FEDERAL COURT OF AUSTRALIA

BDT16 v Minister for Immigration and Border Protection [2017] FCA 249

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| Appeal from: | *BDT16 v Minister for Immigration & Anor* [2016] FCCA 2091  |
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| File number: |  |
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| Judge: | **ROBERTSON J** |
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| Date of judgment: | 15 March 2017 |
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| Catchwords: | **MIGRATION –** appeal from the Federal Circuit Court of Australia dismissing an application for judicial review of a decision of the Administrative Appeals Tribunal (**Tribunal**) – the Tribunal affirmed the decision of the delegate not to grant the appellant a Protection (Class XA) visa – appellant a citizen of Pakistan who claimed that he had experienced discrimination and harassment as a result of his Shia religion and Mohajir ethnicity – claim that the authorities could not and would not protect him because of his Mohajir ethnicity and Shia religion and that he would be unsafe anywhere in Pakistan – whether Tribunal failed to consider whether the appellant might face a well founded fear of persecution in the future by virtue of attending a mosque or religious procession in the future – whether Tribunal erred by failing to consider whether the Pakistani authorities were able to protect Shias, rather than that those authorities were generally willing to do so  |
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| Legislation: | *Migration Act 1958* (Cth) s 36  |
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| Cases cited: | *Minister for Immigration and Ethnic Affairs v Guo Wei Rong* [1997] HCA 22; 191 CLR 559 *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* [1996] HCA 6; 185 CLR 259*Minister for Immigration and Multicultural Affairs v Respondents S152/2003* [2004] HCA 18; 222 CLR 1*Waterford v Commonwealth* [1987] HCA 25; 163 CLR 54 |
|  |  |
| Date of hearing: | 22 February and 13 March 2017 |
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| Registry: |  |
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| Division: |  |
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| National Practice Area: |  |
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| Category: | Catchwords |
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| Number of paragraphs: | 73 |
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| Counsel for the Appellant: | The Appellant appeared in person with the aid of an interpreter |
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| Solicitor for the First Respondent: | Mr J Pinder of Minter Ellison |
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| Counsel for the Second Respondent: | The Second Respondent submitted save as to costs |

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| **Table of Corrections** |  |
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| 28 March 2017 | Date of hearing changed from 15 March 2017 to 13 March 2017. |
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| 29 March 2017 | The appeal citation on the cover page has been corrected. |

ORDERS

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|  | NSD 1443 of 2016 |
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| BETWEEN: | BDT16Appellant |
| AND: | MINISTER FOR IMMIGRATION AND BORDER PROTECTIONFirst RespondentADMINISTRATIVE APPEALS TRIBUNALSecond Respondent |

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| JUDGE: | ROBERTSON J |
| DATE OF ORDER: | 15 MARCH 2017 |

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The appellant pay the first respondent’s costs, as agreed or assessed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

ROBERTSON J:

## Introduction

1. This appeal is from orders made by the Federal Circuit Court of Australia on 15 August 2016 dismissing an application for judicial review of a decision of the Administrative Appeals Tribunal (**Tribunal**) made on 14 April 2016. The Tribunal affirmed the decision of the delegate not to grant the appellant a Protection (Class XA) visa.
2. The grounds of appeal in the notice of appeal dated 30 August 2016 were as follows (without alteration):
3. I appeared before His Honour Judge street until now I have not received the judgment.
4. I understood that he dismissed my case.
5. I wish to reserve my right to provide detailed comments because His Honour failed to understand my circumstances.

It appears that the appellant had not received the reasons for judgment at the time he was required to file his appeal. I shall treat the grounds stated in the appellant’s application to the Federal Circuit Court as constituting his grounds of appeal.

1. Before the Tribunal, the appellant claimed that he had experienced discrimination and harassment at the hands of the police and anti-Shia or anti-Mohajir groups as a result of his Shia religion and Mohajir ethnicity. He claimed that the authorities could not and would not protect him because of his Mohajir ethnicity and Shia religion and that he would be unsafe anywhere in Pakistan.
2. The appeal to this Court was listed for hearing on 22 February 2017. I adjourned that hearing until 13 March 2017 by reason of the appellant’s application, accompanied as it was by a medical certificate.

