

071661524 [2007] RRTA 265 (5 October 2007)

DECISION RECORD

RRT CASE NUMBER: 071661524

DIAC REFERENCE(S): CLF2007/73063

COUNTRY OF REFERENCE: Pakistan

TRIBUNAL MEMBER: Kira Raif

DATE DECISION SIGNED: 5 October 2007

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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).

The applicant, who claims to be a citizen of Pakistan, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.

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.

The applicant applied to the Tribunal for review of the delegate's decision. 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

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.

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 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).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

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:

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.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* [1989] HCA 62; (1989) 169 CLR 379, *Applicant A v MIEA* [1997] HCA 4; (1997) 190 CLR 225, *MIEA v Guo* [1997] HCA 22; (1997) 191 CLR 559, *Chen Shi Hai v MIMA* [2000] HCA 19; (2000) 201 CLR 293, *MIMA v Haji Ibrahim* [2000] HCA 55; (2000) 204 CLR 1, *MIMA v Khawar* [2002] HCA 14; (2002) 210 CLR 1, *MIMA v Respondents S152/2003* [2004] HCA 18; (2004) 222 CLR 1 and *Applicant S v MIMA* [2004] HCA 25; (2004) 217 CLR 387.

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.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

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.

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.

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.

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.

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.

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

The documentary material before the Tribunal is contained in Tribunal case file 071661524 and the Departmental case file CLF2007/73063. 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. A summary of the evidence on the files follows.

Primary application

According to the Protection visa application, the applicant is a male born in in , UAE. He claims to be of ‘Muslim’ ethnicity and religion. He has completed several years of schooling. He stated that he performed work for the Pakistan Muslim League he worked as a labourer in , UAE and he worked as a farmer in another county (referred to here as country A) Country A. The applicant stated that he previously resided in Pakistan, in UAE and in Country A until recently. .

When making the application, the applicant made the following claims

- His problem started when Musharraf took office in 1999. The applicant was working for the Muslim League in Lahore. He became involved with the Muslim League through a friend who was the president of the district for the Muslim League and while visiting the friend he also met person A. Four of his brothers were murdered because of their political activities.
- The applicant started going to his friend's head office. He noticed that this friend was an honest person and was doing work for the development of the community and people's well-being. He officially joined the Muslim League as he believed that it was the real democratic party in Pakistan.
- The applicant was appointed as a leader of an Area. His responsibilities included helping people with social and financial matters and overseeing some development work in the area. They would provide assistance with problems with police, courts and government departments. All the work he did was under the guidance of the party, which provided them with funds. The applicant worked with a team of other officials .
- The Area he was involved in was an important electorate for person A and when he was in government, they worked in development projects and organised district level meetings for the party in the area. Person A was elected as a member of the National Assembly . Whenever he was in the area, they organised meetings and visits with residents. All district officials attended the district meetings. During the meetings they would relay issues affecting the part and people in the district to the National representative. The applicant also attended national meetings and meetings for other Muslim League candidates to assist the party to show number of supporters
- Whenever they received a call for strike, they would mobilise people to strike.
- As the applicant's home was close to the Muslim League's office in Lahore, he was close to a particular person referred to here as person A. He visited the office almost every day.
- In 1999 Musharraf's military overthrew Nawaz Sharif's government and he was imprisoned along with most party leaders; his wife Begum Kulsum Nawaz took leadership of the party. She worked for the release of her husband and for bringing democracy to the country.
- They organised strikes, meetings and protests against the arrests and to re-establish democracy in the country. They used to visit people and encourage them to join the strikes, telling them that the party was strong despite Nawaz Sharif's imprisonment and that Sharif would be released soon. There were more than 20 meetings during this period supporting democracy and they contacted other political parties. The government tried to crush them by disturbing the meetings and processions by force. The army started to arrest people.
- The applicant was involved in a mass strike on 23 November 1999 called by Begum Kulsum Nawaz. The applicant collected people in the area, arranged for transport and food for the people. About 300 – 400 people were involved in the strike in the area and it spread across Lahore. The applicant was arrested in his own home. He was imprisoned and tortured physically and mentally for seven to eight months. No charges were pressed against the applicant. Because of the efforts of his father and party workers, the applicant

was released with a finding that there was no case against them and that they were arrested to stop political activities.

- The applicant continued his activities for the restoration of democracy after his release. When they noticed that they did not stop, they were framed with false charges. Based on these charges, the applicant was among nine arrested and he was imprisoned for months. He was charged with conspiring against the government, disturbing the peace and breaking the law. Two of them appeared before the court but there was no evidence against them. The case was still ongoing when the applicant was granted bail and fled to UAE while his co-accused fled elsewhere.

- The applicant knew an agent in Pakistan whom he paid to arrange his visa to the UAE. He did not have problems leaving the country despite the ongoing court case because only terrorists are kept on the watch list and not political activists.

- In UAE the applicant worked in terrible conditions. The applicant then paid money to someone to help him to arrange a visa for Country A. He travelled Country A and approached an immigration consultant, who charged him a fee to prepare and lodge the refugee application and told the applicant that he had done so, but when the applicant contacted the immigration department, he was told that they had no record of the applicant. When the applicant made inquiries with the agent, he was threatened and told that if he complained, he would be deported. The applicant met another consultant who promised to secure the refugee status for him but he also did not lodge the application. The applicant lost his job and started living on the streets and he was helped by a friend. He was in that situation for years and when he approached the migration consultant, [details of his immigration processing deleted in accordance with s431 as it may identify the applicant] .

