

1414627 (Refugee) [2016] AATA 3535 (4 March 2016)

DECISION RECORD

DIVISION: Migration & Refugee Division
CASE NUMBER: 1414627
COUNTRY OF REFERENCE: Pakistan
MEMBER: Paul Windsor
DATE: 4 March 2016
PLACE OF DECISION: Melbourne
DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

Statement made on 04 March 2016 at 8:06am

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Pakistan, applied for the visa [in] May 2013 and the delegate refused to grant the visa [in] August 2014.
3. The applicant applied to the Tribunal for review of this decision on 27 August 2014.
4. The applicant appeared before the Tribunal on 3 March 2016 to give evidence and present arguments. The Tribunal also received oral evidence from the [applicant's son]. The Tribunal hearing was conducted with the assistance of an interpreter in the Punjabi and English languages.
5. The applicant was represented in relation to the review by her registered migration agent. The representative attended the Tribunal hearing.

CRITERIA FOR A PROTECTION VISA

6. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
7. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
9. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').

Mandatory considerations

10. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal took account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

11. The applicant claims to be a citizen of Pakistan who was born in [Punjab] province on [date]. According to her Protection visa application¹ she is of Punjabi ethnicity and the Ahmadiyya Muslim religion, and speaks Urdu and Punjabi. She was widowed when her husband died [in] 2002. She departed Pakistan legally [in] April 2013, travelling on a [temporary] visa issued [in] April 2013, and arrived in Australia [in] April 2013.

Summary of claims from the Protection visa application

12. The applicant's claims from her Protection visa application² can be summarised as follows:
 - She was brought up as an Ahmadiyya. Everything was peaceful until the 1973 constitution was passed. Following that they experienced a sudden hatred and anger towards them from among the people of the village. People stopped communicating with them, the farmers working her father's land stopped work and started abusing them.
 - Her father was the only Ahmadi in his family so no relatives helped them. Her father sold his land and moved to another province. They faced the same situation so relocated again to Peshawar, where she married her husband who lived in [a small village] in [Punjab].
 - They encountered a similar situation in her husband's village. They were not allowed to worship so her husband and his father established a one room mosque for worship. When the local authorities found out they attacked them with long sticks and knives while they were praying.
 - They were forced to move to another area. When people found out they were Ahmadi they would not rent them a house. When they found a house, people would not welcome them and they could not get tradesmen to attend to fix things. They were denied the right to shop at their local village.
 - Her children were treated badly at school. They were forced to stand outside the classroom and were beaten by children from the neighbourhood.
 - Her youngest [child], at age [age], was flying a kite on a mosque roof near to home and was pushed down by a mosque preacher, sustaining a permanent [injury].
 - Her husband was transferred into the local area [workplace] but was shunned and scorned by [colleagues]. He had a [medical condition] due to continuous psychological torture. This left him incapacitated and forced him to leave his job on medical grounds.

¹ See folios 13-15 of Departmental file [number]

² See folios 16-19 of Departmental file [number]

- Her [son] had to leave his studies to support the family. He tried to run a shop but no-one would purchase goods. He relocated to Lahore. After her husband died in 2003 she and her younger [child] also moved to Lahore.
- Her son was worshipping at an Ahmadiyya mosque in Lahore when it was attacked by terrorists in 2009. He survived but [number] people were killed. Her son left the country after that.
- After the attack it was decided for security reasons that no women should go to the mosque for any religious activity. The woman decided to choose a house where they could pray. As she had a big house near to the mosque, they asked her and she agreed that women could come to her house on Fridays to pray. When the authorities became aware of her activities she was threatened to stop her religious practises or she would be harmed.
- Following an attack on the Christian community in Lahore she feared Ahmadis would be the next target and decided to leave the country as her son had.
- She believes that she will be harmed by the authorities in Pakistan and by preachers of opposing religions because of her religious beliefs and for supporting her community. As it is the authorities that she fears she does not believe they can protect her.

13. The applicant also submitted numerous articles and press reports regarding the impact on the Ahmadi community of the Constitutional amendment of 1974, the promulgation of Ordinance XX in 1984 and Pakistan's anti-blasphemy laws; and concerning incidents involving discrimination and violence against the Ahmadi community and other minority communities.

