

1108531 [2012] RRTA 209 (25 March 2012)

DECISION RECORD

RRT CASE NUMBER: 1108531

DIAC REFERENCE: CLF2010/164739

COUNTRY OF REFERENCE: Pakistan

TRIBUNAL MEMBER: Wendy Boddison

DATE: 25 March 2012

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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] October 2010 and applied to the Department of Immigration and Citizenship for the visa [in] December 2010. The delegate decided to refuse to grant the visa [in] July 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] August 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, *Applicant S v MIMA* (2004) 217 CLR 387 and *Appellant S395/2002 v MIMA* (2003) 216 CLR 473.
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.
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 appeared before the Tribunal [in] February 2012 to give evidence and present arguments. The Tribunal also received oral evidence from [Mr A].
21. The applicant was represented in relation to the review by his registered migration agent.
22. The applicant is [age delete: s.431(2)] and was born in [Country 2] He is a citizen of Pakistan and before he came to Australia he resided in Karachi, Pakistan. The applicant had travelled overseas including trips to [Europe].
23. Prior to coming to Australia he had worked for five years with [Company 1], Karachi.
24. In his protection visa application the applicant stated that he left Pakistan because he was a Shia Muslim businessman. Shia were being targeted and shot at throughout Pakistan. The applicant and his brother-in-law were shot at when his brother-in-law was visiting his brother. It was impossible for them to continue their business and they did not feel safe. The applicant stated that he left Pakistan to avoid being killed. He feared that if he returned to Pakistan he would be shot and killed.
25. There were a number of groups that targeted Shia Muslims in Pakistan. These groups demanded the expulsion of all Shias from, Pakistan and they targeted the Shia holy places and mosques especially at times of communal prayer and during religious processions. The applicant believed that he would be harmed because he was a prominent Shia businessman and a close associate of [Mr B] who was from a prominent Shia family. The applicant's wife's family had also been threatened and there was written proof that he was on the list.
26. The applicant would not be protected by the authorities in Pakistan because the police were disorganised, poorly funded and corrupt. They were reluctant to investigate crimes unless they were paid for it. The applicant's brother-in-law had a police guard but this protection was useless. There were some people in authority in Pakistan who supported the destabilisation that resulted from attacks on Shias and there was little motivation to bring it to an end.
27. In a statutory declaration dated [November] 2010 accompanying his protection visa application the applicant stated that he was a prominent business man who was a Shia Muslim. The applicant was a partner in [Company 1] and had been the sales and marketing Manager since November 2005. The applicant was born in UAE but attended boarding school

in Pakistan. The applicant's father was killed in a [car accident] and the family returned to live in Pakistan.

28. The applicant worked in [City 3] from 1992 to 1997. The applicant's sister married [Mr B] in 1997 and the applicant commenced working for him in 2005. When he joined the business he accompanied [Mr B] wherever he went. They both attended a number of funerals of Shia Muslims who had been killed in bomb blasts. The applicant knew that [Mr B's] life had never been secure and he was also always in danger. [Mr B's] brother and father had been targeted and he was always being watched. The applicant claimed that he was also in danger because of his association with [Mr B] and as a well-known Shia Muslim. The applicant was always being watched. Around November 2009 he received a phone call from the Quetta police. The applicant told the police man that he had recently become engaged to a woman from a well-known Hazara family in Quetta. The police informed the applicant that his name and number was on a list in possession of Lashkar-e-Jhangvi terrorist who had been arrested.
29. [In] March 2010 the applicant and [Mr B] were fired at while they were visiting [Mr B's] brother. The applicant made a report but they would not give him a separate First Information Report (FIR) and he was included in [Mr B's] FIR. The police in Pakistan were lazy corrupt and weak. The terrorists took advantage of the lack of police action. Even if they were caught they only spent a short time in gaol.
30. The applicant said that he was scared of telling anyone that he was a Shia Muslim. Living a majority Shia Muslim area was unsafe as he would be immediately identified as Shia and the surrounding areas were populated by people of different faiths. The applicant took a different route to work every day as he was fearful of being followed. However his need to be constantly vigilant had an effect on him and affected his ability to work. It would not matter what area of Pakistan he was in. The applicant stated that he believed that if he returned to Pakistan he would be killed.
31. The applicant's protection visa application included the following documents:
 - Identity documents
 - First Information Report (FIR) relating to the attack on the applicant and his brother-in-law [in mid] March 2010
 - FIR relating to the killing of [name deleted: s.431(2)] a relative of the applicant [in] September 2001
 - Certificate from Superintendent of police Quetta
 - Newspaper articles regarding the deaths of his bother-in-law's father and brother.
 - Country information regarding the treatment of Shias in Pakistan.
32. The applicant was interviewed by the delegate [in] June 2011.
33. By letter dated [January] 2012 the applicant's agent provide a further statutory declaration by the applicant in which he stated that he had applied for a visa to come to Australia to have discussions with [company deleted: s.431(2)] and whilst they were waiting for the visa to be granted there was an attack on the applicant and his brother-in-law. The police told them to

leave the country but there were many things that he had to do before they could leave. The applicant's marriage was scheduled for [April] 2010 and had already been re-scheduled twice and he did not want to delay getting married again. They had a lot of stock to dispose of. [In] June 2010 the applicant's wife's cousins were killed in Quetta and the next day her father died of a heart attack. The applicant was involved in rituals concerning their deaths.

