and position of applicant's father] PML (Q) Lal Kurti Rawalpindi Subject: INFORMATION LETTER" (RRT file folio 54). The letter provides as follows:

Dear Client,

Assalam-o-alikum

I hereby inform you about present condition of your political case no.[number] date [date]-09-2008 under section 16MPO pending in the Courts of Justice. I want to come your knowledge that the local police and other investigating agencies searching you day and night and that raiding on yours house because present Government of the Pakistan wants to execute the all political members who are involved in political of affairs were guilty or innocent. As I am your legal advisor therefore this is my legal duty to advice you that you should never come back to Pakistan because many investigating agencies and local police is searching you and as well as other party members. The court of Area Magistrate has also issued your non boilable warrants last month. In the light if these warrants the local police become more active to arrest you.

Therefore you are advised to never come back to Pakistan, because your life is in danger by the political enemies and police.

I once again advice you to stay abroad wherever youa re living and don't come back to Pakistan until I advice you. God may keep you in safe.

Your well wisher

[name]

Advocate High Court

Rawalpindi, Pakistan

- A letter dated [deleted: s431(2)] 08/2006 and bears the reference number [deleted: s431(2)]. The original and the translation bear a stamp of a notary public over-written with a date which is illegible (RRT file folios 52 and 53). The English translation is as follows:

Notification

Dear [applicant] we are proud upon you that have much struggled for PML Youth Wing as you have work hard to establish and to make famous political party on the way of Islamic Rule and welfare of public our president of Pakistan PML (Q) Mr. Chouhdayr Muhammad Shujahat Hussain has permuted you on the post of [Position A] Muslim League Youth Wing Ward [number]. He regard you for your honesty, patriotism, unity faith and discipline that you have for PML 9Q in Pakistan and we will hope that you will prove your self as a nice member of PML (Q).

God May Bless You

Raja Abdul Qayum

President PML (Q) Youth Wing Rawalpindi

Office of PML Public Sectriat Raffie Road Rawalpindi.

- A letter, an English version and an English translation bearing the reference number [deleted: s431(2)] and dated [in] 3/09. The English translation states that the letter bears the letterhead of “[Person 1], Member of National Assembly Area NA-74 Rawalpindi” (RRT file folios 49, 50 and 51). The English translation is as follows:

INFORMATION NOTICE

[The applicant]

[Position A]

PML (Q) Youth Wing Lal Kurti Rawalpindi.*

You are hereby informed by this letter, that the existing Government has plans to arrest and start a speedy trial against members of the PML (Q) for the political cases registered against them. A political case [number] dated [date] 9-08 under section 16MPO is also registered against you. The present Government is trying to trial the above mentioned case against you in the court of lay. The present Government is involving the ex and present members of PML (Q) in different political cases.

Therefore, you are advised not to come back to Pakistan till conditions improve because as you come back, the police after your

arrest might level more fake political cases, which will not be good for your life wealth and respect. I will keep informing you about the political situations here. As far as possible please remain outside Pakistan which will be better for you and your family.

Your well wisher

[Person 1]

*Rawalpindi an important city of Pakistan

- A letter, and English version and an English translation of it (RRT file folios 46,47 and 48). The English translation is as follows:

LETTER HEAD OF RAJA ABDUL QAYYAM

President Pakistan Muslim League Youth Wing RAWALPINDI

Dated [date] 42009

Dear [applicant]

[Position] PML (Q)

Youth wing Lal Kurti **Rawalpindi.**

Greetings

I hereby inform you that few days ago during a press conference I had requested the Government to stop the illegal and unfair police raids on the houses of the members of PML (Q). I specially requested the present administration not to raid your house. Keeping the political situation in mind, I will strongly suggest you to find a place to live elsewhere, which will be good for you.

Your well wisher

Rala Abdul Qayyum

- Photocopies of what appears to be pages from two different newspapers with one portion or article highlighted. An English translation following the article relates to a report in a newspaper quoting Raja Abdul Qayyum, President, of PML (Q) Rawalpindi in an interview referring to action by the police against [applicant's name deleted: s431(2)] being illegal and condemnable (RRT file folios 40, 41 44 and 45).
- Untranslated newspapers (RRT file folio 42).
- Printouts from Yahoo Mail and Websites referring to cases or incidents relating to Pakistan and PML – Q (RRT file folios 37 and 38).
- Country information reports referring to Pakistan (RRT file folios 26 – 36).

29. The applicant appeared before the Tribunal [in] June 2009 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Urdu and English languages.
30. The applicant was represented in relation to the review by a registered migration agent. The representative attended the Tribunal hearing.
31. During the hearing the applicant also submitted the following further documents:
- A statement and an attached English version which the applicant stated is a statement made by his wife (RRT file folio 73).
 - A marriage certificate and an English version of it. It relates to the applicant's marriage to [name deleted: s431(2)]. The date of the marriage registration is [in] 08-2006. The certificate was issued [in] August 2006 (RRT file folios 74-76).
 - A certified copy of pages of the applicant's wife's passport (RRT file folios 77 and 79).
 - DHL and Western Union receipts; and a copy of a cheque payable to Carrick Institute of Education (RRT file folios 78, 82, 83 and 84)
 - A document and an English version of it which states that it is an application to D.I.G Rawalpindi Circle. The applicant during the hearing stated that D I G refers to Detective Inspector General (police), and the document refers to a statement made by his wife's father to the police (RRT file folios 80 and 81). The English version is as follows:

The statement of [name] R/o House No. [number] near Madina Mosque Lal Kurti Rawalpindi, stated that my real daughter [name] is living in Australia. Where as [applicant] S/o [applicant's father] R/o House No. [number] Lal Kurti Rawalpindi when to Australia in the month of October 2008 and now it is came to my knowledge that he is declaring my daughter as his wife. He is calling her a wife but actually my daughter is not married him. He has prepared forged and fake document of Kikkah Nama and now the said [applicant] is also residing in Australia and he has started to torch my daughter mentally. I request before you that may kindly call his parents his the police station and be advised them to call [applicant] in Pakistan. So that he cant disturb my daughter in Australia.

Stamp of DIG Circle Raawalpindi

Forwarded to S.H.O Civil Line for legal action signed on [date]12-08

- Two Complaint and Summonses for an intervention order both dated [on] 1/2009; and one Interim Intervention Order dated [in] 11/2008 made against the applicant by [his wife] (RRT file folios 89A, 89B and 89C).

The Tribunal hearing

32. The applicant presented a valid Pakistani passport bearing his personal details. It was issued [in] January 2008 and is valid until [date deleted: s431(2)] January 2013. The passport included an Australian visa granted [in] October 2008. The applicant arrived in Australia [in] October 2008.
33. The applicant provided his address in Pakistan as [deleted: s431(2)], Lal Kurti, Rawalpindi. He stated that he lived at that address until he departed Pakistan to travel to Australia. The applicant lived at that address with his father, [name deleted: s431(2)] aged 75, his mother [name deleted: s431(2)] aged 65, his brother [name deleted: s431(2)] aged 31 and another brother [name deleted: s431(2)] aged 26. An older brother, [name deleted: s431(2)] aged 38 lived at a different address in Rawalpindi. The applicant stated that he also has four sisters who are married; two live in Lahore and the other two in Islamabad.
34. The applicant said that he had no difficulty obtaining his passport and no difficulty departing Pakistan.
35. The applicant gave details of his education. He stated that he completed tertiary studies at Government Degree College in 1994 and began working with his father and brother in the family printing press business. He said that his father has retired but his brother [name deleted: s431(2)] continues to operate the business.
36. The applicant stated that in 1998 he opened his own printing press business in Lal Kurti, Rawalpindi. He has sold his business.
37. The applicant stated that he married [in] August 2006 in the Rawalpindi Court.
38. The applicant stated that he fears returning to Pakistan because:
 - Of his political opinion. The Pakistan People's Party (PPP) and the People's Students Federation (PSF) filed false reports against him with the police as he is [Position A] of the PML – Q in his area.
 - The family of his wife would harm him as the marriage was outside the family, issues of honour and reputation, wealth and religion.
39. The applicant stated that he organised a rally in Lal Kurti with around 4000 participants. Their only demand was to have a public meeting place to meet and talk. The police used tear gas, harassed and beat people. The applicant stated that the police later filed a First Information Report against him alleging that he had burnt the flag of the PPP. The police kept going to his family home looking for him. His family moved to Gujar Khan which is around a 2.5 hour-drive from Lal Kurti but the police went to their new address. They took his brother [name deleted: s431(2)] one time. He said [name deleted: s431(2)] has finished the business in Lal Kurti because of police harassment. The applicant said that his wife's family are in the PPP and that is a reason the police keep going around to his family home.

40. I observed that he had said that his marriage was not known to his family or his wife's family. That he and his wife married in secret. The applicant said since the intervention order his wife obtained against him, they had to disclose their marriage.
41. I asked the applicant to clarify why the intervention order in Australia would lead his wife to tell her family of the secret marriage as to tell her family would place her in danger of honour killing with her own family. The applicant said that his wife had told her parents that she was not married to him but that the applicant had prepared false documents of a marriage to her. The applicant said that on the same day his wife obtained the intervention order against him, she contacted her family and told them that he had fabricated their marriage and asked that her family go around and ask the applicant's family to tell him to stop bothering her.
42. I asked the applicant how he came to know that his wife had told her parents of the marriage. He said that her father made a statement to the police and presented a document in support of this (the document is listed above). The applicant said it is a copy which has been translated. I asked the applicant how he came to have this report to the police. He said that he paid the police and obtained a copy. His brother paid the money and collected a copy from the police. The applicant said prior to this his wife's family took the police to the applicant's family house and his wife's family abused his family and her brother and her cousins beat up his brother because they are of different race and religion.
43. The applicant then presented a marriage certificate and an English translation of it; an affidavit in English and a version in the original language said to be made by his wife; intervention orders, copy of pages of his wife's passport. I asked the applicant about the English version of the marriage certificate. He said he obtained the English translation from the Court where the marriage was registered at the same time as he obtained the marriage certificate in the original language. The applicant said he obtained the English translation for the purpose of the visa application to Australia. I noted that the date on the English translation is [in] August 2006 but his wife and he travelled to Australia in 2008. The applicant said he had planned in advance and had been advised by an agent that he would need an English translation of his marriage certificate even before the marriage had taken place.
44. The applicant referred to the affidavit made by his wife to support that the marriage had taken place and that she had no money at that time. He also stated that the marriage certificate is issued in four copies: one copy is retained by the Court, one is provided to the Union Council, one copy is retained by him and the fourth copy is give to the wife's family or is retained by the wife.
45. I asked why he had all these documents in his possession, the applicant said because the marriage was a secret he kept all documents in his possession.
46. The applicant also referred to his wife's passport where it shows him as her husband. He stated that is further proof of the marriage as in Pakistan if a woman is not married, her father's name would appear on the passport.
47. I indicated to the applicant that his claims for protection had changed significantly since his protection visa application. At the time of the visa application, he had provided the reason for his fear of returning to Pakistan as fear of his wife's family. He mentioned

