

1102913 [2011] RRTA 767 (25 August 2011)

DECISION RECORD

RRT CASE NUMBER:	1102913
DIAC REFERENCE(S):	CLF2010/68264
COUNTRY OF REFERENCE:	Pakistan
TRIBUNAL MEMBER:	Patrick Francis
DATE:	25 August 2011
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 on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] February 2010 and applied to the Department of Immigration and Citizenship for the visa [in] May 2010. The delegate decided to refuse to grant the visa [in] March 2011 and notified the applicant of the decision.
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] March 2011 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. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
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 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.
20. The applicant was represented in relation to the review by his registered migration agent.

Background

21. [The applicant] arrived in Australia [in] February 2010 on a subclass 676 tourist visa which had been granted [earlier that month]. He applied for a protection visa [in] May 2010.
22. The applicant's representative provided a statement from the applicant and a submission with the protection visa application form as follows:

I, [name] have been running a baby cycle factory since 1982. In 2005, a man called [Mr A] started selling cycles that he used to buy from my factory. After a while he was in partnership with another man called [Mr B]. In April 2007, [Mr A] and his partner [Mr B] came to my factor and told me they want to talk to me about something. I asked [Mr A] and [Mr B] if there is any problem, and they both told me they want partnership with me to run my factory. They told me they will work hard and will take our business to prosperity as back in that time my business was in demand. I did realise that even general public was having conversation about my factory and its progress. Having in mind the market demand for my products, I didn't want to have partnership with anyone as I was certain about my business and its progress. I told them I don't need any partner as I can alone handle my business very well. After having said this to them, they still would visit me all the time and pressurise me to have them partner in my business, I got worried and suspicious for what they were doing to me. At sometime I felt that [Mr A] and [Mr B] were actually jealous of my factory progress and actually wanted to take over the business. I got worried as they were coming to me all the time, I didn't know what to do. While I was still thinking for what to do, [date] October 2007, [Mr A] and [Mr B] were accompanied by two other men. The two men introduced them to me in a very strange way, they told me they were working for some Gang. The men introduced themselves with names [Mr C] and [Mr D]. The two men threatened me to have [Mr A] and [Mr B] as partners in my business, other then that I got no option. They even told, doesn't matter what I do, will be pointless. As they will fix or kill anyone who comes in between. I was threatened if I didn't get into partnership with [Mr A] and [Mr B], me and my family will be killed and that I had no option.

I was scared for my family life as I had small children. I didn't know what to do, and October [date], 2007 I went to police station straight away to tell them about my situation. I put my report at the police station and told them everything about [Mr A],[Mr B], the two men those accompanied them, [Mr C] and [Mr D]. After that I was very careful moving around the town and in the factory. I told my wife to not let the kids go out and lock the door all the time. I even stopped my kids from going to school. After three days October [date] when I finished work and was on my way home, [Mr C] and [Mr D] came to me and told me I have put myself in big trouble for going to police station. They both started hitting me, I fell in the ground. They dragged me to a van and drove me to somewhere that I didn't know. They threatened to kill me if I screamed or asked for help. They took me to this unknown place, it was like some house. They pushed me into the room and told me that they are doing this to me, I went to the police station and put a complaint against them. They told me if I didn't put my business in [Mr A] and [Mr B] name they will kill me. And if I do, they will set me free.

They hold me hostage for 40 days, I remember only one man, he used to come bring me food and then leave. I always asked him for help but he wouldn't talk. All he used to say is that I have made a big mistake for getting into business with these people. As it's a big gang belong to Jamaat-ul-Dawah. I was going mentally sick. I always used to ask the same guy, if I don't put my business in their name, what will they do to me? And if they were serious to kill me. In response he used to say "yes". The same man who used to bring me food told me I shouldn't have gone to police station and now I am dead. He told me if I want myself and my family safe, I should do what [Mr C] and [Mr D] were telling me. I knew even if I put everything on their name they would still kill me, so I decided not to transfer or put anything on their name. If they would have killed me. No one knew about me. No one knew where I was. And they could have easily got away with all this. And that's what I felt they were going to do, after sign the papers. Kill me and that's it.