34. When they initially applied for the visa they intended a 3 day business trip. This was why they did not include their families. After the attack on their lives they began to plan to apply for a protection visa.
35. In relation to whether he could relocate the applicant stated that that he was a Shia Muslim whose family migrated to Pakistan after separation and they were not welcomed and were called Mohajirs (migrants). Mohajirs mostly settled in Karachi and there had been numerous clashes between Sindhi, Pushto, Balochs and Punjabis and Mohajirs. If the applicant settled in another part of Pakistan apart from Sunni extremism he would have the additional problem of being a Mohajir and his wife was Hazara.
36. There had been a growth in the Punjab of Sunni extremist groups. Their aim was to eliminate Shias from Pakistan. The applicant had two brothers. His brother [Mr A] worked in a [factory] in Karachi. [Mr A] had been receiving threatening phone calls and one day when he was stopped traffic lights a note was thrown into his car that said "we will get you" He was verbally threatened on another occasion whilst driving to work. He reported the incidents to the police but he did not trust them and wanted to avoid bringing attention to himself. The applicant's other brother [Mr C] worked for [a media outlet]. He was offered a promotion as journalist but turned it down as it would have been too dangerous. About a month ago a letter was thrown into the applicant's house. It was a tirade against the family and ended 'long live Pakistan Taliban'
37. In a letter dated [June] 2011 the applicant's representative submitted that the applicant could not relocate within Pakistan because Shia Muslims faced violence and discrimination throughout Pakistan and they referred to the US State Department International Religious Freedom report 2010 dated 17 November 2010. They also provided:
 - A letter from [name deleted: s.431(2)] who stated that the applicant was a known Social and religious worker in Pakistan.
 - A letter dated [June] 2011 from [a] conference
 - Country information regarding the treatment of Shias in Pakistan
38. In a letter dated [January] 2012 the applicant's agent stated that in November 2009 the applicant was contacted by the police in Quetta and informed that his name and number were on a list in the possession of a Lashkar-e-Jhangvi (LeJ) terrorist who had been arrested. There were also the names of Shia Mullahs on the list.
39. [In] March 2010 the applicant and his [brother-in-law] were shot at. Since the applicant has been in Australia both of his brothers had received threatening phone calls and his brother [Mr A] was stopped in the way to work and threatened. A threatening letter had been left at the family home. It was submitted that the LeJ had publically stated that it was dedicated to the extermination of Shias and made no distinction between those who were prominent and those who were not. It was submitted that the applicant faced a real chance of persecution

because he was a Shia Muslim. The applicant practised his religion regularly. He attended the mosque and Shia events. He had particular prominence because of his close businesses and personal association with [Mr B]. The agent referred to country information regarding attacks on Shias in Pakistan. The applicant's agent submitted that it was not contended that the applicant's profile was such that his identity and business would be already known in other parts of Pakistan rather as a Shia the applicant would be at risk of being targeted by Sunni extremists across much of Pakistan. It was submitted that in addition to the Taliban there were a number of extremist Sunni groups pursuing a common anti-Shia agenda throughout Pakistan. The applicant's fear of persecution was not localised and it was not reasonable to expect him to relocate to avoid the risk of harm. If the applicant was to move to another part of Pakistan and start up a business or apply for a senior management position he would bring attention to himself. He was also a devout person.

40. By letter dated 31 January 2011 the applicant's agent provided:

- The applicant's brother, [Mr A's] statement
- The applicant's brother, [Mr C's] statement
- The letter thrown into the [Mr A's] car
- The letter thrown into the applicant's house
- News Items

Evidence at the hearing

41. The applicant stated that initially he was employed as the marketing manager with [Company 1]. He then invested some money into the business and became a partner on about a 30-70/60-40 basis with [Mr B]. [Company 1] was a small company and they only had 4 or 5 permanent staff including accountants and a public relations officer. They had 10 – 12 other day labourers. When they decided that they were leaving Pakistan they closed down the business. First of all, they cleared all the stock out and then they called in the money that was in the market. They had to tell all their staff that the business was closing down. They did not tell anybody the reason why they were closing it down.

42. The applicant confirmed that he had previously worked in textiles and computers. It was put to him that he was claiming the reason why he was at risk in Pakistan was because of his association with [Mr B], in particular his business association. If this was causing him so many problems, why didn't he seek alternative employment? The applicant maintained that it was not the business relationship or company relationship that was the issue, it was the personal relationship that he had with [Mr B]. The applicant's sister was his wife and the applicant's mother was related to [Mr B]. His mother came from the same village as [Mr B] and they were both from the [name deleted: s.431(2)] tribe. Further, there was a strong social connection between the two families. They were also very involved with religious matters within their society. They participated in the processions and regularly attended the mosque. They were the people who sat with the priests and spoke with them often. The applicant claimed he would have been someone well known for his connection to the mosque and his involvement in organizing religious matters. In Australia, there was no mosque that the applicant could attend in [place deleted: s.431(2)], so he practiced his religion at home. During Ashura, he came to [another town] to participate in ceremonies. There was one in [place deleted: s.431(2)] and one in [place deleted: s.431(2)].

43. The applicant was asked whether he ever had any problems because he was a Mohajir, the applicant stated that in Karachi it was okay because it was a stronghold for Mohajir's.

However when he travelled outside of Karachi he felt that he was looked down upon by other people. He often travelled to Islamabad, Peshawar and Lahore as part of his business. He spoke Urdu with an accent which would identify him as a Mohajir and he did not speak any of the local languages. He felt the people were concentrating more on the fact that he was a Mohajir rather than listening to what he was saying. He said he felt that he was looked at in a bad way because he was Mohajir.

44. The applicant was asked how a Mohajir from Karachi became engaged and then married to a Hazara from Quetta. The applicant said that it was not that uncommon for people to marry outside of their own ethnic group in Pakistan. His wife's family had a couple of houses in Karachi which they used to stay at during the winter time when it was too cold in Quetta. The applicant's sister who was married to [Mr B] came to know his mother in law because they lived near one another. His mother-in-law told his sister that she was looking for somebody to marry her eldest daughter. And this was how they met; became engaged and were married. The applicant's engagement ceremony was very large and was held in Quetta and he was married in Quetta. He had visited Quetta but had not lived there. His wife spoke Urdu and Persian. He had not visited Quetta or Baluchistan before he became engaged to his wife.
45. He was asked about the letter from [a] conference which was on the Department's file. That letter indicated that his father in law was a member of the [name deleted: s.431(2)]. He said this was a religious organization which organized religious events. They would arrange for the priests to come during religious events, arrange their accommodation and food and arrange all the other aspects of these activities. If there were targeted killings or other problems in the community then those affected would approach this organization because they had connections to government ministers and could intervene on a person's behalf. His father in law was quite prominent in this organization and he was also a businessman and was prominent for this reason. The applicant was not a direct member of any Shia conference but he took part in Shia activities and was very religious. He was not involved in any political groups including Mohajir political groups. He had no direct involvement in the MQM, although he knew quite a lot of people involved in the MQM and they had solicited him for donations. His wife's father had a [business] in Pakistan.
46. [In] June, 2011, two of his wife's cousins were killed. They were with the applicant's father-in-law and their cousin. They were closing up the shop and the two cousins and their cousin went to get a car to collect the father in law. A van approached them and tried to apprehend them and the cousin that survived believed that they might have been trying to be kidnapped. There was a struggle and they fired and the two cousins died and the survivor was shot in the leg. They knew that they had been targeted by Suni extremists and it was not merely criminal activity because they had been receiving threats to kill them. Their father was involved in the management of the [name deleted: s.431(2)]. This was a building where Shia's gave speeches and have lessons whereas they pray in the mosque. The family has been receiving threats from Lashkar-e-Janghvi and also from the Taliban of Baluchistan. This was the only reason why they would have been targeted. His wife's first cousin was killed [in] January, 2012. His name was [name deleted: s.431(2)]. He had been receiving threats from Lashkar-e-Janghvi and he was an inspector and he was shot dead. The applicant was engaged in June 2009 and there was a big party in Quetta and from this time on he would have been linked to his wife's family. His wife's father died from a heart attack at the funeral of her two cousins when he was carrying their bodies.
47. The applicant said that in about November 2009, he was telephoned by someone who asked for him by name. He asked who this person was and he said he was from the Quetta police