## The facts

1. The Tribunal found that the appellant applied for a tourist visa in March 2013, which was granted on 12 April 2013. The appellant arrived in Australia on 30 June 2013 and applied for a student visa on 30 September 2013. That application was refused on 16 October 2013. The appellant applied for a review of that decision, which was refused on 11 February 2014. The appellant applied for a Protection (Class XA) visa on 22 January 2014 and the delegate refused that application on 17 October 2014.
2. As found by the Tribunal, the appellant is a citizen of Pakistan.
3. The Tribunal found the appellant to be a 38 year old man from Karachi. He is married with two children. He completed a Bachelor of Business Administration in 2006 and a Master of Arts in 2010. He worked for Citibank in Karachi from July 2002 until April 2013. He is a follower of Shia Islam and belongs to the group of Urdu speaking people who relocated from India to Pakistani at the time of partition and are commonly referred to as Mohajirs.
4. The appellant claimed he was detained in 2001 when he and three other Mohajirs were taken from the office of a strata manager and detained overnight for no reason. The appellant claimed he was beaten while in detention and pressured to sign a document which would have been used to accuse him of involvement in a murder.
5. The appellant claimed he next experienced problems with the authorities because of his ethnicity in 2010 when he was stopped on the road by police who demanded that he get out of his car. When he challenged that officer and demanded to see a more senior officer he was taken to a police station where he was held for 3 hours without water or toilet facilities.
6. The appellant also claimed that he was threatened and attempts were made to kill him because he was a well-known Shia activist. He stated that he did voluntary work for three organisations associated with Shia people.
7. The appellant also claimed that he was involved in social awareness dramas which were broadcast nationally and as a result of this and his other religious and welfare work he was well-known nationally.
8. The appellant claimed he was threatened and attempts were made to kill him in early 2013. He claimed that he received a death threat by telephone on 31 January 2013. He reported the call to the police who suggested it was a joke, delayed taking a report and took no further action.
9. The appellant claimed that on 6 February 2013 he was driving home from his volunteer work when he was chased by a motorcycle with two riders. He sped up and the motorcycle also increased its speed. The riders shouted at him to pull up and fired at him when he refused. He did not stop and that motorcycle disappeared. He lodged a first information report with the police, but they refused to provide him with any protection. The appellant said that he believed that the men who attempted to kill him were not common criminals as they would not have shot at him if they were trying to rob him.
10. The appellant claimed that a second attempt was made on his life on 8 March 2013 when he was returning from helping an organisation to provide assistance to victims of an attack on the Shia area of Abbas Town that occurred on 3 March 2013. As he was returning home from this work he was followed by a van and fired upon. Two police officers were approaching at the time and fired at the van. These officers helped the appellant to lodge a report regarding the incident.
11. Following this incident, the appellant applied for a visitor visa for Australia. The visa was granted in April 2013, but the appellant did not leave Pakistan until two months later. When the delegate asked why he had delayed his departure, the appellant said that he had needed time to gather sufficient money to pay for his ticket for Australia.
12. The appellant did not apply for a protection visa until about seven months after his arrival in Australia. When the delegate asked why he had waited so long before applying for a protection visa, the appellant said that he had not been aware of the possibility of applying for protection until he met the representative who helped him to lodge his application.
13. The appellant provided a doctor’s certificate dated 9 June 2014 stating that he was being treated for anxiety and depression due to family issues and taking medication.
14. The delegate accepted that the appellant had experienced some low-level discrimination because of his Mohajir ethnicity. She also accepted that he had been a victim of two random attacks in February and March 2013. However, she did not accept that he was a prominent person and did not accept that he had been involved in television social awareness dramas. She also rejected his explanations for his delay in leaving Pakistan and applying for protection in Australia, but found that his experiences had given rise to some level of fear in Pakistan. She found his fear of persecution was not well-founded and that in any event he would relocate if he was at risk of harm in Karachi.
15. In his statement provided to the Tribunal on 29 February 2016 the appellant claimed that while he was not involved with any political party, he held a range of political opinions which were not acceptable to the current government of Pakistan, such as ending corruption, violence, human rights abuses and inequality and ensuring protection and equal rights to minorities such as Mohajirs and Shias.
16. With regard to his delay in leaving Pakistan after he obtained his visa for Australia, he said that he had some family and personal commitments and had to ensure that his family was safe. In addition, the risk was not imminent at that time, although that did not mean that he was not at a serious risk. He also said that he did not have financial problems in Pakistan.
17. With regard to his delay in applying for protection, the appellant said that he had not applied for protection until almost seven months after arriving in Australia because he did not understand the Australian system and was not aware of the possibility of applying for protection. He was also under considerable stress. He added that he had applied for a student visa to keep his legal status in Australia.
18. With regard to his status in Pakistan, the appellant said that he had never claimed that he was a national figure, but he had been known as an active Shia and this was enough for him to be targeted by extremists.
19. The appellant submitted to the Tribunal that Mohajirs were discriminated against by the Pakistani government and Pakistani people. He said that many Mohajirs were killed and tortured in Pakistan, but this was not reported in the media. He added that the government supported these activities.
20. The appellant provided a copy of an announcement from a particular school in Karachi, stating that due to prevailing uncertain conditions the school hours had been changed for the month of February 2016 to allow students to get home early. The appellant said that the hours had been changed because there was a terrorist threat in the city.
21. The appellant’s representative submitted that country information showed consistent and continuous persecution of Mohajirs and Shias in Pakistan. He also submitted that state protection was not available to these groups in Pakistan because of discriminatory attitudes which resulted in the authorities knowingly tolerating mistreatment and abuses against them.

