

**RŌPŪ TAKE MANENE, TAKE WHAKAMARU
AOTEAROA**

Appellant: **FZ (Partnership)**

Before: M B Martin (Member)

Counsel for the Appellant: S Shamia

Date of Decision: 1 September 2020

RESIDENCE DECISION

[1] The appellant is a 27-year-old citizen of Afghanistan who has previously lived in Pakistan. His application for residence made under the Family (Partnership) category was declined by Immigration New Zealand.

THE ISSUE

[2] The appellant provided Immigration New Zealand with a forged Pakistani police certificate. His application was declined because he did not meet the good character requirement of instructions and had been refused a character waiver.

[3] The primary issue on appeal is whether Immigration New Zealand's decision was correct. The Tribunal finds that the decision was not correct. While Immigration New Zealand correctly determined that the appellant did not meet the good character requirement, its subsequent character waiver assessment was flawed. The application is returned to Immigration New Zealand for a correct assessment.

BACKGROUND

[4] In November 2015, the appellant was granted a visitor visa so that he could travel to New Zealand to marry his now wife (a New Zealand citizen originally from Afghanistan) pursuant to a culturally arranged marriage. His wife had previously

been granted residence under the Family (Sibling and Adult Child) category, along with her parents and siblings. She and her family arrived in New Zealand in 2010.

[5] The appellant arrived here in December 2015. He and his wife married in January 2016 and they have since had two New Zealand-citizen daughters. The elder daughter is two years of age and the younger daughter is aged 11 months.

[6] Between February 2016 and June 2018, the appellant made various applications for temporary visas. All but one of those applications were approved.

The Appellant's Application for Residence

[7] On 9 October 2018, the appellant made his application for residence, which was supported by his wife. He declared that he had no convictions. Immigration New Zealand received clear police certificates from New Zealand and Afghanistan. However, the appellant did not produce a police certificate from Pakistan. He had indicated that he, along with his parents and siblings, lived there from 2000 to 2014.

[8] On 1 February 2019, Immigration New Zealand emailed the appellant's then counsel to request, among other things, evidence of the appellant's time spent in Pakistan, namely school records, and a police certificate from Pakistan. In the latter regard, a hyperlink was provided to that part of Immigration New Zealand's website which set out how the appellant could obtain a police certificate, such as through an application being made to his nearest High Commission for Pakistan (there being one in New Zealand).

[9] In response, counsel advised that, when the appellant's family had moved from Pakistan back to Afghanistan, they did not take any of his school records with them. Counsel did produce a clear Pakistani police certificate (19 February 2019) purportedly issued by the "Office of the Capital City Police Officer", based in the city where the appellant had previously resided in Pakistan.

[10] Immigration New Zealand made enquiries with the police station said to have issued the police certificate. The station advised that the document was a forgery.

Immigration New Zealand Raises Character Concerns

[11] On 23 April 2019, Immigration New Zealand wrote to counsel and advised that it had discovered that the Pakistani police certificate was a forgery. Applicants who would not normally be granted a residence class visa, unless granted a

character waiver, included any person who had, in the course of applying for visa, provided any evidence that was forged (A5.25.i, effective 30 March 2015).

Response to Immigration New Zealand's Character Concerns

[12] On 8 May 2019, counsel provided Immigration New Zealand with letters from the appellant and his wife. The appellant said that he had not known how to get a police certificate from Pakistan in circumstances where he had no family or friends left there. He had spoken with a friend in New Zealand who said that he had a brother in Pakistan who could get him a police certificate. The appellant's details were passed on to the brother, including his passport number, and the certificate was eventually sent to the friend in New Zealand, who then provided it to the appellant. The appellant stated that he had not known that it was a forgery. He had asked his friend to speak with the brother to find out what process had been followed in obtaining the certificate. The friend reported that the brother's position was that the certificate was legitimate, and that he was not prepared to explain how he had secured the document.

[13] The appellant produced a receipt for the previous shipping of the certificate to New Zealand, along with a screenshot of text messages containing his personal details, including his passport number (apparently sent to the friend).

[14] The appellant's wife advised, in her letter, that the appellant was "constantly" calling his friend. However, the friend was no longer taking his calls.

Appellant Not of Good Character

[15] On 28 May 2019, Immigration New Zealand wrote to counsel and advised that it considered it more likely than not that the appellant had provided a forged police certificate. It did not present as credible that he had been forced to use a friend to obtain a police certificate from within Pakistan when information had been provided to him about the process for applying for a certificate through the High Commission for Pakistan. The appellant did not meet the good character requirement of instructions (A5.25.i) and information could now be produced in support of a character waiver.