Being hostage for 40 days, November [date], 2007 Police put a raid on the house. I was set free too. But I was shocked to hear that, police were not actually looking for me. They were looking for some other people that same men had kidnapped. I was scared and worried to find out, that actually a big gang Jamaat-ul-Dawah. Not just [Mr C] and [Mr D]. They were working for this gang Later on I found out more about this gang. And I came to know that actually this gang had people working for them those belonged to Jamaat-ul-Dawah. My brother in law [Mr E] also put a report in police station for I was lost. But [Mr A], [Mr B], [Mr C] and [Mr D] were not amongst the men arrested. In 40 days time my factory was destroyed and all machinery was stolen. Some people who knew about this gang Jamaat-ul-Dawah came to me and told me, that the people who did all people belong to a big gang. And if I want safety of my family and myself I should run away. Having that in my mind, I look my children and wife to my friend place to stay there until its safe. While we are at my friends place, my brother in law [Mr E] informed me that some people were looking for me. After some days my brother in law [Mr E] told me that my factory and our house have been over taken by some people. At the very moment I realised that it's not safe for me to stay in Pakistan for longer. I didn't want my family to killed, just because they were looking for me. I knew they will kill me but may be they kill my family too. I started thinking of leaving Pakistan for safety of my family and myself. I had to leave my family at friends place, and I made my mind to leave Pakistan forever. And that's how I got to Australia.

23. The applicant's representative made the following written submissions:

FACTS AS THEY APPLY TO THE LAW

In the current case the Applicant complains that he was targetted by an organised criminal gang who sought to take over his business.

When he returned he was kidnapped and held for the purposes of extorting his compliance. The Applicant was held for 40 days and was only released following police action trying to locate another person in similar circumstances.

During the period of his kidnapping the Applicant's plant and business was destroyed. The Applicant has set out his claims and the relevant facts and circumstances in his application.

There is abundant evidence (Annexure D) to the effect that the kidnapping and extortion of prominent persons within the community is a burgeoning crime in Pakistan. The loosening of State control, the risk of corruption and the political instability engendered by the 'war' between the fundamentalist Taliban and the State have permitted the rise of organised criminal gangs.

The Applicant is unable to avail himself of the protection of the State and as such constitutes a member of a particular social group who find themselves victimised by criminal gangs who are able to act with impunity.

The fear of the Applicant is perfectly explicable given the reach of these criminals and the pervasive nature of this criminal conduct in Pakistan. Further the ability to in effect relocate within Pakistan may see the Applicant beyond the protection of his immediate family and thus prey to other regional criminal enterprises.

Primary decision

24. [In] March 2011 the departmental delegate refused the protection visa application and advised the applicant of the decision in a letter [later that month]. In part the delegate reasoned that there was nothing to indicate that the applicant's fear of harm had anything to do with his race, nationality, political opinion, religion or membership of any particular social group. The delegate reasoned that it was clear from the applicant's statements that the motivation caused by the criminal gang was purely financial and an act of retaliation, if it occurred. The delegate concluded that the applicant's fears related to business matters and were not based on a Convention ground.

Hearing

25. The applicant appeared before the Tribunal [in] August 2011 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Urdu and English languages. The applicant's representative did not attend the hearing. No hearing response form was received prior to the hearing. The applicant indicated his representative would be unable to attend by telephone and that he wished to proceed with the hearing.
26. The following is a summary of the applicant evidence at hearing:
27. The applicant told the Tribunal that he has two sons who live in Australia. They have both been here since 2007 and are undertaking automotive related courses. He has two other sons that reside in Pakistan and they are in hiding. The reason they are in hiding is because they are in danger. He explained that they could be kidnapped and a ransom required which is a means of making him come forward so that he would be located by those who seek to harm him.
28. The applicant said that he had separated from his wife then indicated that she left him when "*these things happened*", referring to the events in his statement. He has three

brothers in Pakistan, one lives in Gujranwala and the other two live in Lahore. His four daughters are all married and living in their own houses with their respective families. He has sisters who are married and many distant relatives in Pakistan. Immediately prior to coming to Australia he spent six months in Gujranwala working in a furniture factory. His sons lived with him for a few days but he moved again for their safety because he was in danger and therefore they were in danger.