- After arriving in Pakistan, the applicant went to his home and police came and arrested him and the trial for political charges recommenced. The applicant's father paid money to have him released on bail again, but the police continued to harass him.

- The applicant continued his political activities with the Muslim League. The police started to harass him and warned him to desist his political activities. They encouraged the applicant to join the ruling government but he told them that he was opposed to dictatorship.

- One evening the applicant was standing in front of his house when someone shot at him, but he escaped. After the shooting the people from Musharaf's government came to the applicant's house and said that either he should join their government and be given a good position, or it would be better for him to leave Pakistan because he will rot in prison there. He consulted one of his friends who also advised him to leave. The applicant arranged with an agent to come to Australia. The applicant signed the application form and the agent arranged the rest. The agent also assisted in renewing the applicant's passport.

Included with the primary application was a copy of the applicant Pakistani passport. It indicates that the applicant was born in UAE. The applicant also provided a copy of an identity document.

The Tribunal also obtained information concerning the applicant's application for the Australian visitor visa. The information indicates when the applicant applied for the visa. When applying for the visa, he provided information that he was a managing partner at a private business in Lahore. The applicant stated that he intended to travel to Australia for tourism purposes. The applicant provided evidence of funds to the sum of AUD17190 and evidence of ownership of the business. The applicant indicated that he had previously travelled to Country A and other countries. The Department of Immigration made inquiries concerning the information provided by the applicant in his visitor visa application concerning his employment and assets and the inquiries indicated that some of the documents provided were not genuine.

Application for review

The applicant did not provide any further written material to the Tribunal when making the application for review. He wrote to the Tribunal, stating that he wanted to travel to Country A for a week to bring evidence and applied for a bridging B visa, but his application for the BVB was refused and he was now trying to obtain evidence from Pakistan, which he would submit as soon as possible. The applicant requested more time to arrange for evidence in his case. The Tribunal wrote to the applicant the following day informing him that it would consider any material received prior to the handing down of its decision.

The Tribunal wrote to the applicant pursuant to s 424A of the Act seeking his comment on information which the Tribunal considered may be the reason or part of the reason for affirming the decision under review. The correspondence referred to the information the applicant provided on the application form when applying for the protection visa relating to his residence in UAE and Country A and return to Pakistan, his failure to apply for the protection visa in Country A and the delay between his return to Pakistan and his application for the Australian visitor visa. The Tribunal also referred to the delay between the applicant's arrival in Australia and his application for the protection visa. This was said to be relevant as it may indicate that the applicant did not have a genuine fear of persecution while residing in Pakistan, Country A or after coming to Australia. The Tribunal also referred to the information provided by the applicant with his visa application, noted that it appeared to be inconsistent with his claims made in the protection visa application. This was said to be relevant to the assessment of the applicant's credibility.

The applicant responded. The applicant stated that while he resided in UAE, he did not apply for protection because he was already granted a resident status based on his working visa. While in Country A, he engaged two migration consultants to process his application and when he was apprehended by the police he told the police that he had applied for protection and that his passport and documents were with the immigration consultant. The police contacted the consultant who informed the police that he had lost the applicant's passport and papers. [Details deleted]. After about fifteen days of arriving in Pakistan, he was arrested by the police and imprisoned for two months, he was unable to leave Pakistan earlier than he did. When he arrived in Australia, he had no money and was unaware about free legal services, so he tried to find employment to raise money for the application. After about 40 days he was told to contact the Red Cross and referred to Legal Aid where he understood what he

needed to apply for protection. That is the reason he delayed his protection visa application.

With respect to the information concerning his employment, provided with the protection visa application and the visitor visa application, the applicant states that the information on the visitor visa application was submitted was created by the agent who assisted him in obtaining the visa in Pakistan. He gave the applicant business documents stating that he was a partner in a business and he signed these, he asked for the applicant's expired passport and put fake travel stickers from Iran, China, Hong Kong, Korea and other places, attaching it to the new passport. He paid close to \$12,000 for this service as he was desperate to leave Pakistan as soon as he could. The agent also offered to create a new identity as a Country A or British citizen for the applicant but the applicant refused.

The applicant states that he understands that it is difficult to assess his case without supporting evidence. He states that his documents are with the second immigration consultants in Country A; he tried to contact the consultants but they said that they did not have anything. The applicant applied for a Bridging B visa to obtain these documents from Country A but he was refused the visa and he made attempts to obtain the documents from a friend in Pakistan who is trying to obtain the documents which he hopes to provide by the hearing date.

Included with the applicant's submission was a copy of a Pakistan Muslim League designating the applicant as a President of a ward. The applicant also provided a statement from the Pakistan Muslim League, which states that the applicant joined the Pakistan Muslim League (in the early 1990s and since the [sic] he is working is very active and enthusiastic, initiative, etc. It is stated that he participated in many demonstrations staged by the League and his object to join the League is to render his services to the party. The applicant presented three arrest warrants, with respect to the applicant. He also provided a First Information Report (FIR) which states that 'today, the father of the applicant visited the police station and made the statement that his son visited the super cloth market and came to the Bazar [sic] for the purchase of domestic items and when he entered the main bazar [sic], four young persons came there, hid their faces with black cloth and attacked the applicant to kill him. They badly beat him and harrass [sic] him, injured him and ran away from the site. The applicant also provided an 'order sheet' which purports to be signed by a court judge and states that the applicant belongs to the Muslim league) and is the president of the a ward and had previously been arrested and he was granted bail.