Pre-hearing submission

14. In a submission dated 29 February 2016 the applicant's adviser indicated that the applicant fears harm on the basis of her religion and her membership of a particular social group, that being 'women from Pakistan'.
15. The submission indicates that the attack on the Ahmadiyya mosques in Lahore occurred in 2010. It clarifies that when the applicant was threatened that she must stop holding religious gatherings at her home or she would be seriously harmed, she was very scared and stopped holding the gatherings. She kept a low profile and did not go out often. She was afraid that the authorities would try to burn down her house. She was extremely stressed and living in constant fear, decided she could not live in Pakistan and decided to leave the country.
16. The submission comments on elements of the delegate's reasoning, including why the applicant did not relocate away from the mosque that she lived near in Lahore, and why she left her younger [child] behind in Pakistan. It also clarifies that the applicant came under surveillance after she held prayer meetings at her home, not before, and that there was false information presented in her [temporary] visa application because she relied on the services of an agent to obtain the visa to Australia and, as she was scared for her safety, she placed her faith in the agent.

Evidence from the hearing of 3 March 2016

17. At the hearing the applicant indicated that her youngest [child] has now left Lahore and is living with the applicant's [sibling] in [location]. She commented that [he/she] is no longer working and is supported by her son in Australia, and that both her younger [child] and her [sibling] are very concerned about the situation facing Ahmadis in Pakistan.
18. The applicant clarified that the mosque referred to in her statement is an Ahmadi mosque which was located [a short distance] walk from her house in Lahore. She indicated that this mosque was not targeted in the terrorist attacks on Ahmadi mosques in May 2010.
19. The applicant indicated that she travelled with other members of [an] Ahmadi community to a three day Ahmadi religious gathering in [Country 1], during December 2012 – January 2013.
20. The applicant indicated that she lived in an area of Lahore where other Ahmadi families lived but there were also non-Ahmadi families. Of [number] houses in her street [number] were occupied by Ahmadi families. After the community leaders determined that it was not safe for the women to go to the Ahmadi mosques the women undertook religious activities in various houses, including the applicant's house. Non-Ahmadi neighbours resented this and would watch them and yell abuse at them. Because of this they kept a low profile and rarely went out. There was anti-Ahmadi propaganda in the streets and shops and some shops refused to serve Ahmadis.
21. The applicant said she did not seek to flee or come to Australia sooner because she did not have the resources. When the situation became intolerable she had no option but to ask a broker to arrange a visa for her to get to Australia.
22. The applicant's son also appeared before the Tribunal and corroborated the applicant's evidence. He indicated that he thought his role within the community's [group] heightened the risk for his family, as those seeking to harm the community have lists of persons who have designated roles within the Ahmadi community and threaten those people. He commented that while you can't say for sure someone will be killed you cannot say anyone in the Ahmadi community in Pakistan is safe. He submitted a press release³ regarding a recent faith based killing of an Ahmadi man in his [business] in Lahore which occurred [in] March 2016.

Findings and reasons

23. The issues in this review are whether there is a real chance that, if the applicant returns to Pakistan, she will be persecuted for one or more of the five reasons set out in the Refugees Convention for the purpose of s.36(2)(a) of the Migration Act and, if not, whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of her being removed from Australia to Pakistan, there is a real risk that she will suffer significant harm for the purpose of s.36(2)(aa) of Migration Act.
24. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

Delegate's decision

³ Folio 75 of tribunal file 1414627.

25. The delegate of the Minister for Immigration and Border Protection accepted that the applicant is a citizen of Pakistan and a member of the Ahmadiyya faith. The delegate accepted that many members of minority religions suffer official discrimination in Pakistan, and that Ahmadis are subject to occasional sectarian violence. The delegate had concerns regarding the applicant's credibility, stemming from the fact that totally false family details were supplied to the department in the applicant's [temporary] visa application. The delegate accepted that in some circumstances Ahmadis are targeted and harmed, but, due to credibility concerns, did not accept that the applicant has a profile that would bring her to the attention of extremist groups or the authorities if she were to return to Pakistan. The delegate concluded that there is not more than a remote chance that the applicant would face persecution on account of her religion in the reasonably foreseeable future if she were to return to Pakistan. The delegate also concluded there was not a real risk of the applicant suffering significant harm should she be returned to Pakistan⁴.

Applicant's identity

26. On the basis of the copy of the applicant's Pakistan passport provided to the Department⁵, the Tribunal accepts that the applicant is a citizen of Pakistan and that her identity is as she claims it to be. The Tribunal accepts that Pakistan is the applicant's country of nationality for convention purposes and is the applicant's 'receiving country' for complementary protection purposes.