and that he had obtained the applicant's number from somebody he had arrested. The policeman asked him why his number would be with these people and what his connection was to Quetta given that he lived in Karachi. As soon as the applicant mentioned his father in law's name the policeman said he understood why he may have problems in Quetta and told him to be careful and not to go to Quetta or Baluchistan. The policeman also told him that there was a number of priests (Mullahs) numbers who were also in the possession of the people they had apprehended.

48. The applicant was asked about his statement that he thought that he was always being watched. The applicant said that after he became engaged to his wife they moved to a different part of Karachi as his mother wanted a change. He started to notice that people were following him and staring at him in public. He was being vigilant after the killing of his wife's relatives and he believed that people were following him.
49. The applicant described the attack on him on the 13 March, 2010. It was suggested to him that as he was with [Mr B] at the time of the attack and outside [Mr B's] brother's house that maybe [Mr B] and his family were the target of the attack. He said they also fired directly at him and he did not believe that he was not part of the attack. Their assailant had pistols and as soon as they started firing, he and [Mr B] went to the ground. [Mr B's] police guard opened fire and their assailant fled. The applicant was asked why he had never had a police guard if he believed he was in danger. He said he did not want to bring attention to himself. He said if he had a guard and went out to the market, people would look at him and think that there must be some reason he need protecting and he felt that it drew attention to himself that he did not want. This was the same reason why his wife's family did not apply for a police guard.
50. The applicant's brothers and mother were moving to [City 3] this week. They were permanently leaving Pakistan. They did not know where they would go after [City 3]. Since December, his wife has returned to live with her family in Quetta. His brothers and mother were leaving because they felt that things were getting worse in Pakistan for Shia's. They had received threatening phone calls and they had also received threatening letters. He said his mother and brothers did not tell him about the threatening letters that had been delivered to the home. His wife told him about this. He was asked why his wife had gone to live in Quetta when it was seen to be more dangerous than being in Karachi or why she did not leave Pakistan with his relatives. He said she had returned to Quetta because her family was making arrangements to leave Pakistan. She had relatives in [Europe] and her relative in [Europe] was trying to sponsor the family to migrate to [Europe].
51. It was discussed with the applicant that the Tribunal had to be satisfied that there was a real chance that he would be targeted as a Shia. And although a real chance could be less than 10%, the country information indicated that there were more than 20 million Shia's in Pakistan and that only hundreds had been targeted in attacks. This suggested that the chances of being the victim of attack were fairly low. The applicant says that they were targeting prominent Shia people; businessmen and lawyers and people like that He said even hundreds of people being targeted was too many and that Shia's had a right to live.
52. His brother, [Mr A] conducted a textile business and he had handed over the running of his business to his business partner. Applicant's other brother had resigned from his position.
53. The applicant was of the view that although there were difficulties in Pakistan, up until 2009, things were alright. It was only after that time that there seemed to be an increase in the

number of attacks on Shia and further it was after this time that he became associated with his wife's family.

54. The applicant said that when he and his brother-in-law [Mr B], applied for the visa to come to Australia, they had intended to come for a short business trip. They also had applied for a US visa and they were going to go to the US [first] and then go on to Australia. They were then subject to the attack a few days after lodging their visa application. They could not leave Pakistan at that time because their passports were with the Australian High Commission in Islamabad. They however had a meeting with all the family and they decided that they would close down their business and seek protection in another country. Their visas were not granted until May. Then the applicant's wife's cousins died and he had to participate in their funeral processions and the commemorations on the third, the seventh and the fortieth day after the death. He was the eldest son in law and it was expected that he would take part in these ceremonies. The applicant did not know anybody else who had sought protection in Australia. Not long after they arrived in Australia, they consulted their migration agent to get advice about seeking protection. Their agent confirmed she had opened a file [in] October 2011.
55. It was suggested to the applicant that things were more difficult for Shia's in Baluchistan and Quetta and the areas along the border with Afghanistan. However it appeared that things were relatively safer for Shia's in Islamabad and Rawalpindi. The applicant maintained that there was nowhere in Pakistan that he would be safe. Due to his background as a Mohajir, it was difficult for him to move to Islamabad or Rawalpindi and that Shia's were not safe anywhere. There had been bomb blasts all over Pakistan targeting Shia's. If there were safer places in Pakistan, they would have moved to those places and continued to conduct their business and not close it down and come to Australia.
56. The applicant was asked whether his wife had any difficulties because she was a Hazara and he said that she did not go out very often. The applicant said that a few days previously, one of his neighbours had been killed and he provided the newspaper cutting. He had seen this child growing up and now he had been targeted mainly because he was a Shia. He believed that things had become worse after 9/11 and he noticed that when he returned from [City 3], that things were different. They had become very bad since 2009. His wife's father's family migrated from Afghanistan many, many years ago and his wife's mother was of Iranian background.
57. He said the situation for Shia's in Pakistan was very difficult. No one was supporting them and Shia's were targeted and killed every day. He did not want to see his brothers killed or he did not want to get killed himself. Once there was attack on his own life, he realized how serious things were. He did not want to give them a second chance to attack him, he just wanted to leave. He received no support from the government. When matters were reported in the paper, it was not reported that Shia's were being killed by terrorists. It was just reported that persons were being killed by unknown people. They did not want Pakistan or the rest of the country to know what was going on. The Sunni extremists regard Shia Muslims as Kaffirs and they call them this to their face. They write on the walls, that Shia's are non-Muslims and Kaffirs. The media was pro-Taliban in Pakistan and did not report the incident's properly. There had already been 12 people killed so far in 2012. They got no support from the police and he did not trust them. The current Chief Justice and his family had connections to Lashkar-e-Jhangvi and also to the Pakistan Taliban. He did not try to protect them or stop the attacks. Every day over the loud speaker, they announced that someone had been attacked and requested that people come and give their prayers for the