The Tribunal received from the applicant another FIR which states that the applicant was apprehended by a police officer as he was an 'absconder in a very old case' after which the applicant was handcuffed, placed in a van and placed in lock up. The applicant provided another copy of the Pakistan Muslim League card .

Oral evidence to the Tribunal

The applicant appeared before the Tribunal 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 oral evidence is summarised below.

The applicant confirmed that all information and material he provided to Immigration and Tribunal was correct and that he did not wish to change anything.

The applicant said that he was born in UAE. He said that he was not entitled to the citizenship of the UAE but that he could get a three year residence visa. He was not sure what he needed to obtain the visa but he thought that he needed either a company sponsorship or that a visa could be organised through an agent.

The applicant said that he had not been employed in Australia. He said that Prior to coming to Australia he was in Pakistan for about several months. In Country A he worked. In Pakistan he worked for the PML. In UAE he worked as a labourer for about a year. The applicant said that his family remain in Pakistan.

The applicant said that he joined the PML in the 1990s. He said that he had a friend whom he used to visit and his elder brother was the president of the Muslim League district and person A was also sometimes there. He said that he joined the League because person A did good work and he thought that it would be good to join the party, the PML it is also a real democratic party in Pakistan. He said that there is a fee of 12 rupees fee to join the League. He said that once a person joined, one was a member and if one was working for them on a regular basis, there was no renewal process. The applicant said that he was the president of an Area. He said that he became a president in the 1990s as soon as he joined the party. The Tribunal asked the applicant how he became the President so soon after joining the party. He said that he was in touch with the members and was aware how the party worked. He said that the position is given by appointment, there are no elections. Once appointed, they look at whether he could do the job. He said that the president of a ward is not a very high position. The applicant said that as a ward president, they had to do social work and help the community financially and otherwise with any problems such as with the police and government problems. He said that the ward president's duties are to help the people with their problems.

The Tribunal referred to the constitution of the PML which indicates that membership is tri-annual and has to be renewed every three years. He said that he was referring to the 1990s and he is not sure about the current picture.

The applicant said that when in 1999 Musharaf replaced Nawaz, he arrested and jailed him and the political people who were involved were also arrested. [details deleted] The applicant said that when Ms Nawaz took over, she started to make efforts to bring democracy to the country and to take people out of prisons. When the strikes started, they had to organise meetings, demonstrations, etc. To organise a demonstration, they would visit the Nawaz supporters and inform them of what was going on and seek their assistance and there would be a lot of meetings in their area when they would address the people. He said that there were many thousands of workers helping Ms Nawaz in the same way.

The applicant said that in November 1999 Ms Nawaz called for a strike and a lot of people gathered from Punjab and he organised about four to five hundred people from his area. They had a strike and the next night he was arrested at home. He said that at the time there were a lot of arrests in the Lahore area. The applicant said that he was taken to a police station and then to jail. He was in jail for about six to seven months.

The Tribunal noted that in his statement the applicant said that there were 300-400 people in the strike while he now stated that he organised 400 – 500 people. The applicant said that there were thousands of people and he organised a few hundred people from his area. The Tribunal also noted that in his original application he referred to being in prison for seven to eight months while he now referred to six to seven months. The applicant said that he could not remember exactly, it was a long time ago. The Tribunal noted its concern that the applicant could not remember something as significant as the length of his imprisonment. The applicant said that he does remember, but he cannot remember the exact dates. The Tribunal noted that its question related not to the exact dates of imprisonment, but the length of imprisonment. He said that he was there for approximately seven months.

The Tribunal asked the applicant if he could remember the details of elections in which the party participated between 1993 and 1999. The applicant said that he could try to remember. The Tribunal asked the applicant how many groups the Muslim League had in the 1993 elections. He said there were 3 groups, the Nawaz Group, the Junajo group and the third was something like Financial. There was also a Zia-ul-Haq group. The Tribunal asked the applicant if he could remember how many seats the PML won in the 1993 elections. He said that he did not remember that because he was only a president of the ward and he was not involved in that very much. He said that he did not know how many seats the PML won in the 1997 elections but Nawaz won and became the president. The applicant said that all party supporters within an area come within a ward and the number of people varies, in his ward there were 1700 to 1800 people.

The Tribunal asked the applicant if he had been formally charged in the late 1990s. He said that there were no formal charges. The Tribunal noted that in his statement the applicant said that the a court found that he had no case to answer. The applicant said that all the workers were kept in jails and were not being released and they were released. His party friends and his father raised the writ and they were released. He then continued with his party activities. The Tribunal asked the applicant if he was not concerned about the repercussions of continuing with party activities. The applicant said that he did have the fear as the police and the government were giving him a hard time. He said that the police used to visit their office and tell them to close the office and to stop the activities and there were also people from the Quaid-e-Azam who were giving them a hard time. He said that most people who are now in the Quaid-E-Azam group were originally in the PML group. The applicant said that he had a lot of problems on a personal level, his friends and family had problems, there were fights involved. The Tribunal asked the applicant why he continued with his political activities despite these problems. He said that the intention was to bring the democratic institutions back to the country, they wanted Nawaz as the head of the state. The Tribunal asked the applicant if he had given up on that intention now. He said that he had seen so many problems that he had given up on his intention. He said that he is no longer interested in politics. The Tribunal asked the applicant if he would engage in political activities if he were to return to Pakistan. He said that in Pakistan things may happen, one is never certain. He said that if he returned, he may be involved. The Tribunal referred to the applicant's statement that he had no interest in politics. He said that he is now in Australia and he is peaceful but if he is in Pakistan, one never knows. The Tribunal noted that there must be millions of people in Pakistan who are not involved in politics. The Tribunal asked the applicant why his situation

would be different. The applicant said that all his friends and relatives are involved in PML and he may also be involved. The Tribunal asked the applicant if they work for the PML. He said that at the moment the police again are arresting the PML members and things are a bit quiet at the moment.