Claims to be a practising member of the Ahmadi faith

27. Like the delegate, the Tribunal accepts that the applicant is a practising member of the Ahmadi faith. Page 2 of her Pakistan passport⁶, issued [in] 2011, states her religion as Ahmadiyya. She has provided documentation from the Ahmadiyya Muslim Association to indicate that she has been accepted by that organisation as an Ahmadi by birth. Her claim to have travelled to [Country 1] in December 2012 to attend an Ahmadi religious [festival] is supported by travel stamps and visas in her passport and by country information⁷ that indicates such an event was held in [Country 1 in] a town [of specified location], at that time. The Tribunal found nothing in the evidence presented by the applicant at the hearing that would suggest she is not an Ahmadi.
28. The Tribunal accepts that, in the event the applicant returned to Pakistan, she would wish to continue to practise her religion as an Ahmadi and would continue to identify as an Ahmadi. In light of these findings, the Tribunal must consider whether the applicant's fears of being persecuted are well-founded, that is, whether there is a real chance that the applicant will suffer treatment amounting to persecution for the Convention reason of her religion.

Relevant country information

29. The Tribunal has considered a range of independent country information regarding the situation of Ahmadis in Pakistan. Relevant information is summarised below.
30. According to the 2016 Department of Foreign Affairs and Trade (DFAT) Country Information Report on Pakistan, there are approximately 500,000 Ahmadis in Pakistan, mostly living in Punjab province, including the town of Rabwah, where the movement's headquarters is located.⁸ The DFAT Report indicates that Ahmadis are not recognised as Muslims under

⁴ See folios 9-26 of Tribunal file 1414627.

⁵ See folios 123-127 of Departmental file [number].

⁶ See folio 126 of Departmental file [number].

⁷ [Information deleted].

⁸ DFAT Country Information Report, Pakistan, 15 January 2016

Pakistan's constitution and there are a number of discriminatory laws which inhibit their right to practice their religion openly:

Although Ahmadis identify as Muslim, the Constitution describes them as non-Muslim. Under Ordinance XX – upheld by the Supreme Court – Ahmadis may not identify, or 'pose,' as Muslims. They are also barred from worshipping in non-Ahmadi mosques or public prayer rooms; performing the Muslim call to prayer; using the traditional Islamic greeting in public; publicly quoting from the Quran; preaching in public; seeking converts; or producing, publishing and disseminating religious materials. These acts are punishable by imprisonment for up to three years. Ahmadis also have no representation in Pakistan's Council of Islamic Ideology. Ahmadis are exempt from the otherwise mandatory 2.5 per cent *zakat* deductions on personal income.

Ahmadis continue to experience political discrimination. Changes to the electoral system in 1985 established a separate registration list for non-Muslims. While electoral reforms in 2002 removed the distinction between Muslims and non-Muslims, Ahmadis must still register on a separate, Ahmadi-specific list. In the 2013 general elections, many Ahmadis refused to register on this list and were therefore unable to vote.

The Ahmadi community has told DFAT that Pakistani authorities have demolished, restricted access to, or forcibly occupied Ahmadi places of worship. Mobs have also reportedly set fire to some Ahmadi places of worship, and Ahmadi graves have been desecrated and their dead disinterred. The Ahmadi community has also reported the closure of Ahmadi publications, removal of Ahmadi students from schools and universities, and reporting of Ahmadi communities en masse to local police forces for unspecified crimes.

Since the promulgation of Ordinance XX, there has been an increase in the number of physical attacks against the Ahmadi community in Pakistan. According to the Human Rights Commission Pakistan (HRCP), 11 Ahmadis died in sectarian violence in 2014. On 17 July 2014, for example, an Ahmadi grandmother and her two granddaughters died when a mob set fire to their house in Gujranwala, Punjab.

According to the Ahmadi community, authorities have colluded and participated in some of these attacks. The leaked Abbottabad Commission report also suggests that police in Lahore protected perpetrators of violence against Ahmadis in 2010. DFAT is unable to verify these claims.

DFAT assesses that Pakistan's Ahmadi community is subject to a high level of official discrimination, which impacts their ability to freely practice religion and limits the extent of their political engagement. Ahmadis are also subject to a moderate level of societal discrimination and a low level of violence, although this violence is generally mitigated by Ahmadis' relatively high socio-economic status.