that he used to be a member of the PML - Q only as an additional reason which may increase the chance of his persecution. He had also provided a statement with his protection visa application stating that he has discussed his claims with his then migration agent and he understands that he would not receive a favourable decision but that he wishes to apply to the Minister to use his discretion to grant him a visa. In his application for review, his claims place much more significance on the political aspects and his role with the PML – Q has changed from “used to be a member” to holding a “prominent leadership position” and provided a significant number of documents relating to his political profile and the associated risk.

48. I asked the applicant how he obtained the supporting documents – a letter from a lawyer regarding a case against the applicant and PML – Q membership cards...He said his brother and PML – Q members sent them to him. He said that the lawyer who provided the letter is a PML – Q member and he has the responsibility to monitor who has court actions against PML – Q members.
49. The applicant gave an account of how he became a member of the PML – Q and in 2006 he was offered the position of [Position A] of the youth wing.
50. I asked the applicant about a letter which he submitted to the Tribunal from a member of the national assembly for Rawalpindi – [Person 1] The applicant said this man used to be a member of the national assembly and was a member of PML – Q. The applicant said he was elected in 2002. The applicant provided the name of the current member of the national assembly representing Rawalpindi.
51. I indicated to the applicant that I have a copy of the members of the national assembly but [Person 1] is not listed. I asked the applicant if this man stood as a candidate in the 2008 elections, he said he did not. I asked how many members represent Rawalpindi in the national assembly. The applicant said there are many. I asked if he knew, as [Position A] of the youth wing in the PML – Q if he knew how many candidates the party fielded in the 2008 elections. The applicant said he would count them. After some delay, he said he only knows of two in his own area or constituency. I noted that on the letterhead of [Person 1] it is stated that he is a member for “Area NA – 74” and asked the applicant how his area is identified; he said “54” The applicant named the member and the PML – Q candidate for area “NA - 54”. I asked the applicant if he knew where the area mentioned on the letterhead of [Person 1] as “NA- 74 – Rawalpindi” was. The applicant said Rawalpindi has many districts. I observed that the applicant indicated that he knew [Person 1] as a member of the PML – Q. The applicant said that he did not know him. I observed that the letter indicates that the letter is dated [in] March 2009 and states that he *is* a member of the national assembly for an area in Rawalpindi I observed also that the applicant had earlier given evidence that this member was elected to the national assembly in 2002 and he was a PML – Q member.
52. I indicated that I have printed a copy of the results of the 2002 elections and they indicate that Area NA-74 is not in Rawalpindi. The elected member for Area NA – 74 is of a different name, *not* [Person 1]. I put to the applicant that with his assistance we have established that [Person 1] is not the current member for Area NA- 74. We have also established through the election records that Area NA- 74 is not in Rawalpindi and that the elected candidate for Area NA- 74 in 2002 was not [Person 1] The applicant stated that there is some confusion and wished to make a statement.

53. After a long silence, the applicant said that the current government has shut down all the public secretariats in Rawalpindi after the murder of Benazir Bhutto. He needed to obtain a letter, he contacted the president of PML- Q youth wing in Rawalpindi, Raja Abdul Qayyum. Mr Qayyum told him that because the secretariats are shut down and their members are not sitting in their own constituencies, he will send him material from a different constituency. The applicant said he did not know [Person 1]. I observed that he had earlier said he knew that this man was the PML-Q candidate and was elected in 2002. The applicant said he was confused between NA – 74 and NA – 54. I asked the applicant whether NA – 74 is in Rawalpindi, he said it was not.
54. I indicated to the applicant that the letter in discussion submitted in support of his claims indicates that the writer is a current member for the national assembly. It indicates that the writer knew the applicant and of his circumstances. It appears to contain false information when checked with other sources. I invited the applicant to comment. The applicant said he would have to check some details as he is confused.
55. I asked the applicant why he had not presented any of these significant and detailed claims on the ground of political opinion at the time of lodging his protection visa application. The applicant replied that his previous migration agent advised him that at that time he did not have sufficient proof and as the application is ongoing and the case will run for six months, he could make these claims when he has obtained the supporting documents translated into English. I indicated that if the Tribunal finds that the applicant has provided documents containing false information, it may not be satisfied that the other documents are reliable.
56. I indicated to the applicant that I had some concern about the credibility of his oral evidence. He gave evidence that the police were regularly harassing his family; however, he was able to obtain a report from police through payment or bribery. He also submitted that the police in Pakistan are very corrupt saying “you can pay the police and get whatever you want”. The Tribunal observed that given his statement about the police, the possibility may also exist that he too may have been able to obtain false reports and documents from the police through bribery. I indicated that I have concerns about the credibility of how his claims on political opinion grounds had developed so significantly between the time of the protection visa application and the time of the review. I had concerns with the credibility of the claim that his marriage was a secret to her family given that his wife’s passport bore his name as her husband.
57. I also indicated that I have concerns with the credibility of his claims that he was in hiding and only travelled at night because of his fear of the police but he was able to depart Pakistan without incident. He said for this reason he departed from Lahore. He was lucky that he was able to depart without incident. He added that the arrest warrant was issued [in] April 2009 and was shown to his family when they searched his house. But he did not have a copy of the arrest warrant. Previously there was only the First Information Report and the police were not after him but now he claims there is an arrest warrant. I asked the applicant that given he has said that the police are corrupt and through bribery would do anything, why he did not ensure his departure would be without incident by bribing the police rather than rely on luck. He said that at that time there was only the FIR against him so the police were not pursuing him. Also the police wait until they have 7 or 8 persons to arrest. I asked if the police were not pursuing him because they only had an FIR, why then was he in hiding and only travelling at night. He said he only had difficulty in Rawalpindi and the police do not need anything to