The Tribunal noted that the applicant stated that he is not interested in politics but may be involved if he returns because he has friends and relatives who are members of the PML(N) group, but who are not active at the moment. He said that some of his friends had left the country and are no longer in Pakistan. Some of these people had gone through rough times, being in jail and beaten up, they had gone quiet now. He had some money, so he left Pakistan but people with no money have no choice, otherwise they would leave the country as well. The applicant said that it was only a couple of weeks ago that he decided that he was no longer interested in politics.

The Tribunal asked the applicant about the events in the 2000s. The applicant said that they were striving for democracy and he was arrested with a friend of his, who has now gone to another country. There were people who were arrested and false cases were registered against them. They were in jail for about six months and after this time his father did a lot of hard work and he bailed the applicant and his friend out of jail. After the bail was granted, his friend went to another country and the applicant went to UAE. The applicant said that the false cases related to revolts against the government, violating the law, taking the law into own hand, etc. The applicant confirmed that he was released on bail and had to return to court to defend the charges. The Tribunal asked the applicant why he thought he was allowed to leave the country if he was on bail. The applicant said that it was a political case and they were not worried about it at the airport, they only checked if they were terrorists. The Tribunal asked the applicant if he was suggesting that anyone with an outstanding court case, including a political case, would be able to leave the country freely. The applicant said that if one held a senior position in the party, then the name maybe placed on an exit list and they may have a problem. The government desired that the PML workers would leave the country. The applicant said that he had no difficulty leaving the country in the 2000s.

The applicant said that he was in Abu Dhabi for about eleven to twelve months. He had a working visa for labour, his passport was taken and he had to work in difficult circumstances. There he met a person who arranged a Country A visa for the applicant. He said that he paid \$4000 to one migration agent to have his case processed but the agent did not do anything for the applicant and did not return the money. He then met another immigration consultant who requested \$5000. The applicant took documents and papers from the first agent and he was paying the second agent weekly for two years but the agent did not do anything for him. [details deleted] . The applicant said that he informed officials that his immigration consultant was working on his behalf and had his documents. The Tribunal asked the applicant if he had informed officials that he was seeking protection in Country A. The Tribunal noted that Country A is a signatory to the Refugee Convention and under the Convention, it was required to give the applicant an opportunity to apply for the protection visa, irrespective of his dealings with the immigration consultants. The applicant said that he was supposed to get that opportunity but he did not. The Tribunal noted that it may cause the Tribunal to conclude that he did not seek that

opportunity. He said that he did mention this to the officials but he was in the court for a minute and nobody listened to him.

The applicant said that when he landed in Pakistan, he did not have any money with him. He wanted to travel home. He said that the immigration officials fed him and bought him shoes because he did not have any. The Tribunal asked the applicant why the authorities would feed him and help him instead of detaining him if he skipped bail a few years earlier. The applicant said that his perception is that the Immigration has no records at the airport; otherwise it would be very difficult to leave the country and enter the country. The Tribunal noted that it was difficult to accept. He said that the list which was issued in 2000 had about 200 people who were wanted. The Tribunal noted that there was not only Immigration at the airports, but also Customs, police and other authorities, so that the applicant may have had difficulties leaving and returning into the country if he was wanted. The applicant said that one cannot compare Australian airports and Pakistani airports, there is no such system in Pakistan and it is only after the World Trade Centre incident that the system was installed. The Tribunal noted that the applicant returned. The applicant said that he is not a terrorist, the computers are donated by America and they are only interested in terrorists. The Tribunal asked the applicant how then the police would be able to find him. He said that the only way would be if someone complained about him or informed on him or if he went to his home and somebody informed the police. The Tribunal asked the applicant why he could not return to Pakistan and live away from his home. He said that if someone saw him or recognised him, his life would be hell because he is most wanted by the police, they already tried to find him. The Tribunal noted that he stated earlier that the police could not find him. He said that if there is a police report or if he applies for something, even if he rents a house, he would need to lodge a police report. It is difficult for anyone on the wanted list.

The Tribunal asked the applicant how he came to be on the wanted list. The applicant said that when he did not appear for bail, he became wanted and a warrant had been issued against him. The Tribunal noted that the applicant stated earlier that he was able to return to Pakistan in the 2000s and nobody was interested in him. The applicant said that when he returned to Pakistan, he was arrested again and they used the old cases because he left the country with the cases pending against him. The Tribunal asked the applicant why he was placed on the wanted list for the old cases after he returned to Pakistan and not at the time when he was returning to Pakistan. The applicant said that when he returned, he was arrested. The Tribunal asked the applicant whether he was on the wanted list when he returned to Pakistan. He said that he was on the wanted list because of the old cases for which he skipped bail. He said that there are different wanted lists, he was wanted by the police. The Tribunal asked the applicant how he managed to re-enter the country, travel 1600 kilometres to his home and be supported by Customs if he was on the wanted list at the time. The applicant said that when he landed, he was given food and a pair of shoes. He had small change. His aunt lives there and he went to her house. They gave him money and the following day he went to his home.