31. The US Department of State 2014 Report on International Religious Freedom – Pakistan⁹ contains the following information relevant to Ahmadis:

Government policies did not afford equal protection to members of minority religious groups, and due to discriminatory legislation such as blasphemy laws and laws designed to marginalize the Ahmadiyya Muslim community, minorities often were afraid to profess freely their religious beliefs.

According to the constitution and penal code, Ahmadis are not Muslims and are prohibited from calling themselves Muslims or their belief Islam, as well as from preaching or propagating their religious beliefs, proselytizing, or insulting the religious feelings of Muslims. The punishment for violation of these provisions is imprisonment for up to three years and a fine.

⁹ 2014 Report on International Religious Freedom - Pakistan", *US Department of State*, 14 October 2015, OGD95BE926076

Non-Muslim missionary activity is permitted and missionaries can proselytize as long as there is no preaching against Islam and the missionaries acknowledge they are not Muslim (thereby excluding Ahmadis).

The government does not restrict religious publishing in general; however, the sale of Ahmadiyya religious literature is banned. The law prohibits publishing any criticism of Islam or its prophets and insults to others' religious beliefs.

The government designates religious affiliation on passports and requests religious information in national identity card applications. Those wishing to be listed as Muslims must swear they believe the Prophet Muhammad is the final prophet, and must denounce the Ahmadiyya movement's founder as a false prophet and his followers as non-Muslim. This provision inhibits Ahmadis from obtaining legal documents and pressures community members to deny their beliefs in order to enjoy citizenship rights, including voting, which requires an identity card.

Ahmadiyya community leaders expressed continued concern over authorities' targeting and harassment of Ahmadis for blasphemy, violations of "anti-Ahmadi laws," or other crimes. The vague wording of the legal provision forbidding Ahmadis from directly or indirectly identifying themselves as Muslims enabled officials to bring charges against members of the community for using the standard Muslim greeting or for naming their children Muhammad. According to Ahmadiyya leaders, authorities charged 24 Ahmadis in eight separate cases, largely in connection with "anti-Ahmadi laws." Police charged 13 Ahmadis for allegedly defiling the Quran in separate instances.

According to Ahmadiyya community members, between 1984 (when the "anti-Ahmadi laws" were promulgated) and 2014, authorities sealed 33 Ahmadiyya mosques and barred construction of 52 mosques, while assailants demolished or damaged 31 Ahmadiyya mosques, set 14 mosques on fire, and forcibly occupied 19 mosques.

Societal elements also used "anti-Ahmadi" provisions of the penal code to justify abuse and discrimination of Ahmadis. Human rights and religious freedom activists and members of minority religious groups reported they were at times hesitant to speak in favor of religious tolerance due to a climate of intolerance and fear.

The Ahmadiyya community reported that aggressors killed 10 Ahmadis for their faith. On May 16, local media reported that a teenager walked into a police station and shot and killed an Ahmadi, Khalil Ahmad, accused of blasphemy in Sharaqpur, Punjab. On May 26, two unidentified men shot and killed an Ahmadi cardiac surgeon, Mehdi Ali Qamar, at an Ahmadiyya cemetery. On July 27, a mob gathered in response to allegations that an Ahmadi, Saqib Din, had committed blasphemy in Gujranwala, Punjab. The mob set a house on fire, killing a woman, Bashira Bibi, and two children and injuring nine others.

Observers generally reported that the media's coverage of issues facing religious minorities was improving. There were, however, instances where media used inflammatory quotes or inappropriate references to minorities. For example, on December 22, cleric Syed Arif Shah Owaisi, while appearing on a Geo TV talk show as a guest, referred to Ahmadis as "enemies of Pakistan." Five days after the show, gunmen killed Luqman Ahad Shehzad, a member of the Ahmadiyya community near Gujranwala, Punjab. Although there was no apparent direct link between the two incidents, Geo TV issued an apology and noted that the cleric's remarks had violated the network's code of conduct.

32. In February 2015, the *UK Home Office Country Information and Guidance on Pakistan* included the following commentary in relation to Ahmadis:¹⁰

¹⁰ UK Home Office, Country Information and Guidance, Pakistan: Ahmadis. February 2015. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406527/CIG_-_Pakistan_-_Ahmadis_-_v1_0_-_2015-02_23.pdf

2.2.6 There is clear evidence that the legislation is used by non-state actors to threaten and harass Ahmadis. This includes the filing of First Information Reports (FIRs) (the first step in any criminal proceedings), which can result in detention whilst prosecution is being pursued. Ahmadis are also subject to attacks by non-state actors from sectors of the majority Sunni Muslim population.