arrest him. That is why he only travelled at night and did not attend meetings. I asked what caused him to run from or fear the police, he said the FIR. I indicated that he appears to be providing more inconsistencies. He had said that it was following the arrest warrant [in] April 2009 that the police had an interest to arrest him. Further, I asked if the arrest warrant was issued [in] April 2009 why the lawyer in his letter dated [in] March 2009 would warn the applicant that the police were searching for him day and night as the government wants to execute all political members and that warrants have been issued and the police would arrest him. He said because the government hates them so much they refer to them as the killers' league.

58. I further indicated to the applicant that I have concerns about the credibility of his oral evidence and may not accept any of his claims. I reiterated the reasons including his evidence regarding [Person 1], his claims having significantly changed in magnitude since his protection visa application with the Department, the way in which his evidence is suggesting the dire state in which PML – Q members are in Pakistan, is not reflected in or supported by independent sources such as international reports or on the official Website of the PML – Q.
59. I indicated also that I find it implausible that if his wife's family were of the belief that she is single and given what he had submitted about the strict Islamic sect to which her family belongs, and his evidence that if she was not married she would have her father's name on her passport, that they would not have been involved in the arrangement of her travel to a foreign country alone.
60. The applicant said he prepared all of his wife's documents in secret; her father works in Kuwait and only visits Pakistan once every two months. Only her mother and little brother live at home. I noted that he had earlier said that his wife's brother hit his brother [name deleted: s431(2)] and I asked how old is his wife's little brother? He said 22 years. The applicant said his wife had kept everything from her family about her arrangements, they knew nothing of it. I indicated that I may find it difficult to accept as credible that a supposedly Moslem single woman from a strict sect associated with Wahhabism would arrange her own passport and departure to study overseas without any involvement from her own family. The applicant restated that his answer remains the same.
61. Following the hearing, by letter dated [in] June 2009, the applicant was invited to comment in writing in the following terms:

Dear [applicant]

**INVITATION TO COMMENT ON OR RESPOND TO INFORMATION –
[APPLICANT]**

I am writing about the application for review made by you in relation to a decision to refuse to grant a Protection (Class XA) visa.

You are invited to comment on or respond to information that the Tribunal considers would, subject to any comments or response you make, be the reason, or a part of the reason, for affirming the decision that is under review.

The particulars of the information are:

- You submitted a document dated [date] March 2009 which in the English translation purports to be from [Person 1]. The letterhead states that [Person 1] is a Member of the National Assembly Area NA – 74 Rawalpindi.
- During the Tribunal hearing held on [date] June 2009, you indicated that you knew [Person 1] to be a member of the PML – Q and that he was elected to the national Assembly in 2002.
- The Tribunal has obtained the following information:
 In the 2002 National Assembly elections, Area NA-74 in Punjab was decided as follows:
 Members of the National Assembly by Province
 “NA-74 Bhakkar-II Ch Shujjat Hussain (PML-Quaid)
 Source: Pakistan Electoral Commission website”
 Downloaded from *Islamic Republic of Pakistan: Legislative Election of 10 October 2002* <http://psephos.adam-carr.net/countries/p/pakistan/pakistan20022.txt>-

GeoTV website at http://www.geo.tv/election2008/prev_elections.html there is no mention of [Person 1] among the candidates who stood for the 2002 National Assembly elections.

In 2008 the candidates for Area 74 were:

1 Hafeez Ullah Khan Niwani, Post Office Shahni, Tehsil & District Bhakkar. (Bucket)

2 Rashid Akbar Khan Niwani, Post Office Shahni, Tehsil & District Bhakkar. (Sewing Machine)

3 Muhammad Afzal Khan Dhandla Dhandla House, Bhakkar. (Tiger)

4 Murid Hussain Shah Angra Daggar, Tehsil Darya Khan, District Bhakkar. (Telephone)

5 Moulana Muhammad Safi Ullah House No.324/A, Mohallah Rahimabad, Bhakkar. (Takhti)

http://www.geo.tv/election2008/images/Final_List_Contesting_Candidates/Punjab_NA.pdf

Why this information is relevant to the review

This information is relevant to the review because the document purporting to be a letter in support of your claimed fear of persecution if you were to return to Pakistan appears to contain false information. The information from the independent sources indicate that Area NA 74 is not within the electorates of Rawalpindi; and no-one by the name of [Person 1] is either currently a member of the National Assembly, or stood as a candidate for the elections in 2008 or in 2002. Subject to your comments and/or response, the information may lead the Tribunal to conclude that you have provided false information to mislead the Tribunal regarding your claims for protection. It may lead the Tribunal to not accept this and other documents you have submitted in support of your claims, as reliable. This may in turn be part of the reason the Tribunal may affirm the decision under review.