29. The title to the house in [Suburb 1] was in his sole name and he owned half of the factory from which he had previously operated. The titles to those two properties are still in his name but the factory has been ransacked and all the furniture, stock and machinery has been sold. Additionally a significant part of the building has been demolished.
30. In response to a question the applicant told the Tribunal that his intention in coming to Australia in February 2010 was to seek protection because of the problems in Pakistan. The reason for the two half months delay in making a protection visa claim after arrival in Australia was that he knew he had three months permission to stay in Australia; he didn't know the process and was exploring the possibilities. He said that his sons in Australia have not made protection visa claims, they are young and studying.
31. The applicant said that he fears being killed if he returns to Pakistan and he has received reports that the group Jamaat-ul-Dawah were looking for him and would kill him if they found him. He said that this is one of the ways that they operate, initially slowly getting into an organisation and then moving to control it. He said that he was doing very well in business and 300 to 350 people used to work for him. When asked why he feared these people he said that they were a religious group who had captured his house and business and that they were careful and professional in the way they operated. He said the religious group had an innocent public image. The applicant said that he had not made a complaint to the police about his house and factory being taken over. In response to the question as to why he hadn't done the applicant said the police would not protect ordinary people and the police themselves were not feeling secure unable to looking for protection. The Tribunal noted the general country information suggested that police did take action against terrorists and violent groups including in Lahore. The Tribunal further referred to the applicant's own statement in which he indicated that he was released from the kidnappers by the actions of the police. The applicant said that police would act "here and there" He said that the inspector who saved his life (in November 2007) told him that his group was very strong and that nobody could do anything against them. He was told by this inspector that he was lucky to escape and that they were dangerous people who normally kill and dispose of the body. He said that there are thousands of dead bodies found in Pakistan. The applicant said that the police act on small matters. He said that he did not make a complaint or first information report to the police about his factory and house being taken against his will because when he was released by the group he came to know that the group was very dangerous.
32. The Tribunal referred to a document (folio 197 of the departmental file) titled "Application for Protection on Police Help". The Tribunal referred to other documents provided by the applicant which were stated to be "First Information Reports" and pointed out that his document was different to the first information reports. It further noted general country information was that there was a standard format for the first information reports but that his document did not comply with that format. The

applicant responded by stating that he gave the police the statement and that he is not familiar with police documentation.

33. The Tribunal further referred to a translated document titled "First Information Report" dated [in] November 2007. The applicant said that he received this after the police released him in November 2007. The Tribunal noted that this document appeared to be a report by the police of their actions but that it was contained on the document which was essentially a document used to make a complaint to police, in contrast to a report by police of the actions already taken by police to investigate an initial complaint. The Tribunal queried whether this document had been manufactured. The applicant said that he did not know how the police operate and that he obtained whatever documents he could from Pakistan whilst he has been in Australia.
34. The applicant indicated that it is dangerous for him in Pakistan and that if it was not he would have come to Australia when he had a visa a long time ago. The Tribunal (in accordance with s.424AA of the Migration Act) referred to information contained on the Tribunal file, being movement records showing that the applicant had previously held a visa to come to Australia for the period [a date in] April 2007 until [a date in] April 2008. It was explained that this information was relevant because if he was afraid of these people or gangs it appeared that the applicant could have left Pakistan between November 2007 and April 2008. The Tribunal stated that, depending on the applicant's response, it could form the view that his failure to leave Pakistan indicated that he did not have a fear of harm as he asserted. As such it could be the reason or part of the reason to affirm the decision under review. The applicant indicated that he understood the information and its relevance. He chose to respond at the time rather than seeking additional time to respond. The applicant said that initially he was trying to fight and get his things back because he didn't know who the people were. He later came to know that this was a big group of people. He said that in November 2007 after his release he was first tried to save himself and to gather more information; he moved aside to watch what they were doing. The Tribunal queried why he did not send the police to his house or to his factory to arrest those people who had taken his properties over. The applicant referred to the time he went to police in October 2007 and the subsequent kidnapping some days later. The Tribunal however pointed out that on his evidence the police had saved him from this group. The applicant said that the police went for a different purpose rather than to save him. The Tribunal noted that in the applicant's own statement of October 2007 he used the term "*dangerous group*". The applicant responded that he told the police that the four people were threatening him. The Tribunal referred to the translated "First Information Report" dated [in] November 2007 (folio 196) where the term "terrorist group" was used. The Tribunal noted that the evidence suggested that the applicant, on the basis of his own evidence, would have been aware in November 2007 (whilst he still held the visa to come to Australia) that the people he made allegations against were a "dangerous group". The applicant said that was not a simple decision; he had a business and had lived in that area for 35 years.
35. The applicant confirmed that he made no police report about people taking over his home or factory. He confirmed that such people had done so by the time he was released from the kidnappers, [in] November 2007. Noting the applicant's evidence, that he was taken to the police station after being released from the kidnappers, the Tribunal asked why he didn't ask the police to protect him or to arrest those who had over his house and factory. The applicant referred to incidences of violence against the