The Tribunal asked the applicant why he went to his home if he knew that he was wanted by the police and that he may be arrested there. The applicant said that he was very upset, his health was poor and his mind was not working properly. The Tribunal noted that if he was trying to avoid persecution, it was an odd thing to do to return to

his home if he knew that he was on the wanted list and was likely to have been arrested there. The applicant said that he had no options, he thought that things may have softened. The Tribunal asked the applicant why he could not stay with his aunt in another city. He said that he had never visited them in the past and he was only forced to go there because of this incident. The Tribunal asked the applicant if he could not ask his aunt to remain with her longer if there was a risk of his imprisonment. The applicant said that it may have been difficult for her as she may get in trouble because of him. His siblings also live in Lahore.

The applicant said that he returned to Pakistan in one month and he was arrested the next month. He said that for the first few days he was so sick, that he stayed in the house and nobody knew that he was back. The Tribunal asked the applicant why it took the authorities several weeks to arrest him. He said that nobody other than his parents knew that he was back. The Tribunal asked the applicant if he thought the authorities could check his immigration records to see that he returned. He said that they could, but their system is not like that. The Tribunal asked the applicant how the authorities became aware of his return. The applicant said that he was standing on the road with a few of his friends. A police officer who knew him by name and face came down and got hold of the applicant. The Tribunal noted that it had difficulties understanding the applicant's actions after returning from Country A. The applicant returned to his home where he could be identified and was staying on the street where he could be identified. The Tribunal noted that it did not appear like actions of someone who was genuinely fearful of persecution by the authorities. The applicant said that what happened to him was a coincidence. The Tribunal asked the applicant what his plan was at the time. He said that he planned to face the case and get out of it and to re-commence the political activities. He had an argument with the government supported Quaid-E-Azam League and they even fired a shot at him and even in the shopping centre he was beaten up by people.

The applicant said that he was granted bail and after that somebody tried to shoot him and then he went to the bazaar and was beaten. The Tribunal asked the applicant why he thought he was granted bail the second time if he skipped bail the first time. The applicant said that it was not easy, his father used a lot of money and personal contacts to get him bail. He said that the system in Pakistan is different and things can be done if one is willing to spend money.

The Tribunal asked the applicant if he planned to face the court and defend the charges. The applicant said that this was the plan but when he was attacked, he was advised that it was better if he left the country. He planned to defend the case and recommence political activities but his life was in danger. The Tribunal asked the applicant if he thought he could be successful in court. He said that even if he was successful in this case, they would bring on more cases against him. He said that it is very easy to kill someone in Pakistan. The Tribunal noted that this is why it was concerned that the applicant returned to his home knowing that there was danger for him there. The applicant said that he never expected that when he returned there, he was hoping for things to calm down but since his return things became worse and they tried to kill him. He did not expect that. The Tribunal asked the applicant why he remained at home, where he could be recognised, after he was granted bail. He said that he was not sleeping at home, his life was in danger after the bail. The Tribunal again asked the applicant why he remained at home after the bail. The applicant said

that he hoped to recommence political activities. The Tribunal noted that this may have made it even more dangerous for the applicant. The applicant said that this is why things happen. The Tribunal noted that the applicant appeared to have taken no steps to avoid danger. He said that he is a simple person, he does not like being involved in fighting, he is not rude, it is easy to kill a person. The Tribunal noted that the applicant had been involved in political activities since the early 2000s, he had been imprisoned and false cases brought against him, yet he did not believe that he would be in danger because he was a friendly person. The applicant said that he was forced to return from Country A. The Tribunal noted that it was referring to his conduct after he returned to Pakistan from Country A. The applicant said that at the time he did not realise that his life was in danger, he was only thinking about the false cases and he was going to sort it out. The attacks on him took place in January and then he realised that his life was in danger. The Tribunal noted that the applicant intended to continue his involvement in political activities and in the past he was imprisoned for such activities for more than 12 months and he also claims that it is easy to kill someone in Pakistan. The Tribunal asked the applicant if he was not worried about these matters. The applicant said that he was very worried but if he is sent back from Australia, he cannot do anything about it. The Tribunal noted that the applicant's actions after he returned from Country A do not indicate that he was worried. He said that he cannot demonstrate that he had problems, what could he be expected to do about it. The Tribunal noted that the applicant had not done anything at all about it. The applicant said that he did not return to Pakistan voluntarily, he was forced into that situation. The applicant said that when he was forced back, maybe the only option for him was to defend the false cases, that was the intention but when he went back with that intention, he found out that they tried to kill him and that is when he became worried.

The Tribunal asked the applicant when he applied for the Australian visa. He said that he gave money to the agent and the agent applied on a particular date. The Tribunal noted that it was about a month and a half after he was attacked. The applicant said that he realised that his life was not safe, he had consulted a friend and had to find the agent. He said that for that month and a half he stayed indoors because he knew that he was on bail and the police could not do anything to him and if any of his friends came to inquire about him, his parents said that he went back to Abu Dhabi. The Tribunal asked the applicant if he thought the people who shot at him or tried to beat him could have found him while he was at home. The applicant said that only if he left home people would know that he was still there. The Tribunal asked the applicant how he arranged the paperwork for the Australian visa if he did not leave home. He said that his friend brought the agent to his home. The Tribunal asked the applicant if he renewed his passport without leaving his home. The applicant said that he left home when it was still dark and nobody saw him.

The Tribunal asked the applicant if he claimed that he was able to leave Pakistan in a recent year because he was not on the right 'wanted list'. He said that the list is given by America and it contains only those people who are classified as terrorists.