## The Tribunal’s findings

1. The Tribunal accepted that the appellant was concerned about the level of violence in Karachi. The Tribunal did not accept that the appellant fled his homeland because he feared that he would face serious harm at the hands of extremist groups in Pakistan if he remained in his homeland.
2. The Tribunal gave a number of reasons for this conclusion.
3. The first major reason was that, despite claiming that he feared for his life after receiving a threatening telephone call on 31 January 2013 and surviving two attempts to kill him in February and March 2013, the appellant remained in Pakistan until 30 June 2013. On 31 January 2013 the appellant had a valid passport and a visa for Malaysia and could easily have fled the country if he feared for his life. Furthermore, he remained in Pakistan for a further 11 weeks after receiving his Australian visa.
4. As to the appellant not leaving Pakistan immediately he received his Australian visa, the Tribunal said it did not believe the appellant would have remained in Pakistan during that period if he genuinely believed his life was in danger. Furthermore, the reason the appellant gave for delaying his departure was at odds with his evidence to the delegate that he needed time to raise money for his ticket. At the hearing in the Tribunal the appellant agreed that what he had said to the delegate was not true and said he had been confused during his interview with the delegate. The Tribunal found that the appellant’s contradictory evidence regarding the reasons for his delay in departing Pakistan to be a further indication that he was not a credible witness. Further, in the written submission provided to the Tribunal the appellant said that he had not left Pakistan as soon as possible because the risk had not been imminent at that time. The Tribunal found this was completely at odds with the appellant’s claims that he had received a death threat from an extremist group and two attempts had been made to kill him and that he feared for his life.
5. The second major reason given by the Tribunal for its conclusion was that despite claiming that he had fled Pakistan fearing for his life, the appellant did not apply for protection until seven months after arriving in Australia. The Tribunal did not accept any of the appellant’s explanations: that he did not understand the Australian system because he was not aware of the possibility of obtaining protection and that he was poorly advised and told he risked being detained if he lodged an application. The Tribunal did not accept that the appellant was unable to obtain appropriate advice and assistance regarding applying for protection in Australia until seven months after his arrival. Nor did the Tribunal accept that the appellant would have failed to apply for protection in Australia in a timely fashion after arriving in Australia if he genuinely feared persecution in Pakistan.
6. The Tribunal did not accept that the appellant would have remained in Pakistan for five months after he received a death threat and nearly four months after two attempts were made on his life before leaving when he had the means to do so at any time. The Tribunal did not believe that the appellant would have failed to apply for protection in Australia until seven months after his arrival if he had fled Pakistan because he feared for his life for those reasons. The Tribunal said that it believed that the appellant concocted the claim, that he received a death threat from an extremist group which then made two attempts on his life, for the purpose of obtaining protection in Australia.
7. The Tribunal said that it had considered the police reports and letters which the appellant provided in support of his claim. The Tribunal however noted that the Department of Foreign Affairs and Trade (**DFAT**) had advised that fraudulent documents of this kind could be easily obtained in Pakistan and that first information reports to the police did not constitute evidence that the described events actually occurred. In those circumstances the Tribunal gave those documents very little weight.
8. Furthermore, the Tribunal said, even if it accepted that the appellant received a death threat and was involved in two encounters with unknown armed men while he was driving on the street (which the Tribunal did not), the evidence the appellant had provided regarding those events did not suggest that he was targeted by an extremist group or that he was of continuing adverse interest to an extremist group or anyone else at the time he left Pakistan.