police and police stations noting that every police station has barricades or reinforcements. The Tribunal indicated that it might form the view that the applicant did not fear such people because the circumstances he described didn't happen. The applicant queried why he would have had come to Australia if he had no fear given that he had been a successful business person. The applicant later explained that he had a discussion with a police inspector on the date of his release in November 2007. The police inspector told him to leave and try and save himself; that he should make arrangements. The Tribunal asked the applicant why, having used force to free him and others in the incident in November 2007, the police would be unwilling to protect him if he had told them that the same people had taken over his house and factory. The applicant said that the police were also trying to save their own lives and that if it was a difficult situation, they might not put themselves at risk.

36. In response to a question as to whether he believed he could live elsewhere in Pakistan, the applicant said that he could not, that he was on a hit list and could not escape. He was lucky he survived. The Tribunal noted that according to the applicant's evidence, the people who had sought to obtain his business had done so and had taken his house. The Tribunal queried therefore why he would be on a hit list. The applicant responded that that's the way these groups operate; they will take a person's things and then they will kill the person. The Tribunal asked the applicant what he did between November 2007 and February 2010. The applicant said that he was living in hiding and tried to get more information about the group of people. He lived off his savings and income from employment he had in Gujranwala. He moved from Lahore to Karachi and then back to Gujranwala. The Tribunal asked the applicant how he would be located in a population of 170 million people in Pakistan. The applicant indicated that especially someone more well-known could be located. He said that the religious groups are powerful; they take everything from the person or finish him off. The Tribunal queried with the applicant whether it could reasonably be said that he had sought the protection of the police or the Pakistani authorities. The applicant said that police could not put a guard around him 24 hours a day.
37. The Tribunal asked the applicant why, if he believed he was not safe then, he had delayed leaving Pakistan until February 2010. The applicant responded that in the initial 6 to 8 months he didn't realise he was targeted by such a huge group and that it took a while to get a visa. He said he applied for a visa in November or December 2009. In response to question as to whether he could live with other family members in Pakistan the applicant said that he could not and that there were many people being killed. He believed he could be found anywhere in Pakistan by a group that is organised and strong.
38. The Tribunal asked the applicant why he believed these events had happened to him. He said that he didn't know; that the people might have thought he had a lot of money. He was asked if he believed it was because of anything he had done. The applicant said it wasn't, he was just a businessman, a respectable person. He thought that being a businessman might be one of the reasons and that he had a lot of assets.

Country information

39. In addition to the information provided by the applicant the Tribunal had regard to the following information regarding the situation in Pakistan:

- Immigration and Refugee Board of Canada, Pakistan: First Information Reports (FIRs) , 4 November 2010, PAK103605.E, available at: <http://www.unhcr.org/refworld/docid/4dd100012.html> [accessed 4 August 2011]
- ([Information deleted: s.431(2)])
- U.S Department of State Bureau of Diplomatic security - Pakistan Crime & Safety Report 2011: Lahore
<https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=11288>
- US Department of State's 2010 Country Reports on Human Rights Practices (8 April 2011): www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm
- Australian government - Australian National Security - information on Lashkar-e-Tayyiba (also known under the alias Jamaat-ud-Dawa)
http://www.nationalsecurity.gov.au/agd/WWW/nationalsecurity.nsf/Page/What_Governments_are_doing_Listing_of_Terrorism_Organisations_Lashkar-e-Tayyiba?open&query=LeT (accessed 5 August 2011).
- Dunya News Pakistan:-CID Police arrest nine terrorists, impound weapons
<https://www.dunyanews.tv/index.php?key+Q2F0SUQ9MiNOaWQ9MzE4NT=>
- Daily Times – Leading News Resource of Pakistan – CID police arrest 2 TTP activists
http://www.dailytimes.com.pk/default.asp?page=2011%5C04%5C09%5Cstory_9-4-2011_pg12_3 (accessed 5 August 2011).
- Crime Statistics - Punjab Police - <http://www.punjabpolice.gov.pk/crimestatistics>

FINDINGS AND REASONS

40. The applicant travelled to Australia on a Pakistani passport, a copy of which is contained on the departmental file. It appears to be a valid passport. The applicant claims to be a citizen of Pakistan. The Tribunal is satisfied that he is in fact a citizen of Pakistan and finds accordingly.
41. The Tribunal does not accept however that the applicant is a person to whom Australia has protection obligations under the Convention.
42. The Tribunal accepts that, as Beaumont J observed in *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437 at 451, “in the proof of refugeehood, a liberal attitude on the part of the decision maker is called for”. However, this should not lead to “an uncritical acceptance of any and all allegations made by suppliants” As the Full Court of the Federal Court observed in *Chand v Minister for Immigration and Ethnic Affairs* (unreported, 7 November 1997):

Where there is conflicting evidence from different sources, questions of credit of witnesses may have to be resolved. The RRT is also entitled to attribute greater weight to one piece of evidence as against another, and to act on its opinion that one version of the facts is more probable than another.

43. As the Full Court noted in that case, this statement of principle is subject to the qualification expressed by the High Court in *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 576 when it said:

...in determining whether there is a real chance that an event will occur, or will occur for a particular reason, the degree of probability that similar events have or have not occurred for particular reasons in the past is relevant in determining the chance that the event or the reason will occur in the future.

44. If, however, the Tribunal has “no real doubt” that the claimed events did not occur, it will not be necessary for it to consider the possibility that its findings might be wrong: *Minister for Immigration and Multicultural Affairs v Rajalingam* (1999) 93 FCR 220 at 241. Furthermore, as the Full Court of the Federal Court said in *Kopalapillai v Minister for Immigration and Multicultural Affairs* (1998) 86 FCR 547 at 558-9, there is no rule that a decision maker concerned to evaluate the testimony of a person who claims to be a refugee in Australia may not reject an applicant’s testimony on credibility grounds unless there are no possible explanations for any delay in the making of claims or for any evidentiary inconsistencies. Nor is there a rule that a decision-maker must hold a “positive state of disbelief” before making an adverse credibility assessment in a refugee case.
45. In the facts of this case the Tribunal does not accept that the applicant has been threatened with harm if he did not go into partnership with the persons he claims threatened him. Nor does the Tribunal accept that the applicant was beaten and kidnapped by criminals or an extremist organisation, including Jamaat-ul-Dawah. The Tribunal finds that he therefore was not released by police after being held for some 40 days as a hostage. The Tribunal does not accept that the applicant’s home and business have been taken from him, that his machinery was destroyed or sold or that he has been told by police that nobody, including police, could do anything to assist him. The Tribunal finds that the applicant’s sons in Pakistan are not in hiding. The Tribunal finds that the applicant is not on a hit list in India and was not in hiding before coming to Australia.
46. The applicant claims that he was a financially successful and respectable businessman living in [Suburb 1], Lahore and owning a business employing some 300 to 350 people in a factory making bicycles. He states that he also owns half of the factory building. He claims that he was initially approached in April 2007 by two men, who up until that point of time had purchased bicycles from his factory. His evidence is that they initially sought partnership with him to run his factory and after he declined their offer, they resorted to threats and intimidation. He says that his own and his family member’s lives were threatened by two men working for a gang. The men he says were connected with the two others who had been attempting to purchase his business. He claims that [in] October 2007 he made a police report about those threats. A copy of a translated document headed “*Application for Protection and Police Help*” has been provided in support of that claim and is on the departmental file. The document is addressed to “*In Charge Police Station, Shafiqabad, Lahore*” and states as follows:

I am running a cycle factory since 1982. My factory is progressing well. Today [Mr A] and [Mr B] came to me. Both of them use to purchase the goods for my factory to sell. [Mr C] and [Mr D] also came with him. They said that we want to be share holder in this factory. I refused to make them share holder. They

threatened me and said if I will not accept their offer then we will kill you and went away. Do not think that we are ordinary people, we belong to a dangerous group.