2.2.11 If an Ahmadi is able to demonstrate that it is of particular importance to their religious identity to practise and manifest their faith openly in Pakistan in defiance of the restrictions in the Pakistan Penal Code, they are likely to be in need of protection ... Members of religious minorities accused of blasphemy, including Ahmadis, are likely to be in need of protection.

2.3.1 Pakistani legislation, commonly known as the 'anti-Ahmadi laws', restricts the way in which Ahmadis can openly practise their faith.

2.3.2 Where a person is at risk from the authorities because they would openly practice their faith on return in defiance of the restrictions in the Pakistan Penal Code, they would be unable to avail themselves to those authorities for protection.

3.2.1 Ahmadis are prevented by law from calling themselves Muslims, or referring to their faith as Islam, preaching or propagating their religious beliefs, inviting others to accept Ahmadiyya teachings, or insulting the religious feelings of Muslims, calling their places of worship "mosques," worshipping in non-Ahmadi mosques or public prayer rooms, performing the Muslim call to prayer, using the traditional Islamic greeting in public, publicly quoting from the Qur'an, or displaying the basic affirmation of the Muslim faith. The punishment for violation of these provisions is imprisonment for up to three years and a fine. Ahmadis are restricted in building new houses of worship, holding public conferences or other gatherings, and travelling to Saudi Arabia for religious purposes, including the hajj.

3.2.2 ... "anti-Ahmadi laws" were used to target and harass Ahmadis, and 'frequently accusing Ahmadis of blasphemy, violations of "anti-Ahmadi laws," or other crimes.

33. In its Eligibility Guidelines' the *The United Nations High Commissioner for Refugees* commented that Ahmadis were subject to the most severe legal restrictions and officially sanctioned discrimination of all religious minorities in Pakistan, and that there had been an increase in violence against them for which the State did not provide protection.¹¹
34. The DFAT Country Report also comments on the operation of Pakistan's blasphemy laws¹², noting that while the law applies to all religious groups, punishments for insulting Islam are greater than other religions, extending to death or life imprisonment. The report notes that, as of September 2015, 38 people are on death row for allegedly committing blasphemy. The report makes clear both that the laws are 'often misused to settle personal or property disputes' and that those accused of blasphemy are 'often targeted in communal violence'. DFAT assesses that the laws disproportionately affect religious minorities in Pakistan.
35. The applicant claims that her son, who has been granted a Protection visa in Australia, left Pakistan following attacks on Ahmadi mosques in Lahore, one of which he was attending at the time, during Friday prayers in May 2010. A 2012 document issued by *Human Rights Watch*¹³, calling on the Pakistan government to prosecute the massacre suspects, indicates that:

¹¹ 'Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan', *United Nations High Commissioner for Refugees*, May 2012, available at <http://www.unhcr.org/refworld/pdfid/4fb0ec662.pdf>

¹² DFAT Country Information Report, Pakistan, 15 January 2016, 3.25-3.28.

¹³ CX288015: "Pakistan Prosecute Ahmadi Massacre Suspects", *Human Rights Watch (HRW)*, 27 May 2012, <http://www.hrw.org/news/2012/05/27/pakistan-prosecute-ahmadi-massacre-suspects>

On May 28, 2010, Islamist militants attacked two Ahmadiyya mosques in the city of Lahore with guns, grenades, and suicide bombs, killing 94 people and wounding well over 100. The Punjabi Taliban, a local affiliate of Tehrik-e-Taliban Pakistan (the Pakistani Taliban or TTP), claimed responsibility. Two men were captured during the attack, but the government has failed to make progress on their trial, seeking repeated adjournments from the court as has the defense.

The May 2010 attacks killed 27 people at the Baitul Nur Mosque in Lahore's Model Town area and 67 people at the Darul Zikr mosque in the suburb of Garhi Shahu. Worshipers overpowered two attackers, Asmatullah, alias Muaz and Abdullah Muhammad, and turned them over to police. Each was charged under the Anti-Terrorism Act and remains in custody, but there has been no progress in the case and proceedings have been repeatedly adjourned.