The particulars of the information are:

- You submitted a document dated [date] March 2009 which purports to be from [name]. The letter is in English and indicates that the writer is an advocate of the High Court. The letter warns you not to return to Pakistan as the police are searching for you, a warrant has been issued for your arrest and that the present government of Pakistan wants to execute “all political members who are involved in political affairs”.

- During the Tribunal hearing held on [date] June 2009, you stated that the writer of this letter is a member of PML – Q Lawyers Wing in Rawalpindi. During the hearing you also stated that the police wanted to arrest you only after they had a search warrant on [date] April 2009.
- The Tribunal obtained other relevant information:
The Pakistan Lawyer’s Directory of the Pakistan Lawyers website at <http://www.pakistanlawyer.com/> does not list this person as a lawyer in Pakistan.

The Punjab Bar Council’s Website at <http://www.pbbarcouncil.com/init/index.php> does not list this person in the Rawalpindi Division or any other division.

Why this information is relevant to the review

This information is relevant to the review because the information contained in the letter is inconsistent with your evidence during the hearing in that you said that the police were searching to arrest you after the [date] April arrest warrant was issued, however, the letter dated [date] March warns you that the police are searching and that a warrant has been issued relating to you.

In addition to the above consistency, there does not appear to be a person registered as a lawyer by the name of the writer in Pakistan. Subject to your comments and /or response, the Tribunal may conclude that this document contains false information and you have provided this false information to mislead the Tribunal regarding your claims for protection. It may lead the Tribunal to not accept this and other documents you have submitted in support of your claims as reliable. This may in turn be part of the reason the Tribunal may affirm the decision under review.

You are invited to give comments on or respond to the above information in writing.

62. The letter provided the date by which the response is required and information regarding extension of time.
63. [In] June 2009 the Tribunal received a reply dated [in] June 2009 to its letter above from the applicant’s migration agent requesting an extension of time of at least eight weeks. The Tribunal granted an extension of time in accordance with the Migration Regulations 1994 by letter dated [in] June 2009.
64. [In] July 2009, the Tribunal received a letter from the applicant’s migration agent acknowledging that the response to the Tribunal’s letter is due no later than [date deleted: s431(2)] July 2009 and that the applicant is in contact with his friend in Pakistan and is attempting to rectify the clerical errors in the documents referred to in the Tribunal’s letter before the due date.
65. [In] July 2009, the Tribunal received a further submission from the applicant’s migration agent dated [in] July 2009 and included attachments.
66. The submission provides that in relation to [Person1] who provided the letter referred to above, the applicant does know him and that the contents of the letter are accurate but “*unfortunately there appears to be a misunderstanding due to a clerical error made by the computer operator in using the wrong letterhead when typing out the letter...*”. It goes on to state that in fact [Person 1] comes from another division not known to the applicant but he is still awaiting clarification of this matter.

67. The submission also states [name deleted: s431(2)] (see letter referred to above) is a lawyer from Gujarkhan and the applicant is still awaiting certified proof of this fact but to no avail.

68. The attachments are:

- A letter dated [in] July 2009 headed as “PML (Q) PP-6 Rawalpindi Muhammad Basharat Raja. Ex. Minister for Law and Justice; Ex Minister for Rural Development; Ex. Minister for Parliamentary Affairs and Local Bodies”.

It addresses the applicant and comments of the activities of the PML (Q) in Pakistan and advises the applicant to remain where he is now. It is signed “For Secretary for Political Affairs” (see T1 folio 131).

- A document in the original language and a similar looking page described as the “English Version” The page in the original language shows two wet stamps and the date is illegible. The English version shows one wet stamp from a notary public and an illegible date.

- The English version states as follows:

“Arrest Warrant of [applicant] S/o [applicant’s father] in case FIR No. [number] Dated [date]-09-2008 under section 16MPO

Police Station Civil Line Rawalpindi.

S.H.O. Police Civil Line is directed to arrest [applicant] and be perused him before this court on [date]-04-2009.

Magistrate Section 30
Rawalpindi (sic).” (See T1 folio 130)

- Copies of two news clippings and their English Translation from “[publications and dates deleted: s431(2)]. The articles state that [Position A] of the Youth Wing of Q-League Rawalpindi, [applicant’s name deleted: s431(2)] has provided a statement to the paper that Nawaz Sharif must stop false statements against former president General Pervez Musharraf and other related comments.

FINDINGS AND REASONS

69. In order to be a refugee under the Convention, it is necessary for the applicant to be outside his country of nationality and to hold a well-founded fear of persecution for reasons of at least one of the five grounds enumerated in the Convention.