The Tribunal asked the applicant why it took him more than a month to apply for the protection visa when he came to Australia. He said that he did not have any money and did not know what to do. When he arrived, he started looking for a job so that he could find a solicitor and make the application. He then met another person who

referred him various agencies who helped him with the process. The Tribunal pointed out that the applicant had already been through the process in Country A. He said that he was not familiar with the process, he only gave money to the immigration consultants. He used to work long hours and did not know anyone there.

The Tribunal asked the applicant if he had any contact with the authorities or the police after he was released on bail. He said that he had contact after he was attacked and when he was beaten in the market also after he came to Australia they came to his home. He said that there was no contact other than in those two incidents. The Tribunal noted that in his statement, the applicant referred to the police harassing him and warning him to desist from political activities. The Tribunal asked the applicant what he meant by that. He said that when he was attacked and when he was beaten up, this was in the course of these events. After he realised that his life was in danger, he did not leave home. He said that during most of February and March he stayed at home.

The Tribunal asked the applicant when he was supposed to return to Court to defend the charges. The applicant said that he did not know because his father was dealing with the matter. The Tribunal noted that the applicant was still in Pakistan at the time. The applicant said that the warrants were issued which he submitted to the Tribunal and there are hearing dates on those. He said that he did not follow it up as his father was dealing with it and when he received the papers from his father, he did not bother with them. The Tribunal asked the applicant why he did not bother with it when he was still in Pakistan between January and March. He said that his whole intention and concentration was on getting out of the country, he did not worry about the bail. The Tribunal noted that it was odd that the applicant would not even consider the date of his court appearance either before he left Pakistan or since he received these documents in Australia. The applicant said that his father got the bail for him and these documents are with the solicitor. His father advised him that he should save his life and not worry about these matters.

The Tribunal asked the applicant why his membership card which he provided to the Tribunal is dated with a recent date. The applicant said that when he went this year, he gave them the photo as his old card is with the immigration consultant in Country A. He also had photographs with a political figure which are with the consultant. The Tribunal again asked the applicant why the card has a future date. The applicant said that this is the document that was issued and he had provided it to the Tribunal. The Tribunal asked the applicant how it could be satisfied that the document was genuine. He said that they may have made a mistake. He had the document issued and they may have put a wrong date. If it was not genuine, he would not have given it. The Tribunal again noted that it needed to be satisfied that the documents he provided were genuine and the date of the document may be one thing that it will consider when reaching this decision. The applicant said that it was a mistake, instead of one year it should be an earlier year, it was only a mistake. The Tribunal noted that one of the FIRs he provided had 2 dates. The applicant said that this may be when the duplicate was issued. The Tribunal referred to the FIR, noting that it did not refer to the duplicate being issued. The applicant said that this is the document he was given and he had provided a translation. The Tribunal asked the applicant to refer to the original and to clarify the dates on the original. The applicant confirmed that the original also referred to different dates. The applicant said that this was the FIR he

had and that is what he had given, if he had done it himself, he would have checked. These documents are as issued by the authorities. The Tribunal asked the applicant to explain what he meant by saying that if he had done it himself, he would have checked. He said that he did not write the FIR's and he did not do the translation, he was not responsible for the contents of the documents.

Information from other sources

The PML(N)

The Pakistan Muslim League (PML) is generally accepted as the successor to the All-India Muslim League in 1962, credited with having won Pakistan's independence. Variations of the name have been adopted by a number of different parties, all claiming to be the rightful successor to the "Muslim League" legacy. The two largest parties laying claim to the PML legacy are the Pakistan Muslim League (Nawaz, PML-N), led by Nawaz Sharif who is currently in exile in Saudi Arabia; and the Pakistan Muslim League (Quaid-i-Azam, PML-Q), created by General Pervez Musharraf after the October 1999 coup. The PML-Q was formed predominantly through defections from PML-N and Benazir Bhutto's Pakistan People's Party (PPP). Many of the PML-N and PPP party members were said to have been coerced into joining PML-Q, reportedly by state agencies such as the Inter-Services Intelligence Directorate (ISI). Immediately following the 1999 coup and the creation of PML-Q, Musharraf led a campaign of manipulation to neutralise opposition parties and secure complete authority for the PML-Q-led coalition. Musharraf's draconian tactics have brought together previous political opponents, the PML-N and PPP, in an anti-military coalition named the Alliance for the Restoration of Democracy (ARD). The ARD was formed in December 2000 and is the largest opposition group in the National Assembly, consisting of sixteen political parties. In an attempt to counter the opposition parties, Musharraf consolidated the military's links with the Muttahida Majlis-i-Amal (MMA), a group of six religious parties. The MMA is the PML-Q's coalition partner in Balochistan and runs the government in North West Frontier Province (NWFP). However, recent discourse has referred to an MMA-ARD "grand opposition alliance" in response to the alleged distrust in President Musharraf.^[1]

A September 2005 report by the International Crisis Group (ICG) provides the following breakdown of the relationship between President Musharraf and the major political parties in Pakistan since the 1999 military coup:

Upon seizing power in October 1999, General Pervez Musharraf embarked on an ambitious agenda of political and constitutional reforms that he claimed would steer Pakistan away from "an era of sham democracy" and towards effective democratic governance. Six years on, the President-cum-Army Chief maintains that the democratic transition has been successful. However, his political reforms have merely provided a democratic façade to authoritarian rule. Pakistan's moderate opposition parties have been subjected to administrative and other restrictions of their constitutional rights of expression, assembly, and association. Many of their political leaders are in exile, in prison, or disqualified from contesting elections. "The basic struggle in Pakistan", said an opposition politician, "remains between authoritarianism and democracy".^[2]