Due to this circumstances I request you protect me from this dangerous group.

Applicant

[name] son of [Mr F]

[address]

[Suburb 1]. Lahore

47. The above document is different to a standard First Information Report in Pakistan which is the report prepared by police in response to the report of an event or criminal incident brought to their attention (see Immigration and Refugee Board of Canada, Pakistan: First Information Reports (FIRs), 4 November 2010, PAK103605.E, available at: <http://www.unhcr.org/refworld/docid/4dd100012.html> [accessed 4 August 2011]). First, it is not made on the standard form. It does not reflect that a complaint has been made and recorded by police. When this issue was raised with the applicant at hearing he said that he did not know how the police operate and that he obtained whatever documents he could from Pakistan while he has been in Australia. The applicant purports to provide this evidence as demonstrating that he has lodged a police report. That Tribunal does not accept that assertion. Interestingly he has provided copies of documents titled "First Information Reports", one dated [in] October 2007 and the other, [in] November 2007. Both of those reports are in the standard format (although neither are in respect of a complaint by the applicant). The Tribunal finds that the applicant has not lodged a police report in respect of threats that the applicant claims were made to him in October 2007.
48. The applicant states that three days later [in] October 2007, he was intercepted on the way home, beaten and dragged into a van. He claims he was taken to an unknown place where he was threatened that he would be killed unless he transferred the business into the names of the two men who had initially sought partnership with him. The applicant claims he was held hostage for 40 days and in that time he was told that he had made a big mistake for getting into business with people who were in a gang which belonged to Jamatt-ul-Dawah. Despite being threatened with death if he did not transfer the business, he states that he decided not to transfer it, believing that he would still be killed.
49. As referred to above, on the departmental file is a copy of a document titled "FIRST INFORMATION REPORT IN RESPECT OF COGNIZABLE OFFENCE" The date and time of the incident is listed [in] October 2007 at 1 PM. The document also indicates that the report was made at Shafiqabad police station in Lahore. As is relevant to document sets out:

I beg to state that I am [name] son of [Mr F] resident of [address] Lahore. My brother [the applicant] son of [Mr F] is missing since last five days. I and my family tried to find him everywhere but could not find him. I have full doubt on [Mr A] and [Mr B], they kidnapped my brother [the applicant]. The reason of enmity is that [the applicant] was running a factory and that factory is on its peak and is going in profit. [Mr A] and [Mr B] threatened him to give the share in that factory. On refusal by [the applicant] they threatened [the applicant]

and said that we will behave very badly with you and the result will not be good, you are not behaving well with us. Therefore as claimant I request you to register a case against [Mr A] and [Mr B] for kidnap.

The document further records:

Action taken by police. At this time a complaint received in this police station about kidnap case. The case is registered under the article 365. The FIR sent to investigation officer by Constable [name]. The information being given to SHO

50. The applicant claims that after some 40 days ([in] November 2007) he was freed by police who had intended to free others kidnapped by this gang. His evidence at hearing was that a police inspector told him [in] November 2007, when they were back at the police station, to leave and try and save himself; that he should make arrangements. The applicant's evidence is that he did not make a police report, (a first information report) about the invasion of his home and business. The applicant has however lodged with the Tribunal a document in support of his claim which is titled "FIRST INFORMATION REPORT IN RESPECT OF COGNIZABLE OFFENCE". The document sets out that the date and time of the incident was [in] November 2007 at 6am. In part the document reads as follows:

According to the Police Station Shafiqabad book [number] a report kidnap is registered against four people. According to the report of Police Station Shafiqabad Lahore, police raided to rescue four people who were kept captive in a old mansion in a village of Shaikhupura. Under the supervision of SHO, firing was exchanged between accused and SHO. After long resistance four accused were arrested and some of them escaped. Four captive also rescued, one of them was [the applicant] and after taking their statements all of them handed over to their relatives. Accused [Mr C] and [Mr D] ran away with others, they belong to a terrorist group.