70. The applicant has claimed that he is in need of protection for reasons of his political opinion and as a member of a particular social group relating to ‘honour killing’. He claims to be a [Position A] of a branch of the PML-Q in Rawalpindi and as a result of his political activities, is of interest to the police who have issued a warrant for his arrest. He also claims that he married his wife without the knowledge of her parents. She belongs to a different Moslem sect. Due to issues relating to religious difference,

honour, reputation and wealth his estranged wife's family would kill him if he were to return to Pakistan.

71. The Tribunal accepts that the applicant's claimed fears involve serious harm and systematic and discriminatory conduct, and that the essential and significant reasons for the harm claimed to be feared are political opinion and membership of a particular social group, either or both of which are Convention reasons.
72. In both his Protection visa application and his review application the applicant described himself as a national of Pakistan. The applicant arrived on a valid Pakistani passport with a valid visa to enter Australia. On this basis the Tribunal accepts that he is a citizen of Pakistan. As the applicant has made no claims against any other country and as he is outside his country of nationality, for the purposes of the Convention the Tribunal will assess his claims against Pakistan.
73. The Tribunal's task in the present case is to consider whether the applicant fears persecution for the reasons described above, and if so, whether that fear is well-founded. This task requires examining the claims that he has raised and the evidence that he has submitted, in addition to relevant independent country information.

Assessing the applicant's claims

Political opinion

74. As noted in the summary of evidence above, I noted to the applicant that his political claim had developed significantly from the time of the protection visa application to the time of review. He had originally claimed that he "used to be a member" of the PML-Q and referred to it as a factor which "will increase the chance of" being persecuted for the preceding reason of fearing his wife's family. At review, his claim had developed to being the holder of a "prominent leadership position", that of [Position A] of the youth wing of the Rawalpindi Branch of the PML-Q, having organized a political rally, being of interest to the police, hiding and traveling only at night and an arrest warrant has been issued for his arrest. In respect of this significant development of the claim, the applicant replied that his previous migration agent had advised him that it is better to wait until he obtained all the necessary documents (from Pakistan) to detail his political claims. I found this reasoning to be inconsistent with statements from him and from his previous agent that he was not expecting a favourable decision but he is following a process in order to appeal to the Minister for intervention.
75. I have also had regard to the supporting evidence the applicant submitted to the Tribunal with the submission of [date deleted: s431(2)] May 2009 (see RRT file folios 26-66). I indicated to the applicant during the hearing and I put to him for his comment in a letter subsequent to the hearing pursuant to s.424A of the Act that I had concerns with some documents which appeared to contain inconsistent or incorrect information. The documents were a letter of support from a person purported to be a Member of the National Assembly of Pakistan representing an area in Rawalpindi. At the start of the discussion of this letter, the applicant said he knew the Member [Person 1] and that he was a PML-Q member and that he was elected in 2002 but did not stand at the 2008 elections. The letter indicates that the purported Member of Parliament knew, or knew of, the applicant (see RRT file folio 50 and 51). However, when I referred to information from the electoral results of two previous elections in Pakistan which

showed that a): the area which [Person 1] is said to represent according to the letter is not an electoral area in Rawalpindi; and b): that the results of the 2002 elections for that area or any areas in Rawalpindi did not include the name of [Person 1], I suggested that the information appears to be false. The applicant distanced himself from the letter and said, contrary to his earlier comments, that he did not know this man and that his PML-Q President had provided this letter to him. He stated that he has become confused and would have to check some details (see above, paras 50 – 55)

76. I also indicated that I had concerns with the letter purported to be from his lawyer who was also said to be a PML-Q member in the Rawalpindi Lawyers Wing. The letter was dated [in] March 2009 and advises the applicant that warrants have been issued for his arrest and the police are searching for him day and night. The applicant had stated that the arrest warrant was dated [in] April 2009, so it did not make sense that a letter dated [in] March would refer to arrest warrants. The letter did not include any reference to an address or contact details for the purported lawyer. In the s.424A letter, I indicated to the applicant that the writer of that letter, who is claimed to be an advocate of the High Court, did not appear on the register of the Pakistan Directory of Lawyers or the Punjab Bar Council list.
77. I have had regard to the applicant's responses to the concerns I have raised with the above documents. I do not accept them as reliable. The information they contain is not supported by independent sources and in the case of the purported lawyer's letter, it also contains inconsistent information regarding the arrest warrant. This also significantly questions the credibility of the claim. I have also found the applicant's oral evidence to lack credibility; I do not accept that his evidence was truthful. I have also had regard to the other documents he provided which I have listed in detail above. I do not accept any of them as reliable to support his claim of involvement in political activities and the claimed adverse interest in him by the police or the authorities in Pakistan.
78. I have had regard to the submission and attachments received [in] July 2009. In this submission, the applicant reverts to knowing [Person 1] after denying knowledge of him when the incorrect information was put to him at the hearing. He also submitted that the letter was signed by [Person 1] and the contents are accurate but that there was an unfortunate clerical error in the production of the letterhead. I do not accept the explanation of a "clerical error". The letter head contained significantly wrong information. I do not accept that any operator working for, or on behalf of, a person who is purported to be a member of the National Assembly would make an error in the name of the electoral division represented by that member. I am still of the view that the information was false and misleading. I have noted that the applicant has provided in the [date deleted: s431(2)] July 2009 submission that he is still seeking to clarify the matter of the "misunderstanding" or "clerical error" I note also that he has stated that the contents of the letter provided to the Tribunal are correct. The letter was dated [in] March 2009 and the writer refers to the government pursuing the applicant to try him in court in relation to the FIR No. [deleted: s431(2)] and claims the police are out to arrest him. This is inconsistent with the claim that the arrest warrant was originally said to have been issued [in] April 2009 and according to the evidence now provided it is said to have been issued [later in] April 2009.
79. In relation to the submission's reference to [lawyer's name deleted: s431(2)], the submission stated that the applicant has attempted to obtain confirmation that this