people as they die or before they die. It was becoming a day to day thing in Karachi and was not any way to live. People were risking their lives to leave Pakistan, because things were so bad there.

58. The applicant's brother [Mr A], gave evidence via telephone from Pakistan. He confirmed and that he, his brother and mother were planning to leave Pakistan as soon as possible and they were going to [City 3] as soon as their visas were granted. They were leaving because the situation was really bad and had become worse. They had received letters threatening them in the first week of December 2011. In the past few days, 6 Shia's had been killed in their area including one of their neighbours whom they had known for many years. He had received threatening letters and threatening phone calls. He first started to receive the phone calls in December 2011. The letter was given to him in January 2012. He confirmed that the applicant's wife was living at her mother's home at the moment. He said that the applicant left Pakistan because after the attacks on 13/3 he realized that his life would be in danger. He had received threatening phone calls and threatening letters he never really took them all that seriously. It was only after the attack on his life that he realized how serious things were and he decided to leave. [Mr A] said that they did not report the threats that he received to the police because the situation in Pakistan, was that if you reported something to the police then everyone would know that you had been attacked and you would draw attention to yourself. This would mean other people who would want to attack you, would come to know who you were and where you were. [Mr A] believed that his brother (the applicant) was attacked because he was very involved in religious activities and close to the scholars of Shia religious practice. He reiterated that things were very bad in Pakistan at the moment, that there had been a sharp increase in the violence against Shia's and they were being killed every day. That Shia's had the right to live and live safely and independently. They had no right to kill them just because of their religion.
59. [In] March 2012 the applicant's agent provided certified copies of some documents that had been previously provided as scanned documents.

Independent Country Information

60. Human Rights Watch¹ has recorded at least 18 sectarian attacks on Shia in 2011. Since Pakistan's return to constitutional rule in 2008, hundreds of Shia have been killed across Pakistan by alleged Sunni extremists. Human Rights Watch research indicates that at least 275 Shias, mostly of Hazara ethnicity, have been killed in sectarian attacks in the southwestern province of Baluchistan alone since 2008.
61. Pakistani and international human rights organizations, including Human Rights Watch, have made numerous calls to Pakistan's authorities to hold those responsible for the attacks to account. While authorities claim to have arrested dozens of suspects, no one has been charged in these attacks. "The ongoing targeted killings of Shia send a chilling message to all Pakistanis that their government won't necessarily act to protect them," Adams said. "The government's failure to break up the extremist groups that carry out these attacks calls into question its commitment to protect all of its citizens."
62. Some Sunni extremist groups are known to have links to the Pakistani military and its intelligence agencies. Groups such as the banned Lashkar-e Jhangvi operate with impunity

¹ Human Rights Watch Pakistan: Protect Shia Muslims 3 December 2011
<http://www.hrw.org/news/2011/12/03/pakistan-protect-shia-muslims>.

even in areas where state authority is well established, such as Punjab province and the port city of Karachi. In Baluchistan, where local militants challenge government authority and elsewhere across Pakistan, law enforcement officials have failed to intervene or prevent attacks on Shia and other vulnerable groups.

63. International Crisis group Pakistan: The Militant Jihadi Challenge Asia Report N°164 – 13 March 2009 outlined the history of the rise of militant groups in Pakistan and the geopolitical factors that have led to their emergence and prominence. It notes:

The Pakistani Taliban, which increasingly controls large swathes of FATA and parts of NWFP, comprises a number of militant groups loosely united under the Deobandi Tehrik-i-Taliban Pakistan (TTP) that have attacked not just state and Western targets, but Shias as well. Their expanding influence is due to support from long-established Sunni extremist networks, based primarily in Punjab, which have served as the army's jihadi proxies in Afghanistan and India since the 1980s. Punjab-based radical Deobandi groups like the Sipah-e-Sahaba Pakistan (SSP) and its offshoot Lashkar-e-Jhangvi (LJ) provide weapons, recruits, finances and other resources to Pakistani Taliban groups, and have been responsible for planning many of the attacks attributed to FATA-based militants. The SSP and LJ are also al-Qaeda's principal allies in the region.

...

While the rise of militants in Pakistan's tribal areas has deflected attention away from long-established Sunni militant jihadi groups in recent years, these groups still pose the same, if not greater, threat to internal, regional and global security. The larger cause of fighting the West and its allies, and a wider, better-financed network of radical Deobandi groups have changed the pattern of terrorist attacks from those on religious processions, mosques and prominent Shias, to increasingly bold strikes against the symbols of the state.

...

Their increasing capabilities have indeed produced an upsurge of jihadi violence countrywide. "Deobandi groups are becoming bolder and more violent than we have ever seen", said a former Pakistani ambassador. "Their trademark has become the spectacular suicide attack".

According to the Pakistan Institute for Peace Studies, there were 2,148 terrorist, insurgent and sectarian attacks in 2008, a dramatic 746 per cent increase since 2005, killing 2,267 people, and injuring roughly 4,500. Inter-tribe sectarian clashes, primarily in FATA's Kurram Agency and bordering areas, resulted in another 1,336 deaths. While the majority of these were in NWFP and the tribal areas, the threat is by no means confined to the Pashtun belt, as the 20 September bombing of the Marriott Hotel in the federal capital, Islamabad, illustrated.