On 15 May 2007, PML-N members participated in a demonstration against the Karachi killings of 12 May, alleged by the opposition parties to have been carried out by pro-Musharraf *Mutahida Qaumi Movement* (MQM), and the suspension of the Chief Justice of Pakistan, Iftikhar Muhammad Chaudhry. According to the *Business Recorder*, “the rally commenced from Alwan-e-Adal and terminated at Governor House. Initially, the police set up hurdles on the way of rally, which were forcefully removed by angry protestors”. The PML-N has accused the military for the continued chaos and political violence in the country and as a result, it formed a broad coalition with the Benazir Bhutto’s Pakistan Peoples’ Party (PPP) but according to the *Asian News International*, “the two former Pakistan Prime Ministers [Nawaz Sharif and Benazir Bhutto] are apparently headed for a parting of ways in the wake of the reported deal with the Musharraf regime to facilitate Bhutto’s return to Pakistan after a decade of self-exile”.^[3]

On 6 May 2007, Sialkot police released more than one hundred and thirty activists belonging to the PML-N, the PPP and the *Muttahida Majlis-e-Amal* (MMA). The activists were arrested in Sialkot and Narowal districts on 2 May during a special crackdown on opposition activities. According to the *Pakistan Press International Information Services*, “majority of the activists went underground to avert their possible arrests. The police had arrested as many as 10 PML-N and MMA local leaders from Sialkot district late last night [2 May]”.^[4]

Entry to UAE

Information contained in the *Citizenship of the World* (March 2001) directory of the United States Office of Personnel Management states that “Birth within the territory of the United Arab Emirates does not automatically confer citizenship. The exception is a child born of unknown parents”.^[5]

Information on the Permanent Missions to the United Nations website indicates that someone who does not have citizenship is considered an alien in the UAE and that an alien is required to have a valid passport or travel document and visa issued by the UAE to enter the UAE:

Articles 1, 2 and 3 of Federal Law No. 6 of 1973, as amended by Law No. 13 of 1996 concerning the admission and residence of aliens, read as follows:

“Article 1: An alien is whoever does not enjoy citizenship of the United Arab Emirates.

“Article 2: No alien may enter the State, by whatever route, without a valid passport or travel document issued by the competent authority of another State and a valid visa, entry permit or residence permit from the competent authorities of the United Arab Emirates.”^[6]

FINDINGS AND REASONS

The applicant travelled to Australia on a Pakistani passport and claims to be a national of Pakistan. While the applicant was born in the UAE, there is no

evidence before the Tribunal that the applicant is a national of that country. The country information cited above indicates that the applicant's birth in the UAE does not provide him with a current legally enforceable right to enter and reside in that country, for the purpose of s 36(3). Accordingly, the Tribunal accepts that the applicant is a national of Pakistan and has assessed his claims against Pakistan as his country of nationality.

The applicant's claimed fear of persecution arises from his political activities for the Pakistani Muslim League. The applicant claims that he joined the party in the early 1990s and became a president of a ward and that this was not a very high position. He claims that he participated in party activities and supported Nawaz Sharif. He appeared to be familiar with the PML(N). Having regard to the applicant's oral evidence and the supporting documents he presented during the processing of his application, the Tribunal accepts that the applicant had been a member of the PML, that he may have met and worked with person A. The Tribunal also accepts that the applicant may have performed the role of a Ward President, although the Tribunal is somewhat concerned about the fact that the applicant's party membership card is dated with a future date (month and year). Despite this, the Tribunal accepts these aspects of the applicant's evidence. However, for the reasons that follow, the Tribunal rejects other aspects of the applicant's claims, including the claims of continuous harassment, detention, the bringing of false cases against the applicant, assault and others.

The applicant had given vague evidence with respect to the length of his imprisonment in the late 1990s, stating that it was a long time ago and he could not remember. The Tribunal is of the view that imprisonment, particularly in such circumstances as described by the applicant, is an event of such significance that the applicant may be expected to remember its details. The Tribunal is supported in this opinion by the fact that the applicant had provided different information about his imprisonment in his protection visa application, which was lodged only a short time before he gave oral evidence to the tribunal and the applicant had not indicated at that time that he had difficulties remembering the dates.

The Tribunal is also most concerned about the applicant's conduct after returning to Pakistan from Country A. When questioned about how the police could find him, the applicant said that if he returned to his home and somebody reported him, he would come to the attention of the police. Despite that, the applicant did return to his home with the intention of engaging in political activities, knowing that he would be at risk there from political opponents and also due to the outstanding court cases. He stated that he was only concerned about the court cases which he intended to defend and that he did not think there would be any harm from the opponents, however it is difficult to accept that if the applicant claims to have been previously detained for many months as a result of his political activities and he was intending to again engage in such activities, he would not consider this risk.

The Tribunal found the applicant's explanation as to why he had not applied for the protection visa in Country A to be highly unconvincing. He stated that he approached two agents but they failed to apply for the protection visa for him. The Tribunal considers it notable that the applicant had resided in Country A for a period of approximately three and a half years. The Tribunal accepts that the applicant may not

have been familiar with the immigration process in that country and that he was busy with work, however given the level of the applicant's claimed political and social involvement in Pakistan, the Tribunal is of the view that the applicant would have been able to acquire the necessary knowledge if he had any intention of doing so and that he would be able to effectively ensure that an application for a protection visa was made on his behalf during his lengthy stay in Country A, either by an immigration consultant or after it became apparent to him later that it had not been made. The Tribunal does not accept that the applicant had not sought protection in Country A because he was misled by migration consultants and is of the view that the reason for it was the applicant's lack of interest in such an application. The Tribunal does not accept that the applicant had a genuine fear of persecution while he was residing in Country A.