person is a lawyer in Gujarkhan but to no avail. Even if the applicant were to obtain satisfactory evidence to this effect, it would not confirm that the person provided the letter submitted to the Tribunal; and more importantly it would not resolve the inconsistency of the letter dated [in] March 2009 referring to an arrest warrant originally said to have been issued [in] April 2009 but in the evidence now provided it is said to have been issued [later in] April 2009.

80. I have had regard to the documents submitted with the submission [in] July 2009 and described as an arrest warrant in relation to the applicant. I have placed little weight on these documents given my findings above and I do not accept them as containing reliable information.
81. I have also taken into account the letter described as originating from Muhammad Bashrat Raja dated [in] July 2009. I have placed little weight on its content being reliable.
82. I have had regard to the news clippings purporting to quote the applicant making statements to newspapers in May 2009. Given my findings about the credibility of the applicant's evidence, I have placed little weight on their reliability.
83. Having considered all of the evidence he has provided in support of his claim for reasons of political opinion and/or involvement, I formed the view that the applicant has fabricated this claim for the purpose of the visa application. Notwithstanding that the applicant's credibility came into question and that I had indicated that I may not accept any of his claims, I have given the applicant the benefit of the doubt in respect of his claim of membership of the Youth Wing of the PML-Q in Rawalpindi. I accept that he was a member of the PML-Q. However, I do not accept that he has suffered any harm in the past for reasons of political opinion and/or activities.
84. I have considered whether as a member or former member of the PML-Q the applicant would suffer serious harm or persecution if he were to return to Pakistan.
85. Media reports indicate that soon after the 2008 Pakistan elections there were some crackdowns on leaders and workers of the PML-Q and arrests of activists in the PML-Q private militia the 'Wajahat Force' (*The Nation Newspaper* 28 September 2008). Other media reports quoted PML-Q leaders claiming to be victimized. However, more recent searches including the 2008 United States Department of State report on Pakistan, the 2009 United Kingdom Home Office Country of Origin Information report, the 2009 Human Rights Watch report on Pakistan and the PML-Q official Website contain no reports or evidence that members of the PML-Q face persecution or harm. I am satisfied that the applicant does not face a real chance of persecution in the reasonably foreseeable future for political reasons or for membership of the PML-Q if he were to return to Pakistan.

Member of a particular social group

86. I have considered whether the applicant is a member of a particular social group.
87. The meaning of the expression "for reasons of ... membership of a particular social group" was considered by the High Court in *Applicant A's* case and also in *Applicant S*. In *Applicant S* Gleeson CJ, Gummow and Kirby JJ gave the following summary of

principles for the determination of whether a group falls within the definition of particular social group at [36]:

... First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in Applicant A, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group". ...

88. It is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person's membership of the particular social group.

Honour killing

89. I accept that "persons at risk of being victims of the practice of honour killing" are capable of constituting a particular social group. Country information available to the Tribunal confirms that honour killing continues despite legal reforms aimed at eliminating discrimination. The 2009 'Country of Origin Information Report' of the UK Home Office on Pakistan makes the following assessment:

23.02 The concluding comments of 38th Session of the Committee on the Elimination of Discrimination against Women, dated 11 June 2007, noted a number of positive developments in Pakistan:

"...recent legal reforms aimed at eliminating discrimination against women and promoting gender equality. In particular, it welcomes: the 2002 amendment to articles 51 and 59 of the Constitution under the Legal Framework Order to increase women's political participation in the National Assembly and the Senate; the 2000 amendment to the Pakistani Citizenship Act 1951, providing for nationality to the children of foreign spouses; the adoption, in 2002, of the Prevention and Control of Human Trafficking Ordinance; the adoption, in 2004, of the Criminal Law Amendment Act to facilitate prosecution of "honour killing"; and the adoption, in 2006, of the Protection of Women (Criminal Laws Amendment) Act amending some of the Hudood Ordinances."

....

Honour killings

23.39 The IRB in a Response to Information Request (RIR) entitled 'Pakistan: Honour killings targeting men and women, especially in the northern areas (2001 - 2006)', dated 24 January 2007, provided a brief description of the custom and to whom it applied:

"There is an extensive amount of information on honour killings in Pakistan primarily focusing on female victims. Honour killings are described as a custom in which mostly women and some men are murdered after accusations of sexual infidelity. The killers seek to avenge the shame that victims are accused of bringing to their families. However, even girls (and, on a smaller scale, boys) are victims of the practice. Honour killings are known by different names depending on the area in Pakistan in which they are practised. In Sindh province they are referred to as karo kari, where karo refers to the 'blackened' or dishonoured man and kali to the 'blackened' woman; they are called tor tora in the North-West Frontier Province (NWFP), where tor refers to the accused man and tora to the accused woman; kala kali in Punjab province, where kala refers to the accused man and kali refers to the accused woman; and sinyahkari in Balochistan."