Adviser to the interior ministry Rehman Malik has subsequently attributed the Marriott attack to the Lashkar-e-Jhangvi (LJ), the offshoot of another Punjab-based radical Deobandi group, Sipah-e-Sahaba Pakistan (SSP), which has known al-Qaeda links. Although the bombing, as with the Mumbai attacks, symbolises an enhanced focus on high profile and Western targets, radical Sunni groups have also continued to attack Shias and other religious minorities.

64. The same report under the heading “Extremism in Karachi” notes:

Jaish-e-Mohammed leader Masood Azhar is now running a large madrasa in Karachi’s Ehsanabad constituency. Some al-Qaeda members, including Daniel Pearl’s kidnappers, were found and arrested in this seminary. Pro-Taliban and anti-Shia graffiti can be seen in the same constituency. The PPP’s coalition partner in the Sindh government, the Muttahida Qaumi Movement (MQM), which also runs Karachi’s district government, has expressed concerns about Talibanisation in Karachi. It points to an increase in pro-Taliban Deobandi madrasas and mosques, which often encroach on both state and private land with impunity. Of the 34 mosques in the military-run Defence Housing Authority (DHA), the wealthiest residential neighbourhood in Karachi, 32 are Deobandi; the most prominent of them, the Sultan Mosque, is manifestly pro-Taliban, and its clerics regularly preach against Shias.

The renewed intensity of Sunni extremist groups in a city with a history of sectarian conflict has provoked fears of fresh violence. The former president of an Imam Bara (Shia mosque) in DHA was compelled to turn his mosque “into a fortress, with armed guards on the rooftop during Friday prayers”. He also formally complained about the Sultan Mosque’s incitements against Shias to the DHA administration, which took no action. In response to this climate of heightened threat, the Sipah-e-Muhammad, the banned Shia militant counterpart to the SSP, has also regrouped and resumed a conspicuous presence. Similarly, the Barelvi Sunni Tehrik is reportedly “more armed than ever” after the April 2006 bomb attack in Nishtar Park targeting its leadership.

...

With the state becoming a primary militant target, militant jihadi groups have expanded their presence and activities to the federal capital. There were four suicide bombings in and near Islamabad in 2008, claiming 85 lives. These included the suicide bombing of the Danish embassy compound on 2 June 2008, later claimed by al-Qaeda; the headquarters of the Anti-Terrorism Squad in Islamabad, killing eleven people, on 9 October; September’s Marriott hotel bombing; and an attack on an ordnance factory some forty miles outside Islamabad in August 2008, which claimed more than 60 lives.

Militants have made their presence increasingly felt in Islamabad from at least early 2006. An SSP rally in Islamabad on 7 April 2006 drew a reported 5,000 activists, despite the Musharraf government’s ban on the group. At the rally, former Pakistani general

Zaheerul Islam Abbasi, who had been arrested in 1995 for a coup attempt against Benazir Bhutto’s government, declared, “The concept of nation state is an obstacle in the way of the establishment of Khilafat. We will start the establishment of Khilafat in Pakistan and then will do so across the world”. Organisers distributed literature, preaching jihad against Shias, and one organiser reportedly thanked the government for allowing the rally, which continued despite what former law minister and general secretary of the independent Human Rights Commission of Pakistan (HRCPP) Iqbal Haider termed “the blatant violation of laws against inciting violence”. Haider added, “It is obvious that there will be no end to extremism and hatred in society while official policies pro-mote such things. In November 2007, two consecutive suicide attacks in Islamabad’s twin city, Rawalpindi, including one just outside the army’s general headquarters by jihadis—retaliation for the Lal Masjid operation—claimed over 30 lives. On 27 December, PPP leader and former prime minister Benazir Bhutto was assassinated in Rawalpindi.

In September 2008, following an armed attack on Prime Minister Yusuf Raza Gilani's convoy along a heavily guarded route between Rawalpindi and Islamabad, an analyst commented on "how freely [militant groups] have begun operating" in what is essentially the military high command's backyard.

The Jaish-e-Mohammed and Harkatul Mujahidin have reportedly set up bases and transit camps in Rawalpindi for militants travelling from southern Punjab to NWFP. Said a Rawalpindi resident: "Most of the time ... Islamabad gets attention without a reference to the city of Rawalpindi. How can people ignore the influence of what is happening in Rawalpindi? The fact that Rawalpindi has turned into a hub of various sectarian groups needs to be analysed. If you walk around the city after Friday prayers, you will see their strength. They have established their presence in Rawalpindi. Their impact on Islamabad's security is key".

65. Rashid, A. 2010, 'The Anarchic Republic of Pakistan', *The National Interest*, 24 August <http://nationalinterest.org/article/anarchic-republic-pakistan-3917?page=show> – Accessed 7 January 2011 states:

Thus the Pakistani Taliban have a two-pronged offensive: the first is to politically undermine the state and its organs through terror; the second is to commit sectarian violence against all those they believe are not true Muslims. This intolerance has developed deep roots in Pakistan over the past three decades, and it has now been boosted by the jihadist policies of al-Qaeda and the Pakistani Taliban. The government's inability to deal with sectarian threats has led to some Muslim groups arming themselves and taking the law into their own hands. This only leads to further loss of control by the state.

66. Abbas, H. 2010, 'Shiism and Sectarian Conflict in Pakistan: Identity Politics, Iranian Influence, and Tit-for-Tat Violence', *Combating Terrorism Center at West Point, Occasional Paper Series*, 22 September states:

...the Shia perceive Sunni radicalism as a major threat, especially the prevalent anti-Shiism of Deobandi groups and the Ahle-Hadith sub-sect. The targeting of major Shia gatherings in 2008, 2009, and 2010, which began in the NWFP and gradually expanded into Quetta, Karachi, Southern Punjab, and Lahore indicates a rising trend of sectarian attacks. For instance, out of 944 sectarian attacks since 2001, over 50 percent of the attacks took place in the last three years. Unprecedented attacks on Sufi shrines in Peshawar (Rahman Baba), Islamabad (Bari Imam), and Lahore (Data Ganj Bakhsh), which are revered by Shia and Barelvi Sunnis alike, further underline the gravity of the problem.