Submissions and Evidence Produced in Support of a Character Waiver

[16] On 17 June 2019, Immigration New Zealand received submissions from counsel in support of a character waiver. Counsel said that the appellant returned from Pakistan to Afghanistan before coming to New Zealand due to the deteriorating

relationship between the two countries. Due to this experience, he had not been sure whether he would be able to get a police certificate from Pakistan following Immigration New Zealand's request. That was why he had acted upon his New Zealand friend's offer of help. Because his friend was no longer communicating with him, the appellant had resigned himself to the fact that the certificate must have been forged. However, he had not acted with any intent to deceive. It would defy logic for the appellant to deliberately obtain a forged document in circumstances where he was so close to getting residence.

[17] It was noted that, when counsel had asked the appellant, during a recent meeting, why he had not followed the process for applying for a police certificate as per Immigration New Zealand's email of 1 February 2019, he had said that it was because "you did not tell us it can be done online". Counsel then showed the appellant the email which "clearly" provided a link to information explaining the application process through the High Commission for Pakistan, to which the appellant and his wife responded by saying that they had "not really read the [email] carefully". Counsel noted that English was not the appellant's first language.

[18] Counsel asked Immigration New Zealand to weigh the fact that the appellant's wife and their first daughter were lawfully residing in New Zealand, and a second child was due in upcoming months. The appellant had strong ties to New Zealand. It would not be safe for his family to relocate to Afghanistan, in the event that he had to return, due to instability in the region. His daughter and unborn child had a right to have both parents in their lives, and his wife would struggle to care for them without his support because of her compromised psychological health.

[19] Evidence was produced in support, including: a letter (31 May 2019) from the wife's midwife who noted that the wife had antenatal depression; a letter (31 May 2019) from the wife's doctor advising that the wife had ongoing depression and her low mood was affecting her social relationships and interactions; medical records for the wife; a letter from the wife who said that she was using antidepressant medication; letters from two of the wife's sisters who discussed their concerns about her depression; and two letters of support, including from the president of an Afghan organisation in New Zealand to which the appellant belonged (these letters being variously dated).

Further Correspondence and an Interview with the Couple

[20] On 2 July 2019, Immigration New Zealand requested that the appellant

provide updated partnership evidence and that he also follow the process contained on its website for applying for a police certificate from Pakistan.

[21] In response, counsel forwarded an email (12 July 2019) from the New Zealand High Commission for Pakistan confirming that the appellant had applied for a police certificate. Partnership evidence was also produced.

[22] On 19 September 2019, Immigration New Zealand conducted an interview with the appellant and his wife as part of its assessment of a partnership-based work visa application which had been made by the appellant. During that interview, the couple confirmed that their second daughter had recently been born, the wife was in receipt of a government benefit, and they were living in public housing.

[23] On 3 December 2019, counsel advised Immigration New Zealand, again in connection to the work visa application, that the appellant had previously lived in Pakistan as a refugee. He was not sure about his actual immigration status there, but he did not think that he had held a visa. A statutory declaration (3 December 2019) was also produced from the appellant, who said that he was still waiting for the police certificate he had requested in July 2019 through the High Commission.

Attempt to Verify an Earlier-Produced Pakistani Police Certificate

[24] In late 2019, Immigration New Zealand tried to verify a Pakistani police certificate that the appellant had produced in support of a previous temporary visa application. However, the Pakistani authorities advised that they could not find any record of the appellant in their system.

Further Opportunities Provided to Comment on Character Concerns and Produce Information in Support of a Character Waiver

[25] On 9 January 2020, Immigration New Zealand emailed counsel and advised that it would be proceeding to conduct character waiver assessments for the residence and work visa applications. The appellant could have one final opportunity to provide comments in respect of the concern that he had provided a forged certificate in support of his residence application. Immigration New Zealand also said that it held concerns that an earlier produced police certificate, from Pakistan, may have been forged. This certificate, and the one produced in support of the residence application, looked very similar. Finally, Immigration New Zealand requested updated partnership evidence.

[26] On 31 January 2020, counsel provided submissions where it was noted that the appellant and his father had visited a police station to obtain the earlier police certificate. In addition, evidence was produced in support of a character waiver and included: a copy of the earlier produced statutory declaration; a statement from the appellant's wife (21 January 2020), where she noted that her husband had looked after the children during the day while visiting her in the evenings during a recent stint in hospital for a gallstone operation and further surgery for complications; her medical records; another letter of support from the president of the aforementioned Afghan organisation; and further partnership evidence.