23.40 The same source also provided detail about the motivations and justifications for honour killings, and states that such killings:

“...are often carried out by men who believe their honour has been breached by the sexual misconduct of female family members, even when it is only an allegation. The tribal justice system, for example, makes it incumbent upon husbands and male relatives to restore family honour damaged by allegations of a woman's sexual misdeed, usually by killing the woman and her alleged lover. The NCSW [National Commission on the Status of Women] indicates that it is not just honour killings but all forms of domestic violence that are ‘frequently intended to punish a woman for a perceived insubordination supposedly impacting on male honour’ The media in Pakistan reports stories indicating that the male companion of the accused female will also be killed in the name of protecting family honour, or for marrying a woman from another tribal group without the consent of her parents, to restore the honour of her tribe.”

The IRB RIR summarised the motives for honour killings:

- “maintain family assets;
- acquire another family's assets;
- prevent women from freely choosing their husband;
- punish women for seeking divorce, having been raped or having disobeyed family wishes;
- seek revenge on an opponent; and
- disguise the murder of another man.”

90. The question for the Tribunal is whether in the present case, having regard to the information, the applicant is a member of the particular social group and whether he would suffer persecution as a member of this group.

91. The applicant stated in evidence that his wife's family were not aware of his marriage to his wife. He said that his wife had informed them while she was in Australia He stated that his wife and her family belong to a strict Moslem sect known as *Ahl- I - Hadith* or *Ahle Hadith*

92. Al-i-Hadith or Ahle Hadith is said to be a Sunni sub-sect of Wahhabi inspiration, and to have originated in the nineteenth century as a religious educational movement. The following excerpts are from a study carried out by the International Crisis Group of religious sectarianism in Pakistan:

Sunnis can be divided into four broad categories: Barlevis, Deobandis, Ahle Hadith and revivalist, modernist movement like the Jamaat-i-Islami (JI)...The Ahle Hadith is small, ultra-orthodox, puritanical sect inspired by Saudi Wahhabism, which does not follow any of the four Sunni schools of jurisprudence...(II. The Sectarian Landscape. p2)

What is commonly called Sunni-Shia violence is more precisely a Deobandi-Shia conflict in which the Deobandis have appropriated the term Sunni for themselves and are supported in their anti-Shia jihad by the Ahle Hadith...(II. The Sectarian Landscape. p2)

The Barlevi school strives to preserve and promote this Islam of hereditary saints and its shrine culture...(II. The Sectarian Landscape. p3)

The Deobandi and Ahle Hadith schools reject these beliefs and practices, dismissing Pakistan's shrine culture as a form of idolatry. They also condemn and prohibit

traditional marriage and death rites borrowed from local South Asian cultures, calling these Barlevi practices deviations from the true path... (II. The Sectarian Landscape. p3)

The Jamiat Ahle Hadith (JAH) is the sect's main representative but dozens of other Ahle Hadith groups work independently. (II. The Sectarian Landscape. p3)

For Sunnis, especially Deobandis and Ahle Hadith, these Shia beliefs and ceremonies are an affront to their religious sensibilities (II. The Sectarian Landscape . p4)

...

The Shia-Deobandi/Ahle Hadith conflict is in some ways a proxy war between Saudi Arabia and Iran, the regional champions of their respective brands of Islam. (IV. State-sanctioned extremism. 4. External actors and Pakistani sectarianism. p11) (International Crisis Group 2005, 'The State Of Sectarianism In Pakistan', International Crisis Group website, 18 April, http://www.crisisgroup.org/library/documents/asia/south_asia/095_the_state_of_sectarianism_in_pakistan.pdf – Accessed 19 February 2007.

93. The applicant also gave evidence that his name is provided on his wife's passport as her husband to establish that he is married to her and that he had made all the arrangements for her to travel to Australia to study without her family's involvement. He said that her father works in Kuwait and visits home every two months. He also said she has a brother aged around 22. I indicated to him during the hearing that I may find it implausible that his wife, being a young female Moslem from a family belonging to the strict sect of *Ahle Hadith* would be able to make arrangements to leave her home to a foreign country without any involvement or oversight from her family if they were of the belief that she was unmarried and living at home with her family. I indicated that I may not accept his claim that his wife's family was not aware of the marriage or that they did not agree to the marriage. I have had regard to his response which was to reiterate that what he gave in oral evidence remains true. I do not accept as credible or plausible that his wife's family was unaware or did not agree to the marriage and that his wife was able to leave her family to travel abroad without involvement from her father or brother. I am satisfied that the applicant does not face a real chance of persecution or harm from his wife's family because of the honour killing system and therefore find that he is not a member of the particular social group described above and does not face a real chance of persecution in the reasonably foreseeable future for reasons of being a member of a particular social group.
94. On the basis of the above findings I am satisfied that the applicant does not face a real chance of persecution for Convention-related reasons in the reasonably foreseeable future if he were to return to Pakistan
95. In sum, I have considered the applicant's claims individually and cumulatively. I am satisfied that the applicant does not have a well-founded fear of persecution for a Convention reason.

CONCLUSIONS

96. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

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

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act* 1958.

Sealing Officers ID: RCHADW