Renewed targeted killings of Shia in Karachi in June and July 2010 further intensified pressure on the Shia to respond to aggression in kind.

67. More recently in February 2012 the Asian Human Rights Commission² has commented on the links between the ISI and the LeJ and ISI and the judiciary. It has referred to the institutional hatred of Shia Muslims by the Punjabi judiciary which means they cannot get justice in the courts. The article notes:

Hundreds of Shias have been murdered by militants in Quetta in the past few months. In the last couple of weeks, Shias have been taken off buses, lined up and shot dead. Quetta, however, is not an exception. Shias are not safe in any major town in Pakistan. Their places of worship, religious processions, and civilian and religious

² Pakistan: Brutal sectarian violence against Shias continues unabated Asian Human Rights Commission 8 February 2012 <http://www.humanrights.asia/news/ahrc-news/AHRC-ART-008-2012> accessed 21 March 2011

leadership has come under relentless attacks while the State's machinery has either refused or failed to protect Shias and other religious minorities in Pakistan.

68. The South Asian Terrorist Portal reports in January 2012 that:

Amidst rapid radicalization, the Pakistan Government imposed bans on radical formations in Punjab, but, these bans have been far from effective. Banned Deobandi anti-Shia outfits like the SSP and the LeJ have a stronghold in the southern part of the province. On occasion, these groups have sought to circumvent these bans by operating openly under a new banner. For instance, the banned SSP resurfaced as Ahl-e- Sunnah wal Jamaah (ASWJ), while LeT continues to work openly under the banner of JuD and Falah-e-Insaniyat Foundation.

Limited legal action against terrorists has been far from effective. On July 14, 2011, the Supreme Court ordered the release of Malik Ishaq – the former operational chief of LeJ, who was involved in 44 cases involving the killing of at least 70 people, mostly belonging to the Shia sect – on bail from Lahore’s Kot Lakhpat prison because of insufficient evidence produced by the prosecution. According to an internal document, prepared by the Law Enforcement Department, titled, ‘Highly objectionable activities of Malik Ishaq’, Malik resumed his subversive activities soon after his release, preaching hatred and violence in the name of Islam. The “independent” judiciary is haunted by the constant fear of retaliatory action by the militants. A US report in August 2011 noted that most terror suspects in Pakistan escaped conviction due to ineffective laws and prosecution. A report prepared by the Punjab Government, noting that at least 65 extremists were released in 2011, stated that most of the released extremists were back to their old ways, engaging in sectarian violence and terrorist activities again.³

69. In August 2010, an article on The National Interest website reported that “[p]rominent Shia technocrats – politicians, doctors, architects, bureaucrats and judges – have been singled out for assassination in all major cities, while in December 2009, 43 Shias were massacred by Sunni extremists in Karachi”. According to the article:

the Pakistani Taliban have a two-pronged offensive: the first is to politically undermine the state and its organs through terror; the second is to commit sectarian violence against all those they believe are not true Muslims. This intolerance has developed deep roots in Pakistan over the past three decades, and it has now been boosted by the jihadist policies of al-Qaeda and the Pakistani Taliban. The government’s inability to deal with sectarian threats has led to some Muslim groups arming themselves and taking the law into their own hands.⁴

70. Deobandi Sunni Muslim extremist groups such as Lashkar-e-Jhangvi (LeJ) target both Hazara community gatherings and individuals in Quetta.⁵ A July 2010 DFAT report states that “[t]he security situation in Baluchistan, particularly Quetta, is generally poor”, and that “[t]he Hazari community is specifically affected by sectarian killings of Shi’a by armed Sunni groups”.⁶ According to the Human Rights Commission of Pakistan (HRCP), between 2003 and 2009, over 260 members of the Hazara community in Quetta were killed in targeted

³ Pakistan: Punjab Terror Assessment 2012 – Analysis 22 January 2012

<http://www.eurasiareview.com/22012012-pakistan-punjab-terror-assessment-2012-analysis/> accessed 20 March 2012.

⁴ Rashid, A. 2010, ‘The Anarchic Republic of Pakistan’, The National Interest website, 24 August.

⁵ Akbar, M.S. 2009, ‘Hazara tribesmen under attack in Quetta’, *Daily Times*, 6 February

http://www.dailytimes.com.pk/default.asp?page=2009\02\06\story_6-2-2009_pg7_15 – Accessed 29 March 2010

⁶ Department of Foreign Affairs & Trade 2010, *Conditions for Asylum Caseloads: Hazaras in Quetta*, 30 July

killings, and more than 1000 people suffered some form of injury.⁷ Some of these attacks include:

- A July 2003 bombing of a Shia mosque in Quetta that left more than 50 people dead
 - A March 2004 attack on a Shia Ashura procession that killed 38
 - A March 2005 bombing of a Shi'ite shrine in Jhal Magsi that killed 65.
71. The International Crisis Group (ICG) states that the “Pakistani Taliban and other Sunni radical groups including Lashkar-e-Jhangvi and [Sipah-e-Sahaba Pakistan] SSP” were responsible for these attacks.⁸ Since 2009, attacks on Hazaras in Quetta by LeJ and other Tehrik-e-Taliban Pakistan (TTP) affiliated extremist groups have continued. The largest such attack occurred on 3 September 2010, when up to 73 Shi'ites (mostly Hazaras) were killed and over 200 injured in a suicide bombing in the city.⁹ Once again, LeJ claimed responsibility for the attack.¹⁰ The UN News Service reported that extremists claimed that the attack was “revenge for the killing of a Sunni Muslim leader last year.”¹¹

FINDINGS AND REASONS

72. Based on the applicant's passport, a copy of which was attached to his Protection visa application and his oral evidence, the Tribunal accepts that he is a national of Pakistan.
73. The delegate noted that the applicant presented as a credible witness and found that his fears were plausible and accorded with independent country information. The Tribunal also found the applicant to be a credible witness who answered questions spontaneously and was able to provide considerable detail regarding his claims. His account also accorded with the country information set out above.
74. The Tribunal accepts the applicant's evidence that he was associated with [Mr B] whose family was prominent in Shia politics and who was prominent business man in Karachi. The Tribunal accepts that [Mr B's] father and brother were killed by Sunni extremists because they were prominent Shias. The Tribunal accepts that the applicant was fired upon when he was with [Mr B] and that [Mr B's] police guard thwarted the attack.
75. The Tribunal accepts that the applicant is a devout Muslim who is involved in Shia Muslim activities. The Tribunal accepts that the applicant's family has received threats whilst they have been living in Karachi. The Tribunal accepts that the applicant was threatened whilst he was living in Pakistan.
76. The Tribunal accepts that he is a Mohajir.