[27] On 19 February 2020, Immigration New Zealand emailed counsel and advised that it had still not received the new Pakistani police certificate ordered in July 2019. Further, counsel had previously advised that the appellant did not believe that he had held a visa while in Pakistan. Immigration New Zealand was concerned that, because he had not been lawfully in Pakistan, he could not obtain any government documents such as police certificates. It theorised that he may have been aware of that fact and so that was why he had decided to provide Immigration New Zealand with a forged police certificate. Counsel was asked to provide comments by 20 February 2020, following which the character waiver assessment would be completed.

[28] On 20 February 2020, counsel asked for a one-day extension. In response, Immigration New Zealand confirmed the requested extension and noted that it had not been able to verify the earlier police certificate that had been produced due to the time that had passed since it was generated.

[29] On 21 February 2020, Immigration New Zealand approved a further extension to 24 February 2020. It stated that the website for the High Commission for Pakistan made it clear that foreign nationals had to produce a copy of their passport on which a Pakistani visa had been issued, in order to apply for a police certificate. It reiterated its concern that the appellant did not appear to have been lawfully in Pakistan and, knowing he would not be able to apply for a police certificate in these circumstances, he intentionally arranged for a false police certificate to be produced for his residence application. Its concerns related not only to the police certificate produced during the assessment of the residence application, but also to the earlier police certificate provided to Immigration New Zealand.

[30] In response, also on 21 February 2020, counsel stated that, based on information gathered to date, it appeared that the appellant and his family went to Pakistan when he was young. They were able to cross the border without a visa.

Most people from Afghanistan living in Pakistan at that time would have been there illegally but could still work and study. The appellant was able to visit his local police station with his father in 2013/2014 and obtain the earlier produced police certificate.

[31] On 23 February 2020, counsel provided further submissions. Counsel submitted that the appellant had no real knowledge of his immigration status in Pakistan until recently, when, due to the concerns raised by Immigration New Zealand, he had discussed the matter with his family. He came to learn that they had been refugees in Pakistan and had been living there illegally. He had been able to obtain his earlier-produced police certificate because (at that time) he was still living in Pakistan. Had he known that he had been a refugee when Immigration New Zealand requested another police certificate in the early stages of the assessment of his residence application, then counsel would have advised him that he could not get one. The most recently requested police certificate, ordered in July 2019, had not arrived and so it could only be assumed that one could not be issued because his immigration status could not be verified by the Pakistani authorities. The appellant had never intentionally provided a false police certificate.

[32] Counsel accepted that concerns that the appellant had intentionally provided a forged document would be weighed against him in the character waiver assessment, although as stated, the appellant did not know that the certificate was fake. There were many positive factors as well, including that the appellant was in a genuine partnership with his New Zealand-citizen wife and they had two children, whose best interests were a primary consideration and could only be served by being with both of their parents in New Zealand. The appellant's wife was suffering from poor health and the stress of the appellant's immigration status was contributing to this. He was assisting his wife with looking after their children. Given the volatile and unsafe situation in Afghanistan, it was not possible for his wife to return there with their children.

[33] The above submissions were supported by a statement (21 February 2020) from the appellant's wife. It also appears that counsel provided, at this point, a selection of Pakistani police certificates from previous clients for the purpose of showing that these documents differed from one city to the next in Pakistan and were not part of a centralised national system.

Character Waiver Assessment

[34] On 25 February 2020, Immigration New Zealand completed a character

waiver assessment. In its conclusion, it focused on the forged evidence which had been produced and concluded that this outweighed the positive factors that existed.

Immigration New Zealand's Decision

[35] On 25 February 2020, Immigration New Zealand declined the appellant's application because he did not satisfy the good character requirement of instructions and had been refused a character waiver.

[36] On 27 February 2020, the appellant's partnership-based work visa application, which had been assessed alongside his residence application, was declined on character grounds. He has since become unlawfully in New Zealand and has lodged an appeal with the Tribunal in its deportation (non-resident) appeal jurisdiction. The Tribunal has heard this deportation appeal alongside the appellant's residence appeal, and its decisions in respect of both appeals are being released contemporaneously. The deportation (non-resident) decision is reported as *BX (Afghanistan)* [2020] NZIPT 504941 and the outcome is that the appellant has been granted a further 12-month work visa.

STATUTORY GROUNDS

[37] The appellant's right of appeal arises from section 187(1) of the Immigration Act 2009 (the Act). Section 187(4) of the Act provides:

- (4) The grounds for an appeal under this section are that—
 - (a) the relevant decision was not correct in terms of the residence instructions applicable at the time the relevant application for the visa was made; or
 - (b) the special circumstances of the appellant are such that consideration of an exception to those residence instructions should be recommended.

[38] The residence instructions referred to in section 187(4) are the Government residence instructions contained in Immigration New Zealand's Operational Manual (see www.immigration.govt.nz).