The document is said to be completed by "[name] of Shafiqabad Police Station, Lahore" on [date] November 2007.

51. First Information Reports (FIRs) are written reports prepared by police in response to the report of an event or criminal incident brought to their attention. FIRs are a record of the initial information that is provided by a complaint to the police. The registration of a FIR "*is meant to initiate the investigation process and may lead to court ordered arrests and formal charges.*" (see Immigration and Refugee Board of Canada, Pakistan: First Information Reports (FIRs) , 4 November 2010, PAK103605.E, available at: <http://www.unhcr.org/refworld/docid/4dd100012.html> [accessed 4 August 2011]).
52. Part of the difficulty the Tribunal has with accepting the above as a FIR is that it is purports to be a record of police action taken subsequent to the report of a kidnapping. That is quite different to a document "*meant to initiate the investigation process*". The Tribunal also considers that the applicant's evidence about these events was contrived and implausible.
53. Included with the protection visa application were articles on kidnappings and crime in Pakistan, print outs of online chat forums and indexes of Google searches. The online chat forums and indexes of Google searches are of little evidentiary value and are

accorded little weight. The articles were consistent with general country information available to the Tribunal, including the Punjab Police crime statistics which show that there were some 7451 kidnappings reported to police in 2011 (up to June) (see <http://www.punjabpolice.gov.pk/crimesstatistics> below (accessed 5 August 2011)).

Crimes Against Person in 2011(upto June)

Offence	Registered	Under Investigation	Untraced	Cancelled	Challaned
Murder	3278	1109	118	92	1959
Attempted Murder	3753	1106	142	244	2261
Hurt	10550	2759	32	728	7031
Kidnapping	7451	2048	49	2823	2531
Kidnapping for Ransom	107	20	0	17	70
Rape	1298	266	11	335	686
Gang Rape	110	27	0	28	55
Other	1023	171	121	16	715
Total	27570	7506	473	4283	15308

54. The Tribunal accepts that a significant number of kidnappings occur in the Punjab. Indeed there is also creditable evidence that there was an increased in such crimes in 2010:

Kidnappings

One new alarming trend is the increase in kidnappings throughout the Punjab. Kidnappings are up 13 percent for 2010, and police report that terrorist groups have begun to engage in the kidnapping for ransom of prominent local businessmen to raise money for arms and resources. The terrorists/kidnappers will typically conduct pre-attack surveillance, picking a target for their wealth and standing in the community, and then kidnap that target in an armed assault.

(United States - Department of State – Bureau of Diplomatic Security –see (<https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=11288>) (accessed 5 August 2011)).

55. Despite the above the Tribunal finds that the applicant was not kidnapped and was not threatened in the manner he claims. The applicant’s statement refers to the almost incidental actions of police in rescuing him from his kidnappers. He claims they were there to free others kidnapped and he was fortunately also released. Despite such action by the police the applicant claims that he was told by a police inspector that the gang targeting him was very strong and nobody could do anything against them. For this reason he claims that he has made no complaint to police or other authorities against those who have allegedly taken over his home and factory and who are still there. This evidence, in the Tribunal’s view, is implausible. The applicant on his own evidence has title to his house and half of the factory he used to operate out of. He claims to have employed some 300 or more people. He claims that these criminals now occupy his home and factory. He was unable to satisfactorily explain why however police would refuse to take action against persons who could so easily be located and arguably

in the format of a First Information Report, which is distinct from a police record of subsequent action taken on a FIR (again see . Immigration and Refugee Board of Canada, Pakistan: First Information Reports (FIRs), 4 November 2010, PAK103605.E, available at:

<http://www.unhcr.org/refworld/docid/4dd100012.html>.) The FIR refers to a “terrorist group” which contradicts that applicant’s evidence that he did not know the group who had kidnapped him until some time (even years) later. It also stands alongside the evidence that the applicant had a visa to come to Australia in November 2007 which expired in April 2008 but he did not invoke the opportunity to leave Pakistan. In addition the FIR stands in contrast to the applicant’s evidence that the police were unwilling or unable to protect him. When these issues were raised at hearing the applicant simply asserted that police would not protect ordinary people and had difficulty protecting themselves. His evidence that he did not make a complaint about the invasion of his home and factory because the police would not do anything must be contrasted to the evidence in the FIR [in] November 2007 of a police shoot-out and dramatic efforts to rescue kidnapping victims. The Tribunal finds that this evidence is contrived.

60. There were significant contradictions in the applicant’s evidence. The applicant claims that he was told by a police inspector on the date of his release in November 2007 that he should try and save himself and leave because nobody could do anything against such a strong group. Despite this, at hearing he said that from November 2007 he moved aside to watch what they were doing and that he didn’t know who these people were. This evidence was quite vague and undetailed. The Tribunal finds that the applicant remained in Pakistan from November 2007 (when he claims he was kidnapped), until February 2010 when he came to Australia. At hearing the Tribunal raised with the applicant the issue of why he did not flee to Australia between November 2007 and April 2008 when he held a visa to enter Australia. The Tribunal noted the language of the documents provided by the applicant in October and November 2007, referring to a “dangerous group” and a “terrorist group”. In response, he said that he was trying to fight and get his things back because he didn't know who the people were. The Tribunal finds however that on the basis of the applicant’s own evidence however that he was not fighting and he was not trying to get his things back; he did not even make a police complaint. The Tribunal finds that if the applicant was as fearful as he claims to have been that he would have taken the opportunity to leave Pakistan at that time. The Tribunal finds that the applicant was not in fact fearful because the events he described in relation to his protection claims did not happen.
61. The applicant also gave evidence that he was working in Gujranwala after having moved from Lahore to Karachi. Although the applicant claims that he was on a hit list the Tribunal notes that he remained unharmed in Pakistan between November 2007 and February 2010. His evidence was that in the six months prior to the hearing he had been working in a factory in Gujranwala. The Tribunal does not accept that the applicant is on a hit list and nor could he reasonably explain why he would continue to be targeted by those he claims have sought to extort him, when his own evidence is that they have taken his property and they have taken his business. This is so particularly in the context that the applicant's evidence is that he has not sought to invoke official measures to regain what is legally his property and nor has he taken action in seeking police protection from those who claims seek to harm him. The Tribunal is unconvinced that the applicant moved to different cities in Pakistan in order to avoid

from those who sought to harm him. The Tribunal finds that the applicant's property (his home and business) have not been taken from him or invaded and damaged in the manner he describes.

62. The Tribunal also finds that the applicant did not make an application for protection in Australia until [a date in] May 2010 having entered Australia [in] February 2010 on a visa that was set to expire [in] May 2010. The Tribunal does not accept the applicant's evidence that he was unsure of what to do. The applicant gave evidence that he fled Pakistan in fear of his life determined to leave Pakistan for ever. He had two sons in Australia already on his own evidence was a very successful businessman in Pakistan. The delay in making a claim furthers the Tribunal's conclusion that the applicant did not in fact have the fear the harm that he claims. For this further reasoned, albeit of a lesser weight, the Tribunal finds that the applicant did not fear persecution in Pakistan. The Tribunal is further unconvinced that the applicant's two sons in Pakistan are in hiding for the reasons he claims.
63. For all of the above reasons the Tribunal concludes that the applicant has invented the claims he has made in support of his protection visa application. The Tribunal does not accept that the applicant was threatened, kidnapped, or dispossessed of his property and business. As to future harm the Tribunal finds that there is not a real chance that the applicant will be subject to the harm he describes now or in the reasonably foreseeable future.
64. The Tribunal finds that the applicant does not in fact have a genuine fear of harm in Pakistan for the reasons he outlined. Therefore he does not fear persecution. As such the Tribunal determines that the applicant will not be subject to serious harm, much less for a Convention reason, on his return to Pakistan.

CONCLUSIONS

65. 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

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