9. The Tribunal said that the lack of continuing problems with extremist groups in the months that the appellant remained in Pakistan indicated that whatever the nature of the threats and attacks in the street, the appellant was not of continuing interest to anyone. Further, the appellant had not provided any convincing evidence that his encounters with unknown armed men while driving in the street in 2013 were anything but random events of criminal violence on the streets of a violent city. The only evidence provided which suggested that these attacks were targeted were the appellant’s claims that he received a death threat a few days before the first attack and that he was a well-known Shia activist in Pakistan. With regard to the telephone threat, the appellant received only one threat which the police dismissed as probably a hoax and he heard nothing further from the group, which was supposedly targeting him, for the six months he remained in Pakistan.
10. The Tribunal then went on to consider separately the appellant’s Shia claims, his Mojahir claims, his political opinion claims and claims as to the presence of the Taliban and ISIS in Karachi and problems at the appellant’s children’s school.
11. The appellant’s Shia claims were described by the Tribunal as being that the appellant would be at risk of persecution if he returned to Pakistan because he is a Shia and because his community work and his appearances in social awareness programs and Pakistani television meant that he is a well-known Shia.
12. The Tribunal accepted that the appellant was one of five office bearers in the Trust which took care of his local mosque and provided other services to Shias who attended the Mosque, but did not accept that being active in his local Mosque community in Karachi would make the appellant a well-known figure in Karachi.
13. The Tribunal did not accept that there was a real chance that the appellant would face serious harm on return to Pakistan because of his work with the Fidayan-e-Panjetan Trust or with the Jafferia Disaster Cell Welfare Organisation.
14. The Tribunal concluded that although militants had conducted large-scale attacks on Shia mosques, religious processions and Shia enclaves in Karachi and a number of high-profile Shia leaders and scholars had been murdered in the past, the appellant was not at risk merely on the basis that he had been active in his local Mosque. The Tribunal noted that to the best of the appellant’s knowledge nobody else from the Trust had ever been threatened because of their work with the organisation.
15. As to the appellant having performed in 10 social awareness dramas which appeared on an Urdu language television channel in Pakistan between 2010 and 2013, the Tribunal did not accept that this would have resulted in the appellant becoming well-known throughout Pakistan, or even throughout Karachi. It did not accept that the appellant’s past or any future involvement in those programs would have any impact on his treatment if he returned to Pakistan.
16. At [94], the Tribunal considered whether the appellant would be at risk of serious harm in Pakistan because he is a Shia but did not accept that claim. The Tribunal said the appellant was a well-educated man who had a good job in Pakistan. There was no credible evidence before the Tribunal which suggested that he faced serious harm or discrimination prior to his departure from Pakistan because of his Shia religion. The Tribunal referred to a United Kingdom Home Office report provided by the appellant which stated that there were no discriminatory laws or government policies against Shias in Pakistan or any legal restrictions on the practice of religion. The report also stated that there was little societal discrimination that would restrict Shias in their daily life. It found that there was a general willingness by Pakistani authorities to protect Shias, but their ability to do so was limited by lack of resources.
17. The Tribunal said that after considering all the relevant evidence, it did not accept that there was a real chance that the appellant would face serious harm on return to Pakistan because of his Shia religion.
18. As to the appellant’s Mojahir claims, the Tribunal accepted that the appellant was detained and ill-treated in 2001 because he was wrongly suspected of involvement in Muttahida Qaumi Movement (**MQM**) violence, but that was an isolated event and there was nothing in the evidence which suggested that he would be suspected of involvement with the MQM if he returned to Pakistan. Also the appellant had not provided evidence that he experienced serious harm or discrimination because of his ethnicity or his suspected involvement with the MQM during the 12 years he remained in Pakistan after that incident. Furthermore, the Tribunal said, it was not aware of any evidence which indicated that Mojahirs were generally at risk of serious harm or discrimination in Karachi because of their ethnicity. In reaching that conclusion the Tribunal considered the videos provided by the appellant which apparently showed Rangers attacking Mojahirs. The Tribunal said, at [97]:

As discussed above, there has been [a] high level of political and criminal violence in Karachi, much of it involving conflict between armed wings of the Mojahir aligned MQM and its non-Mojahir rivals battling for domination. As also discussed above, the paramilitary Rangers charged with ending this violence in Karachi have often gone about their task in a brutal fashion. However, the applicant is not a member of the MQM and has never been involved in political activities or violence of any kind. In the circumstances I find that he does not face a real chance of being beaten or facing any other serious harm at the hands of Rangers or anyone else in Karachi because of his ethnicity.

1. The Tribunal also accepted that the appellant was detained for three hours after an encounter with a police officer who stopped his car in the street in 2010 but said that it was clear from the appellant’s evidence that he was detained primarily because he refused to obey the police officer’s (perhaps unreasonable) instructions. The Tribunal said that there never was an ethnic element in his treatment: the appellant’s brief detention was an isolated incident which did not involve serious harm.
2. At [102] the Tribunal said as follows in relation to the refugee claim:

After considering the applicant’s claims singly and cumulatively and taking account of all the relevant evidence, I am not satisfied that there is a real chance that he will suffer serious harm in the reasonably foreseeable future for a Convention reason if he returns to Pakistan and therefore I do not accept that he has a well-founded fear of persecution for a Convention reason. I am not satisfied that he is a person in respect of whom Australia has protection obligations under the Refugees Convention and he therefore does not satisfy the criteria set out in s.36(2)a (sic).

1. At [108] the Tribunal said as follows in relation to the complementary protection claim:

After considering all of the evidence and taking account of any cumulative effect of the credible claims put forward by the applicant, the Tribunal does not accept that there are substantial grounds for believing that, as a necessary and foreseeable consequence of being removed from Australia to Pakistan there is a real risk that he will suffer significant harm.

1. As to the appellant’s political opinion claims, The Tribunal said that there was no suggestion that the appellant had ever faced any problems in the past because he held views about ending corruption, violence, human rights abuses and inequality and ensuring protection and equal rights to minorities. The Tribunal did not accept that the appellant faced a real chance of experiencing serious harm in Pakistan because he held those views.
2. The Tribunal then turned to the claims in relation to the presence of Taliban and ISIS in Karachi, and problems at the appellant’s children’s school. The Tribunal found, at [100], that there was nothing which suggested that the appellant had been or would be of particular interest to those groups and do not accept that their presence in Karachi meant that there was a real chance that the appellant would suffer serious harm if he returned to his homeland. The Tribunal also accepted that the opening hours of the appellant’s children’s school were changed in February 2016 due to some kind of security threat but noted that school was not closed and that the appellant’s children continued to attend the school. Whatever the problem was, the Tribunal said, it did not pose a serious or continuing threat to the children attending the school. The Tribunal did not accept that the alterations to hours the appellant’s children’s school was open in February 2016 indicated that the appellant faced a real chance of experiencing serious harm if he returned to Pakistan.

## The application to the Federal Circuit Court of Australia

1. In his application to the Federal Circuit Court of Australia, the appellant asserted jurisdictional error on the part of the Tribunal as follows:
2. The Tribunal accepted that there were attacks in Karachi on Shia by militants and that the applicant was involved in Shia activities at a mosque which should lead that I face a well founded fear of persecution by virtue of being a Shia. The Tribunal in its reasoning failed to consider whether the applicant might face a well founded fear of persecution in the future by virtue of attending a mosque or religious process in the future. The Tribunal did not deal with the claim.
3. The Tribunal failed to accept that the applicant will face a risk and significant harm and misunderstood the issue of being willing to provide protection to Shia which is different from the applicant actually will be able to obtain protection.

3. **Particulars**

A) The Tribunal failed to lawfully deal with a claim before it as to the Applicant facing a well founded fear of persecution or significant harm by virtue of his attendance upon his return at Shia mosques, religious processions or Shia enclaves in Karachi.