THE APPELLANT'S CASE

[39] On 10 March 2020, the appellant lodged this appeal on both grounds in section 187(4) of the Act. He has new counsel on appeal, who has provided

submissions (14 May 2020) and copies of documentation contained on Immigration New Zealand's files.

[40] At the time the appeal was lodged, the appellant had still not received the Pakistani police certificate that he had applied for in July 2019. Counsel advised that, since the decline of his residence application, the appellant had obtained new evidence in support of his identity (some or all of which, it appeared to be suggested, had been sent to the appellant by his family in Afghanistan). This evidence comprised previous academic documentation from his time in Pakistan (dated up until 2013) and an "Afghan Citizen — Proof of Registration" document purportedly issued by the Pakistani authorities to the appellant (which contains an incorrect spelling of his name and date of birth). Counsel suggested that some or all of this evidence had been provided to the High Commission for Pakistan to assist with the processing of his application for a police certificate. Copies of this evidence, along with emails (5 March 2020 and 10 July 2020) from the High Commission for Pakistan confirming that his application for a police certificate was being processed, were produced on appeal. In the second email from the High Commission, it was noted that the application had been forwarded to the relevant authorities in Pakistan on 9 August 2019 and it was not clear when there would be a response. The "details of Afghan refugees living in Pakistan or [who] have left Pakistan after spending some years there are very hard to verify".

[41] Following the production of the above submissions and evidence, counsel sent an email (27 August 2020) to the Tribunal advising that the Pakistani police certificate had now arrived. A copy of this certificate is before the Tribunal and is dated 18 June 2020, although it is also stamped 25 August 2020. The certificate is recorded as having been issued by the "Office of the Capital City Police" located in the city where the appellant had previously resided in Pakistan, and records that the appellant has no criminal record.

[42] Other new evidence which has been provided to the Tribunal includes: a letter from the appellant's former school principal in Pakistan; emails and letters from the appellant and his wife; various letters of support; a joint bank statement for the couple; and a report (6 April 2020) from the wife's medical clinic noting, among other things, that she has ongoing depression and anxiety.

[43] The Tribunal is unable to consider the above new evidence in its assessment of the correctness of Immigration New Zealand's decision to decline the application (section 189(1) of the Act), to the extent that it is relevant to the correctness of

Immigration New Zealand's decision. While there is an exception to section 189(1), the appellant does not fall within it because, to the extent that the new evidence existed at the time the application was determined on 25 February 2020, it has not been demonstrated that the appellant could not, by the exercise of reasonable diligence, have placed that evidence before Immigration New Zealand before the decision was made (refer to the exception clause at section 189(3)(a) of the Act). It can be considered by Immigration New Zealand in its reassessment of the appellant's application.

ASSESSMENT

[44] The Tribunal has considered the submissions and documents provided on appeal, along with the files in relation to the appellant's residence application and previous temporary visa applications which have been provided by Immigration New Zealand.

[45] An assessment as to whether the Immigration New Zealand decision to decline the appellant's application was correct in terms of the applicable residence instructions is set out below.

Whether the Decision is Correct

[46] On 9 October 2018, the appellant's application for residence was made under the Family (Partnership) category and the relevant criteria are those in residence instructions as at that time. Immigration New Zealand declined the application because the appellant did not satisfy the requirement to be of good character and had been refused a character waiver. The relevant instructions are set out below.

Family (Partnership) category instructions

[47] An application made under the Family (Partnership) category will be declined if the applicant does not meet the character requirements of instructions contained at A5 (F2.5.d.vi, effective 8 May 2017).

Character instructions

[48] Instruction A5.25 (effective 30 March 2015) is part of A5. If an applicant falls within any of the circumstances listed in A5.25, then they will not normally be granted

residence unless a character waiver is granted pursuant to A5.25.1 (also effective 30 March 2015). Instruction A5.25 relevantly provides:

A5.25 Applicants normally ineligible for a residence class visa unless granted a character waiver

Applicants who will not normally be granted a residence class visa, unless granted a character waiver (see A5.25.1(b) below), include any person who has been:

...

- i. in the course of applying for a New Zealand visa (or a permit under the Immigration Act 1987), has made any statement or provided any information, evidence or submission that was false, misleading or forged, or withheld material information; or

...

Note:

- When considering whether or not an applicant has committed an act that comes under A5.25 (i), (j) or (k) or (l) above, an immigration officer should establish whether, on the balance of probabilities, it is more likely than not that the applicant committed such an act.

...

[49] Where A5.25.i is at issue, Immigration New Zealand must determine whether, on the balance of probabilities, the applicant acted deliberately and dishonestly (intentionally) in producing false, misleading or forged evidence, or withholding material information: see *Chiu v Minister of Immigration* [1994] 2 NZLR 541 (CA).