⁷ UK Home Office 2011, *Country of Origin Information Report – Pakistan*, 17 January, Section 20.06 <http://www.unhcr.org/refworld/docid/4d37e8622.html> – Accessed 27 April 2011

⁸ International Crisis Group 2009, *Pakistan: The Militant Jihadi Challenge*, Asia Report no.164, 13 March, p.16

⁹ Hughes, M. 2010, 'Suicide attack death toll reaches 73 in Quetta Pakistan', *The Examiner*, 4 September <http://www.examiner.com/afghanistan-headlines-in-national/suicide-attack-death-toll-reaches-73-quetta-pakistan-video> – Accessed 8 October 2010

¹⁰ Reporters Without Borders 2010, 'Journalists killed and injured in Quetta bombing, reporter kidnapped in Islamabad', UNHCR Refworld, 6 September <http://www.unhcr.org/refworld/docid/4c8df29814.html> – Accessed 11 October 2010

¹¹ UN News Service 2010, UN chief deplores deadly attacks against Pakistan's Shiite Muslims, UNHCR Refworld, 3 September <http://www.unhcr.org/refworld/docid/4c84aca21a.html> – Accessed 7 October 2010

77. The Tribunal accepts that the applicant is married to a Hazara woman whose family is prominent in Shia politics in Quetta. The Tribunal accepts that her family members received threats from Sunni extremist groups and that her cousins have been killed.
78. The Tribunal accepts that although the applicant had originally planned to come to Australia for business once he was the subject of an attack he decided that he had to leave Pakistan and left with the intention of applying for asylum in Australia.
79. The Tribunal notes that there are between 17 and 26 Million Shia Muslims in Pakistan so although the country information indicates that Shia are targeted by Sunni extremist groups and that many have been killed, when the number targeted is compared to the total population it would seem that the chance of being targeted solely for being a Shia Muslim is relatively remote. However there are a number of factors in the applicant's case that increase the likelihood that he would be targeted in a sectarian attack. There is his association with [Mr B], his own religious activities and his association with his wife's family. The country information indicates that the aim of the Sunni extremists is not just to target Shias but also to demonstrate the lack of state power to prevent these acts. This is why they tend to target professionals and persons who are prominent. They wish to target leaders in the Shia community to engender fear and create the atmosphere that no one is safe which leads to a destabilisation of Pakistan society.
80. [Mr B] was provided with a police guard who prevented the attack on him and the applicant being more serious. This would appear to indicate that adequate state protection was available. The applicant indicated that he did not request a police guard as he felt it would draw too much attention and be more likely to make him the subject of an attack. This would also indicate that police protection may have been available to him if he had requested it. However the country information also indicates:

The local justice system in Pakistan is in dire straits. Policemen, judges and lawyers are frequently intimidated by terrorist groups. Evidence is rarely collected against the arrested perpetrators of attacks, and either the police or judges release the suspects. If not, the terrorists are quite capable of freeing their own by force from jails, courthouses and hospitals. After the Ahmadi killings, terrorists attacked a hospital where one of their arrested comrades was being treated under heavy police guard. In June, terrorists attacked a Karachi courthouse, freeing four members of their group undergoing trial for the earlier massacre of 43 Shias in the city.¹²

81. Abbas, H. 2010, 'Shiism and Sectarian Conflict in Pakistan: Identity Politics, Iranian Influence, and Tit-for-Tat Violence', Combating Terrorism Center at West Point, Occasional Paper Series, 22 September notes that "Pakistan's poor law enforcement capacity continues to seriously undermine its ability to confront sectarian militancy in the country. Even when police apprehend sectarian terrorists, they evade justice because of a failing criminal justice system. The combination of these factors has made this bad problem worse." The report also states:

In terms of tactics and tools, sectarian terror groups like Lashkar-e-Jhangvi and Sipah-e-Sahaba are now increasingly indistinguishable from terrorist organizations like Tehrik-i-Taliban and even Al-Qaeda. Recent developments show that these sectarian groups are also being targeted as part of the anti-terrorism drive in the country. Despite these efforts, it is unlikely that Pakistan will be able to sustain this

¹² Rashid, A. 2010, 'The Anarchic Republic of Pakistan', The National Interest, 24 August
<http://nationalinterest.org/article/anarchic-republic-pakistan-3917?page=show> – Accessed 7 January 2011

counterterrorism strategy in the absence of major structural changes in its law enforcement system and of a major overhaul of prosecution proceedings. Although in recent years a movement for the rule of law in Pakistan has emerged and strengthened, more time is needed for this movement to gain momentum and dividends, and become part of the solution to this problem.