B) When considering whether there was a real risk that the applicant would face significant harm on return to Pakistan because of Shia religion, the Tribunal erred by considering whether the Pakistani authorities were prepared to provide protection to Shias without asking itself whether that protection was practically available to the Applicant having regard to all of his circumstances and the circumstances of the police force (such as its resources), or by failing to ask itself whether the Applicant could obtain the protection from the Pakistani authorities (being the test prescribed by section 36(2B)(b) of the Migration Act.

1. In relation to the first ground, the primary judge found that the Tribunal did deal with the appellant’s claim to fear harm by reason of his religion and by reason of his ethnicity.
2. With respect to the second ground, the primary judge found that there was nothing to suggest that the Tribunal misunderstood the appellant’s claims.
3. The primary judge considered the written submission made by the appellant to that Court and also the appellant’s oral submissions to that Court.
4. The primary judge did not find any jurisdictional error to be demonstrated.

## The appeal to this Court

1. As I have said, I shall treat the grounds before the primary judge as being advanced also on this appeal.
2. The appellant filed no written submissions in this Court. In his oral submissions, the appellant made four points. First he said the submissions he provided to the Federal Circuit Court were not given proper consideration. Secondly, the appellant said he provided some supporting documentation to the Tribunal which demonstrated the circumstances in Karachi against Shia Muslims in early 2016. Thirdly, the appellant submitted that when it was put to him by the Tribunal, he declined to agree with the opinion in the DFAT Country Information Report: Pakistan. Fourthly, the appellant submitted that when the Tribunal put to him advice from DFAT stating that document fraud was endemic in Pakistan and it was relatively simple to fraudulently produce police-issued First Information Reports, he responded to the Tribunal that the ones he had provided were genuine, but the Tribunal did not give them any weight.
3. The Minister submitted that while the Tribunal acknowledged, at [90], that militants had conducted large-scale attacks on Shia mosques, religious processions and Shia enclaves in Karachi and a number of high-profile Shia leaders and scholars had been murdered in the past, the Tribunal was not aware of any evidence which suggested that Shias who were active in their local Mosque in Karachi were generally at risk of being targeted by extremists for that reason. The Tribunal therefore did not accept that there was a real chance that the appellant would face serious harm on return to Pakistan due to his work with the Trust.
4. The Minister submitted that the Tribunal concluded, at [93], that the appellant was not a well-known or high-profile Shia or Shia activist and concluded that his past religious or community activities were not such as to mean there was a real risk he would face serious harm on return to Pakistan.
5. The Minister submitted that the Tribunal considered, at [94], the broader question of whether the appellant would be at risk of serious harm in Pakistan because he is a Shia. The Tribunal noted that there was no credible evidence that the appellant had faced serious harm or discrimination prior to leaving Pakistan because of his Shia religion. The Tribunal noted that a United Kingdom Home Office report stated that the greatest threat to Shias in Pakistan is sectarian violence and targeting by militants. The report added that there was a general willingness by Pakistani authorities to protect Shias, but their ability to do so was limited by a lack of resources. The Tribunal did not accept that there was a real chance that the appellant will face serious harm on return to Pakistan because of his Shia religion.
6. The Minister relied on the findings of the primary judge with respect to each ground. The Minister submitted that the notice of appeal to this Court did not contain proper grounds of appeal and did not demonstrate any appellable error on the part of the primary judge or any jurisdictional error on the part of the Tribunal.
7. In response to the appellant’s oral submissions, the Minister submitted, first, that the submissions the appellant provided to the Federal Circuit Court were considered in sequence in the reasons of the primary judge and were given proper consideration. The Minister also submitted that the Tribunal had taken into account the documents submitted by the appellant as to the current circumstances in Karachi. The third and fourth issues were raised by the appellant in reply.

## Consideration

1. In my opinion, ground 1 proceeds on a misunderstanding of the Tribunal’s findings at [90]-[94]. Those paragraphs are directed to evaluating whether the appellant has a well-founded fear of persecution if he returned to Pakistan because he is a Shia. The Tribunal considered the appellant’s claims, particularly the claim that because he was active in his local mosque he would be targeted by extremists. The Tribunal referred to the general background of violence. It considered, at [94], whether the appellant was at risk of serious harm, if he returned to Pakistan in the future, by reference to what had or had not happened to him prior to his departure from Pakistan because of his Shia religion. This founds the Tribunal’s conclusion at [102].
2. I refer to *Minister for Immigration and Ethnic Affairs v Guo Wei Rong* [1997] HCA 22; 191 CLR 559 at 576 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ, where their Honours said:

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

1. In my opinion, the paragraphs of the Tribunal’s reasons, read consistently with *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* [1996] HCA 6; 185 CLR 259, proceed on the basis that the appellant, if he returned to Pakistan, would or may resume his community work with the Trust at his local mosque in Karachi and with the Jafferia Disaster Cell. No jurisdictional error on the part of the Tribunal is established by this ground.
2. Ground 2 involves a misreading of the Tribunal’s findings at [94]. The reasons of the Tribunal show that it was not satisfied that there was a real risk that the appellant will suffer significant harm in Pakistan. The Tribunal did not misunderstand the issue, in my opinion, but referred to the Home Office report for the proposition that there is a general willingness by Pakistani authorities to protect Shias: see generally *Minister for Immigration and Multicultural Affairs v Respondents S152/2003* [2004] HCA 18; 222 CLR 1 at [26] per Gleeson CJ, Hayne and Heydon JJ. The Tribunal was responding to the submission that state protection was not available to Mohajirs and Shias in Pakistan because of discriminatory attitudes which resulted in the authorities knowingly tolerating mistreatment and abuses against them. In my view there was no jurisdictional error on the part of the Tribunal shown by this reference to the Home Office report.
3. The reference in the particulars to s 36(2B)(b) of the *Migration Act* is to a provision which concerns complementary protection and circumstances where there is taken *not* to be a real risk that a non-citizen will suffer significant harm in a country, that is, where the Minister is satisfied that: the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm. In the present case, as I have said, the claim on behalf of the appellant was that the authorities knowingly tolerated mistreatment and abuses against Mohajirs and Shias, and it was that claim which the Tribunal did not accept. There was no jurisdictional error in this respect.
4. As to the appellant’s written submissions to the Federal Circuit Court, the appellant’s first point was that the Tribunal reached a conclusion which was not based on facts. This centred on the Tribunal giving the appellant’s documents little weight. However, in my opinion, in the circumstances of this case, this was mere fact finding involving no jurisdictional error: see *Waterford v Commonwealth* [1987] HCA 25; 163 CLR 54 at 77 per Brennan J.
5. I reach the same conclusion in relation to the submission that the Tribunal erred in not finding that the appellant was a well-known figure or well-known Shia activist.
6. There was also a submission of error on the part of the Tribunal in failing to properly conduct enquiries, but in my opinion in the circumstances of this case there was no such failure which could be characterised as jurisdictional error.
7. As to the appellant’s submissions that the Tribunal acted contrary to the evidence, failed to deal with a claim that was expressly made or there was no evidence or other material to justify the decision of the Tribunal, at that level of generality these are no more than complaints about mere fact finding.
8. I reach the same conclusion in relation to the appellant’s submissions that the Tribunal “failed to deal with my claim as per the evidence on file” and the “evidence on file is convincing yet the Tribunal acted contrary to the evidence.”
9. I have already considered and rejected, at [61]-[63], the submission that the Tribunal failed to consider the risk that the appellant would suffer as a Shia on return to Pakistan.
10. Turning to the appellant’s oral submissions, which I have set out at [55] above, I do not accept that the submissions he provided to the Federal Circuit Court were not given proper consideration. Plainly the appellant does not agree with the reasons of the primary judge, but that does not mean that his submissions were not given proper consideration. Secondly, the Tribunal considered and evaluated the supporting documentation concerning the circumstances in Karachi adverse to Shia Muslims in early 2016. No jurisdictional error is established by the Tribunal’s treatment of that material, even though it did not accept that the material established that there was a real chance that the appellant would face serious harm on return to Pakistan because of his Shia religion. Thirdly, the fact that the appellant declined to agree with the opinion in the DFAT Country Information Report did not mean that the Tribunal was not entitled to consider that Report. Whether the Tribunal rejected it or, as in this case, accepted it was a matter within the Tribunal’s jurisdiction. Fourthly, similarly, the weight to be given to the police-issued First Information Reports was a matter for the Tribunal and within its jurisdiction.

## Conclusion and orders

1. For these reasons, I dismiss the appeal, with costs.

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| I certify that the preceding seventy-three (73) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Robertson. |

Associate:

Dated: 15 March 2017