Immigration New Zealand's assessment of the appellant's character

[50] As the above "Background" section demonstrates, during the course of the assessment of the appellant's residence application, there was a reasonable amount of correspondence generated on the question of character. The Tribunal considers that it may assist if, before proceeding to assess the correctness of Immigration New Zealand's character finding, the key claims made for and on behalf of the appellant are summarised, along with the main findings made by Immigration New Zealand. This follows.

[51] Pursuant to an emailed request made by Immigration New Zealand on 1 February 2019, the appellant produced a police certificate (19 February 2019) from Pakistan which was subsequently found by Immigration New Zealand to be a forgery. The appellant claimed that he had not known the document was a forgery.

[52] The appellant's position, as advanced during the assessment of his residence application, was that, while Immigration New Zealand had provided him with a

hyperlink to information contained on its website about applying for a police certificate through his local High Commission for Pakistan, in its email of 1 February 2019, he had not appreciated that fact at the time. He had not carefully read the email, English was his second language, and his then counsel had not brought the hyperlink to his attention. In these circumstances, ignorant of the application process available for obtaining Pakistani police certificates as provided by the New Zealand High Commission for Pakistan, he had simply assumed that he would need to get a police certificate directly from a police station in Pakistan. With no family or friends there, he did not know what he could do to get that certificate. He discussed his predicament with a friend in New Zealand (whom he now suggests on appeal was in fact in Pakistan). The friend said that he had a brother in Pakistan who could get him his certificate. The appellant had no idea why the certificate subsequently produced to him had been forged, and only became aware of that fact when it was raised by Immigration New Zealand. He had tried to get an explanation from his friend, but the friend was no longer answering his calls. He had no reason to provide a forged document because that would only serve to put his application at risk in circumstances where it was close to being approved.

[53] The appellant also noted that he had been able to obtain an earlier Pakistani police certificate, provided to Immigration New Zealand in support of a temporary visa application, before he had come to New Zealand. He had gone into his local police station with his father and simply requested one. He said that it was genuine.

[54] Immigration New Zealand did not consider it to be credible that the appellant had used a friend to get a police certificate on the ground in Pakistan when it had previously provided him with, in its email of 1 February 2019, a clear pathway for obtaining a certificate through his local High Commission for Pakistan. The hyperlink to information contained on its website explaining this possible pathway was contained in the same paragraph as the request for the police certificate. It was difficult to accept that only that part of the paragraph requesting the police certificate had been read and understood. Further, the appellant had not been self-representing during the assessment — he had the benefit of assistance from his (then) counsel.

[55] In addition, Immigration New Zealand said that it appeared that the appellant needed to provide a copy of his passport with a Pakistani visa in order to apply for a police certificate through the New Zealand High Commission for Pakistan (according to the Commission's website). There was no evidence to demonstrate that the appellant had held a visa while living in Pakistan or had otherwise been

there lawfully. The concern was that, knowing the problems that an unlawful status in Pakistan presented him in getting a legitimate police certificate, he had made the decision to use his friend in New Zealand to get him a forged certificate. Questions remained as to how he had been able to get his earlier certificate in circumstances where he had not been lawfully in Pakistan at any point while living there.

[56] Immigration New Zealand concluded that the appellant had intentionally produced a forged police certificate and so was caught by A5.25.i.

Point of clarification

[57] The Tribunal notes that, while reference has been made to the appellant's production of an earlier Pakistani police certificate, there were in fact two certificates (dated 27 August 2013 and 27 June 2014) which were received by Immigration New Zealand prior to the one produced for the residence application (dated 19 February 2019). It was the 2014 certificate which received particular attention in the final assessment, alongside of course the 2019 certificate found to be a forgery.

Correctness of character finding

[58] It remains undisputed on appeal that the Pakistani police certificate dated 19 February 2019 was forged. The central question is whether Immigration New Zealand was correct to find that the appellant had intended to produce a forged document.

[59] On appeal, counsel refers to Immigration New Zealand's suspicion that the appellant may have chosen to get a forged police certificate because he had not spent his time in Pakistan lawfully and he knew that the only way he could get a police certificate was through producing evidence that he had held a visa while there. Counsel notes that, with this concern in mind, Immigration New Zealand also had questions as to the genuineness of the earlier police certificate (2014) that he had produced. Counsel is critical of Immigration New Zealand's failure to afford the appellant sufficient time to prove that he was "registered" or had a lawful immigration status while in Pakistan. She refers to new evidence produced on appeal which includes an "Afghan Citizen — Proof of Registration" document issued to the appellant by authorities in Pakistan and evidence showing that he had been able to study there. Counsel submits that this evidence shows that the appellant was registered to live in Pakistan, where he was a refugee. Therefore, he had a lawful

status while in Pakistan, which meant that he could have obtained a genuine police certificate in 2014.