82. The more recent country information referred to above confirms the inadequacy of the Pakistani judiciary to deal with Sunni extremist groups.
83. The joint judgment in *MIMA v Respondents S152/2003* (2004) 222 CLR 1 referred to the obligation of the state to take “reasonable measures” to protect the lives and safety of its citizens, including “an appropriate criminal law, and the provision of a reasonably effective and impartial police force and justice system”, or a “reasonably effective police force and a reasonably impartial system of justice”, indicating that the appropriate level of protection is to be determined by “international standards”, such as those considered by the European Court of Human Rights in *Osman v United Kingdom* (1998) 29 EHRR 245.
84. In *Prathapan v MIMA* (1998) 47 ALD 41 at first instance, Madgwick J referred to “a reasonable level of efficiency of police, judicial and allied services and functions, together with an appropriate respect on the part of those administering the relevant state organs for civil law and order, and human rights, in a modern and affluent democracy” as ordinarily amounting to effective and “available” protection.
85. Thus an adequate police force (or police protection) is not all that is required when determining whether there is adequate state protection. The applicant’s comments regarding the courts being intimidated by defendants who have links to militant groups is consistent with the country information. The Tribunal is satisfied based on the country information quoted above that despite the provision of a police guard to [Mr B] the possibility the applicant could also obtain a police guard, that there is no adequate state protection from the actions of extremist militant groups in Pakistan.
86. The applicant has been targeted in the past and although this might have been because he was with [Mr B] it is not a remote possibility that he would be in this situation in the future. Further the applicant had received threats in Pakistan and his family continues to receive threats. The Tribunal accepts that the applicant has a well-founded fear that he would be persecuted in a reasonably foreseeable future in Karachi where he is well-known and is associated with prominent Shia families for reason of being a Shia Muslim who is prominent in his community. The harm feared is for a combination of his religion and his membership of the particular social group of prominent Shia Muslims. The essential or significant reason for the harm feared is Convention related.
87. The Tribunal also accepts based on the country information and his past experiences that due to his association with his wife’s family that there is a real chance that he faces a real chance of persecution in Quetta for reasons of his religion.
88. The Tribunal must consider whether the applicant’s fear of persecution is well-founded throughout Pakistan. The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country: *Randhawa v MILGEA* (1994) 52 FCR 437 per Black CJ at 440-1. Depending upon the circumstances of the particular case, it may be reasonable for a person to relocate in the country of nationality or former habitual residence

to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution. Thus, a person will be excluded from refugee status if under all the circumstances it would be reasonable, in the sense of “practicable”, to expect him or her to seek refuge in another part of the same country. What is “reasonable” in this sense must depend upon the particular circumstances of the applicant and the impact upon that person of relocation within his or her country. However, whether relocation is reasonable is not to be judged by considering whether the quality of life in the place of relocation meets the basic norms of civil, political and socio-economic rights. The Convention is concerned with persecution in the defined sense, and not with living conditions in a broader sense: *SZATV v MIAC [2007] HCA 40 and SZFDV v MIAC [2007] HCA 41*, per Gummow, Hayne & Brennan JJ, Callinan J agreeing.

89. The relevant questions for the Tribunal to address are whether there is a real chance that the applicant would face persecution for a Convention reason if he were to move to another area of Pakistan, and whether in his particular circumstances, it is reasonable for him to do so.
90. The Tribunal must also look at whether relocation is reasonable also in light of the fact that he is a Mohajir who only speaks Urdu and English and that his wife is a Hazara with a background from Afghanistan.
91. According to the UK Home office report on Pakistan dated 21 September 2011:

20.10 The website Minorities at Risk (MAR), dated 31 December 2006, reported that, constituting eight per cent of the population, the Mohajirs, literally meaning ‘refugee’:

“... are the Urdu-speaking Muslims who fled India after the 1947 partition of the sub-continent and their descendants. Group members are concentrated in Sindh Province, particularly in urban areas... [They] are primarily Sunni Muslims, though some are Shi’a. However, most Mohajirs’ primary identity is not religious but revolves around their outsider’ status. Competition with native Sindhis has defined Mohajirs’ political and economic situation in Pakistan more than any other factor... Mohajirs are mainly represented by the MQM and its various factions.”
92. Country information indicates that discrimination against Mohajirs in Pakistan is "very limited. They can live in most cities safely" and only suffer "occasional social discrimination."¹³
93. The country information set out above indicates that militant Sunni groups are active in many parts of Pakistan including, Baluchistan. Punjab (including Lahore and Multan), Khyber-Pakhtunkhwa (including Peshawar), FATA and Karachi.
94. The country information suggests that matters are relatively better for Shia Muslims in Islamabad and Rawalpindi. While the twin cities of Islamabad and Rawalpindi have experienced a significant number of terrorist attacks over the past decade, few of these attacks appear to have been specifically targeting Shi’ite gatherings or property. The last major attack on a Shi’ite target in the twin cities was the 2002 attack on a Shia community

¹³ Immigration and Refugee Board of Canada, Pakistan: Treatment of Mohajirs (Urdu-speaking Muslims who fled to Pakistan from India following the 1947 partition of the sub-continent) by the general population, particularly in Lahore and Islamabad; whether there is an internal flight alternative for Mohajirs in Pakistan, aside from Karachi (1998-August 2003), 2 September 2003, PAK41873.E, available at: <http://www.unhcr.org/refworld/docid/403dd20c0.html> [accessed 22 March 2012]

centre that resulted in the deaths of 15 people. LeJ was held responsible for this attack. In 2007, two LeJ members were arrested in connection with this attack (Parliamentary Joint Committee on Intelligence and Security 2009, 'Lashka-e-Jhangvi', Australian Parliament House website, 16 March <http://www.aph.gov.au/house/committee/pjcis/six%20terrorist/LeJ.pdf> – Accessed 6 July 2011).

95. However other reports refer to a sectarian attack in Islamabad in June 2010, "Jafaria Alliance Pakistan spokesman Ali Ahmer said the death toll of the members of the Shia sect had risen to six in the last two weeks. He blamed the members of banned organisations for the killings" (Five More Dead in Karachi Target Killings: Daily Times, 29 June 2010).
96. Further the ICG report referred to above notes that the Sunni extremist groups are active in Islamabad even though their targets there appear to be government figures. They have a presence in Islamabad and Rawalpindi. Given their history of sectarian attacks and their antipathy towards non Sunni Muslims it is not a far-fetched or remote possibility that they could mount sectarian attacks in Islamabad and Rawalpindi in the reasonably foreseeable future.
97. In addition the Tribunal accepts that the applicant is connected to two prominent Shi'a [families]. The Tribunal accepts that the applicant is very active in Shia religious activities. Further the applicant has been a successful business person and has made a living from business and would be likely to do so in the reasonably foreseeable future. The Tribunal accepts the applicant's evidence that if he relocated to Islamabad or Rawalpindi he could, in the not too distant future, be prominent in the Shi'a community there or his connections to prominent Shia families would become known. In these circumstances it is not a remote or far-fetched possibility that he would become the target of Sunni extremist groups.
98. The Tribunal finds that the applicant would not be able to avoid the risk of Convention based persecution by relocating to another part of Pakistan and finds that he does have a well-founded fear of persecution for a Convention reason and that he is refugee within the meaning of the Convention.

CONCLUSIONS

99. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

DECISION

100. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.