The Tribunal is equally concerned about the applicant's delay in applying for the protection visa after his arrival in Australia. He explained that he was unfamiliar with the immigration procedures, that he did not have the money to engage a lawyer and did not know how to approach the immigration department. The Tribunal is of the view that the applicant's previous immigration experience in Country A, his travel to UAE and when departing Pakistan on two occasions would have enabled the applicant to acquire information about the Immigration process in Australia. The Tribunal is not satisfied that the applicant's delay in applying for the protection visa was caused by his claimed lack of knowledge and considers it indicative of the absence of genuine fear of persecution on the part of the applicant.

The applicant stated that he was released on bail and that until his departure from Pakistan 2 months later he remained at home and that he had been able to avoid harm because nobody knew that he was there. When the Tribunal asked the applicant about his passport, the applicant stated that he did leave home very early to obtain his passport and he was not seen. The applicant's passport which he provided with his application for the protection visa, indicates when it was issued, that is before the applicant claims to have been attacked and before he allegedly went into hiding. This causes the Tribunal to question the applicant's credibility with respect to this matter. In any case, the Tribunal is of the view that if the applicant's opponents had serious intentions of harming the applicant and if the applicant remained of interest to them, they may have been able to enter and search the house

The combination of these matters causes the Tribunal to find that the applicant is not a credible witness. The Tribunal rejects the applicant's claims that he was imprisoned, tortured threatened, beaten, shot at or otherwise harmed as a result of his political activities or associations. The Tribunal also does not accept that false charges have been brought against the applicant or that an arrest warrant has been issued against him, that he was twice released on bail or that he was harassed or threatened by the police. The Tribunal does not accept that the applicant is on the wanted list or that he left Pakistan to avoid persecution or false charges. The Tribunal rejects the applicant's claim that he will be persecuted if he were to return to Pakistan because of his past activities, involvements and associations and finds that there is no real chance that this will occur.

The applicant provided a number of supporting documents with respect to his claims, including arrest warrants, FIR's and others. As noted above, the Tribunal is concerned

that the PML membership card is dated with a future month. One of the FIR's presented by the applicant also had inconsistent dates on it and the applicant confirmed in the course of the hearing that such inconsistencies also appear on the original document. The applicant claimed that the documents were genuine, that the errors, if any, were simply mistakes and that the documents were issued by the authorities. The Tribunal is not satisfied with the applicant's explanations. Such 'inaccuracies' in the documents, as well as the Tribunal's findings with respect to the applicant's credibility, cause the Tribunal to question the authenticity as well as the accuracy of the presented documents. The Tribunal gives no weight to these documents.

The Tribunal has accepted that the applicant had been involved with the PML and that he may have been an area president. The Tribunal has also accepted the applicant's evidence that it is not a very high position and that the applicant's personal involvement with person A was limited. The applicant stated, and the Tribunal accepts on the basis of the applicant's own evidence and country information, that there are many PML supporters in Pakistan. The Tribunal finds that, given the applicant's position in the party and his personal involvement with the PML activities, the applicant would not be targeted by the authorities or the opposing parties because of his political opinion or activities.

The applicant also stated in oral evidence that he had lost interest in politics but stated that he may engage in political activities if he were to return to Pakistan. Should the applicant do so, the Tribunal finds that the applicant's engagement would not be at a more significant level than his past engagement, given his indication that he had lost interest in politics. The Tribunal finds that, having regard to the likely level of the applicant's engagement in the affairs of the PML or other political activities, there is no real chance that the applicant will face persecution for the reason of his political opinion, if he were to return to Pakistan now or in the reasonably foreseeable future.

Having considered all of the applicant's claims singularly and cumulatively, the Tribunal finds that the applicant had no genuine fear of persecution and that there is no real chance that the applicant will be persecuted due to his political opinion or any other Convention reason if he were to return to Pakistan now or in the reasonably foreseeable future.

CONCLUSIONS

Having considered the evidence as a whole, 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

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

[1] ‘Pakistan’s ARD moots separate alliance with MMA’ 2006, *Hindustan Times*, 22 June; ‘MMA, ARD to Announce Grand Opposition Alliance on Aug 14 Against Government: MMA’ 2006, *Frontier Star*, 30 July

[2] International Crisis Group 2005, *Authoritarianism and Political Party Reform in Pakistan*, Asia Report N°102 – 28, September.

[3] Nawaz, H & Riaz, M. 2007, ‘Lawyers and parties protest over the Karachi killings’, *Business Recorder*, 15 May; ‘Sharif ‘pleads’ with Benazir not to tie-up with Musharraf’ 2007, *Asian News International*, 14 May; for information on the clash between MQM and the PPP see: ‘Violent clashes hit Pakistan city’ 2007, *BBC*, 12 May http://news.bbc.co.uk/2/hi/south_asia/6649089.stm – Accessed 15 May 2007

[4] ‘130 activists of opposition parties released’ 2007, *Pakistan Press International Information Services*, 6 May; ‘25 more activists of PML-N and MMA arrested during a crackdown’ 2007, *Pakistan Press International Information Services*, 3 May

[5] the United States Office of Personnel Management, 2001, *Citizenship of the World*, p.207 <http://www.multiplecitizenship.com/documents/IS-01.pdf>

[6] Permanent Missions to the United Nations, undated <http://www.un.int/uae/leta.htm>