[60] Relevant to the Tribunal's earlier determination as to the inadmissibility of the above new evidence is the fact that it is clear the appellant was afforded a more than reasonable opportunity to provide such evidence to Immigration New Zealand. His then counsel never requested an extension on the basis that this documentation was being sourced, and in fact represented that the appellant had not been living lawfully in Pakistan. Even if the Tribunal were to find that the appellant had not been afforded sufficient time to produce evidence of his immigration status while in Pakistan, and that the above evidence is admissible on appeal and shows that he did have a lawful immigration status in Pakistan, it would still find that Immigration New Zealand's character determination under A5.25.i was correct. The Tribunal's reasoning follows.

[61] The Tribunal finds that a problem that exists for the appellant in this case, although this was not one which received any particular attention by Immigration New Zealand, is that it does not present as plausible that he innocently and unknowingly received a forged police certificate. In the absence of any convincing or reasonable explanation provided by the appellant, there has to be a real concern that he was complicit in the production of the forged document. The immediate and unanswered question that also arises is why his friend's brother in Pakistan would go to the trouble of arranging for a forged police certificate to be created, without the appellant knowing that to be the case and in circumstances where what had been requested was that a genuine certificate be obtained from a police station. The appellant's claim that he had simply received a certificate that he did not know was forged is not, without more, convincing or plausible.

[62] The Tribunal also finds it difficult to accept that the appellant had no appreciation of the process that could be followed for applying for a police certificate through his local High Commission for Pakistan. Immigration New Zealand had given him information about this process and, had he any questions, then he could have asked his then lawyer. His explanation for failing to follow this process, summarised at [52] above, is not convincing.

[63] While the appellant provided Immigration New Zealand with a copy of the shipping receipt confirming delivery of the police certificate in New Zealand, and a number of text messages in which he provided personal details to, it seems, his friend, this evidence did not assist in demonstrating that he was an innocent party.

[64] The appellant was ultimately responsible for ensuring that the evidence he produced, including on the important matter of his character, was genuine and correct. Having assessed Immigration New Zealand's reasoning, and then critically assessed all of the evidence that was before Immigration New Zealand, the Tribunal finds that it was more likely than not that the appellant intentionally provided a forged police certificate. Therefore, Immigration New Zealand's finding that he did not meet the good character requirement of instructions was correct (A5.25.i).

[65] For the appellant's benefit, the Tribunal adds here that, even had it been able to accept the new Pakistani police certificate produced on appeal as genuine and admissible, this would not take away from the concerns which have been set out above.

Character waiver

[66] Having correctly determined that the appellant did not satisfy the good character requirement of instructions, Immigration New Zealand proceeded to carry out a character waiver assessment. Instruction A5.25.1 is relevant in this regard, and provides:

A5.25.1 Action

- a. An immigration officer must not automatically decline residence class visa applications on character grounds.
- b. An immigration officer must consider the surrounding circumstances of the application to decide whether or not they are compelling enough to justify waiving the good character requirement. The circumstances include but are not limited to the following factors as appropriate:
 - i. if applicable, the seriousness of the offence (generally indicated by the term of imprisonment or size of the fine);
 - ii. whether there is more than one offence;
 - iii. if applicable, the significance of the false, misleading or forged information provided, or information withheld, and whether the applicant is able to supply a reasonable and credible explanation or other evidence indicating that in supplying or withholding such information they did not intend to deceive INZ;
 - iv. how long ago the relevant event occurred;
 - v. whether the applicant has any immediate family lawfully and permanently in New Zealand;
 - vi. whether the applicant has some strong emotional or physical tie to New Zealand;
 - vii. whether the applicant's potential contribution to New Zealand will be significant.

...

- d. Officers must make a decision only after they have considered all relevant factors, including (if applicable):

...

- ii. compliance with fairness and natural justice requirements (see A1).

- e. Officers must record:

- i. their consideration of the surrounding circumstances, (see paragraph (b) above), noting all factors taken into account; and
- ii. the reasons for their decision to waive or decline to waive the good character requirements.

...

Effective 30/03/2015

The character waiver assessment conducted by Immigration New Zealand

[67] Immigration New Zealand began the appellant's character waiver assessment by recording that he did not meet the good character requirement of instructions because he had provided a forged Pakistani police certificate. It also noted that it had yet to receive a new Pakistani police certificate, ordered through the High Commission for Pakistan. With the exception of the good character requirement, Immigration New Zealand said that the appellant satisfied all the other requirements of the Family (Partnership) category.

[68] Immigration New Zealand then proceeded to summarise concerns that it had raised during the assessment of the appellant's character, and information that had been provided by then counsel and the appellant.

[69] The final part of the character waiver assessment was headed "conclusion". Here, Immigration New Zealand focused almost entirely on the fact that the appellant had provided a forged police certificate. It considered that the appellant's actions were recent and that the provision of a forged police certificate was "very serious". It did not consider that the appellant had provided a credible explanation indicating that in supplying the forged information he had not intended to deceive Immigration New Zealand. Some of its central reasoning here has been summarised above at [54]–[55]. Immigration New Zealand also noted that, despite the appellant having had some six months to produce a genuine police certificate from Pakistan, he had yet to do so.

[70] In terms of factors that did not relate to the forged evidence, Immigration New Zealand noted that it could not determine whether the appellant and his wife

would make a significant contribution to New Zealand through employment. It went on to state that the appellant had strong ties to New Zealand through his wife and children. The wife was unable to relocate to Afghanistan and, if the appellant could not stay here, this would result in “significant emotional and financial stress on the family”. A number of small quotes were then taken from former counsel’s submissions dated 23 February 2020, including that the appellant’s wife was suffering from “ill health” believed by counsel to have been exacerbated by stress associated with the appellant’s immigration issues. It also recorded then counsel’s submission that “looking after the children must be [a] primary consideration”.

[71] Having noted the various factors set out above, Immigration New Zealand then concluded matters by finding that the intentional provision of false documents “undermines the integrity of the immigration system”. The “significance of the false information provided in this case outweigh the positives”.

Correctness of the character waiver assessment

[72] The only part of the character waiver assessment which contained any particular assessment (taking matters beyond a recording of what had taken place up to the point of the waiver assessment) was the last section headed “conclusion”, and it was there that Immigration New Zealand had regard to factors listed in A5.25.1.b. From the outset, the Tribunal accepts that Immigration New Zealand was correct to find here that the appellant’s provision of a false police certificate in support of his residence application was “very serious”, based on the evidence as it stood. To the extent that counsel suggests otherwise on appeal, these submissions are not accepted.

[73] However, the Tribunal holds two concerns about the way in which the overall assessment was conducted. First, in contrast to the close assessment of the identified negative factor that existed, namely that the appellant had provided a forged police certificate, comparatively little regard was had to the evidence which had been produced in support of factors in favour of the granting of a character waiver: the assessment of these “positive” factors was cursory. Second, Immigration New Zealand did not engage in a proper weighing and balancing of the various factors for and against the grant of a waiver that existed. The Tribunal turns now to consider these two concerns in more detail.

First concern: cursory assessment of favourable factors

[74] With respect to the first concern, that the assessment of positive factors was

cursory, the Tribunal notes that Immigration New Zealand recorded that then counsel had submitted that the appellant's wife had "ill health", believed by counsel to have been exacerbated by stress associated with the appellant's immigration issues. Immigration New Zealand did not go on to assess the independent medical evidence that had been produced as to the nature of the wife's health difficulties and the impact that her health challenges had on her life, nor did it make any particular findings on these matters. Included in this relevant evidence before Immigration New Zealand were letters from the wife's midwife and general practitioner, and her medical notes, which, in combination, showed that she has a history of ongoing depression and was receiving antidepressant medication. Her doctor said that her low mood was "affecting her social relationships and interactions".

[75] Also contained on the appellant's residence file was a "Work and Income Work Capacity Medical Certificate" (January 2018) in respect of his wife. This document recorded that her experience of depression meant that she had no capacity to work in employment, and her capacity to work going forward was expected to "fluctuate significantly".

[76] Letters were provided to Immigration New Zealand from two of the wife's sisters who expressed concern about the extent of her depression. One sister said that the wife's depression was "getting worse day by day", suggesting that a contributing factor was the appellant's immigration issues. The wife herself, in a letter provided to Immigration New Zealand, said that seeing her husband so stressed about his immigration situation was forcing her into a "deep depression".

[77] The above evidence highlighted how the appellant's continued presence in New Zealand and support of his wife and children was of real importance to the functioning of the family unit, and it impacted on an assessment of his potential contribution and the strength of his ties to New Zealand (A5.25.1.b.v–vii). This evidence should have been properly and carefully assessed, with appropriate findings made and weight attached.

[78] In addition to the above, the Tribunal notes that Immigration New Zealand appeared to accept that the appellant's wife could not reasonably be expected to relocate to Afghanistan in the event that he had to return. Presumably it held a similar view in respect of the two New Zealand-citizen children. However, what it then failed to do was to expressly recognise that the effect of the appellant returning to Afghanistan without his family would be, in all reality, a permanent separation of this family unit. No regard was had to what would be in the children's best interests which, then counsel had reminded Immigration New Zealand, had to be treated as

a primary consideration (refer to Article 3(1) of the 1989 *Convention on the Rights of the Child*). The need for their father to be actively involved in their lives was clearly made more significant by the ongoing emotional struggles that their mother was facing.

Second concern: failure to properly weigh and balance all relevant factors

[79] With respect to the Tribunal's second concern, that Immigration New Zealand did not engage in a proper weighing and balancing of the various factors that existed, this appears to have been the result of Immigration New Zealand's failure to first fully assess the evidence in support of a waiver, as discussed above. It was not enough to reduce this very important part of the assessment process, which should have contained clear reasons as to why one set of factors was considered to outweigh the other, to a statement that the "significance of the false information provided in this case outweigh[s] the positives". The lack of reasoning here was in breach of A5.25.1.e.ii.

[80] For the reasons set out above, the Tribunal finds that Immigration New Zealand failed to conduct a fair and balanced character waiver assessment.

Conclusion on correctness of decision to decline

[81] The Tribunal finds that Immigration New Zealand correctly determined that the appellant did not satisfy the requirement to be of good character (A5.25.i), but it did not conduct a fair and balanced character waiver assessment. Therefore, the Tribunal finds that the decision to decline the application was not correct and the application must be the subject of a new assessment by Immigration New Zealand.

The Pakistani police certificate provided on appeal

[82] Immigration New Zealand will need to consider the new Pakistani police certificate provided on appeal and, as a first step, this will likely involve engaging with its verification processes to determine whether the document is genuine. In the event that the certificate is assessed as genuine, then this will obviously assist the appellant under the "character checks" provision at A5.5.b.ii (effective 28 August 2017). Counsel has also indicated that a new and clear Pakistani police certificate would lead her to make new submissions relevant to the question of a character waiver. She will be afforded the opportunity to do so in the new assessment directed by the Tribunal.

DETERMINATION

[83] This appeal is determined pursuant to section 188(1)(e) of the Immigration Act 2009. The Tribunal considers the decision to refuse the visa was made on the basis of an incorrect assessment in terms of the applicable residence instructions. However, the Tribunal is not satisfied the appellant would, but for that incorrect assessment, have been entitled in terms of those instructions to the immediate grant of a visa.

[84] The Tribunal therefore cancels the decision of Immigration New Zealand. The appellant's application is referred back to the chief executive of the Ministry of Business, Innovation and Employment for a correct assessment by Immigration New Zealand in terms of the applicable residence instructions, in accordance with the directions set out below.

Directions

[85] It should be noted that, while these directions must be followed by Immigration New Zealand, they are not intended to be exhaustive and there may be other aspects of the application which require further investigation, remain to be completed or require updating.

1. The application is to be reassessed by an Immigration New Zealand officer not previously associated with the application in accordance with the instructions in existence at the date the residence application was made. No further lodgement fee is payable.
2. Immigration New Zealand is to invite the appellant to update his application within a reasonable timeframe. This will provide the appellant with an opportunity to provide Immigration New Zealand with the original version of the new police certificate from Pakistan, a copy of which has been provided on appeal.
3. Immigration New Zealand will need to make a determination as to the genuineness of the new police certificate, which may entail engaging with its verification processes.
4. Unless new evidence is produced that leads it to conclude otherwise, Immigration New Zealand is to proceed on the basis that the appellant does not meet the good character requirement (A5.25.i). Before carrying out a new character waiver assessment, the appellant must

first be afforded a reasonable opportunity to produce further evidence and/or submissions in support of a waiver, which may include an update on his wife's current medical condition and a psychological report addressing how his removal from his family unit would impact on him, his wife and their children. The relevant instructions must be set out.

5. Immigration New Zealand must ensure that, in conducting a new character waiver assessment, it has regard to all new evidence and submissions provided to it, along with all evidence and submissions previously provided to it and to the Tribunal in support of this appeal. It must also have regard to the requirements of A5.25.1 and the concerns noted by the Tribunal in the assessment contained at [72]–[80] above.
6. Immigration New Zealand will need to ensure that it is satisfied that the appellant meets all the other requirements of instructions.

[86] The appellant is to understand that the success of this appeal does not guarantee that his application will be successful, only that it will be subject to reassessment by Immigration New Zealand.

[87] The appeal is successful in the above terms.

Order as to Depersonalised Research Copy

[88] Pursuant to clause 19 of Schedule 2 of the Immigration Act 2009, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellant's name and any particulars likely to lead to the identification of the appellant, his wife, or their two children.

"M B Martin"

M B Martin
Member

Certified to be the Research Copy
released for publication.

M B Martin
Member