Since the May 2010 attacks, there has been an intensification of the hate campaign against Ahmadis, Human Rights Watch said. In June 2011, a pamphlet named some 50 prominent Ahmadis in the city of Faisalabad in Punjab province and declared them "liable to be killed" under Islamic law, along with all members of the community. No action has been taken by the government against those who disseminated the pamphlet. In September 2011, one of those named in the pamphlet, Naseem Butt, was shot dead. At least another five Ahmadis were killed during 2011, apparently because of their religious beliefs. In December, unknown assailants vandalized 29 graves in an Ahmadiyya graveyard in the Punjab town of Lodhran.

During 2012, extremist groups in Lahore have used discriminatory provisions of Pakistani law that target Ahmadis and prevent them from "posing as Muslims" to force the demolition of sections of an Ahmadiyya mosque on the grounds that its dome made it look like a mosque. In the garrison city of Rawalpindi, the authorities barred Ahmadis from using their mosque at the insistence of local extremist groups. In both instances, Punjab provincial administration and police officials supported the extremists' demands instead of protecting the Ahmadis and their mosques.

Human Rights Watch urged the government of Punjab province, controlled by former Prime Minister Nawaz Sharif's Pakistan Muslim League (Nawaz) party, to investigate and prosecute those responsible for intimidation, threats, and violence against the Ahmadiyya community. Militant groups that have publicly been involved in such efforts include the Sunni Tehrik, Tehrik-e-Tahafaz-e-Naamoos-e-Risalat, Khatm-e-Nabuwat, Difa-e-Pakistan Council, and others acting under the Pakistani Taliban's umbrella. Leaders of these groups have frequently threatened to kill Ahmadis and attack the mosques where killings have taken place as well as other Ahmadi mosques.

Ahmadi community leaders told Human Rights Watch that they had repeatedly brought threats against them to the notice of the Punjab chief minister, Shahbaz Sharif, the provincial government, and the police controlled by the provincial authorities, and that they had asked for enhanced security for vulnerable Ahmadiyya mosques. However, the provincial government failed to act on the evidence or to ensure meaningful security for the mosques.

Human Rights Watch called on Pakistan's government to introduce legislation in parliament without delay to repeal laws that discriminate against Ahmadis and other religious minorities, including sections 295 (blasphemy) and 298 (Ahmadi specific law that prevents them from "posing" as Muslims) of the Pakistan Penal Code.

36. In her submissions the applicant indicated that she decided to flee Pakistan following the attack on the Christian community in Lahore in March 2009. A press report submitted by the applicant from *Dawn* newspaper dated 9 March 2013¹⁴ indicated that the mob attack followed false allegations of blasphemy against a Christian man. The number of houses

¹⁴ Dozens of houses torched as mob attacks Lahore Christian locality, 9 March 2013 – at folios 38-39 of Departmental file [number].

destroyed was put at over 100. In light of the country information above regarding the nature and level of restrictions incorporated in anti-Ahmadi laws, and the scope for misuse of blasphemy laws, the Tribunal finds it credible that this event, while focused on the Lahore Christian community, would have given rise to enormous concern in the applicant regarding her safety in Pakistan.

37. The Tribunal notes the delegate's view that the applicant has not claimed to have any intention or wish to practise and manifest aspects of her faith openly, and that she does not have a high profile (such as that of a business or professional person), that might bring her to the attention of anti-Ahmadi groups. The Tribunal also notes that the delegate did not accept that the applicant held prayer meetings in her house, commenting that if the applicant had been threatened, the fact that she had not suffered harm prior to coming to Australia indicates that those who allegedly threatened her had no intention to further harm her. The delegate concluded that 'Given the numbers of Ahmadi in the country relative to the numbers killed or injured, and in considering the applicant's profile, I am of the opinion that the chances of her being seriously harmed on account of her religion if she returned to Lahore is remote'.

The 'real chance' test

38. Australian case law has established that a 'real chance' is a substantial chance, as distinct from a remote or far-fetched possibility; however, it may be well below a 50 per cent chance. According to Mason CJ in *Chan v MIEA*, the expression 'a real chance':

... clearly conveys the notion of a substantial, as distinct from a remote chance, of persecution occurring. ... If an applicant establishes that there is a real chance of persecution, then his fear, assuming that he has such a fear, is well-founded, notwithstanding that there is less than a fifty per cent chance of persecution occurring. This interpretation fulfils the objects of the Convention in securing recognition of refugee status for those persons who have a legitimate or justified fear of persecution on political grounds if they are returned to their country of origin.¹⁵

In the same case Dawson J stated:

... a fear can be well-founded without any certainty, or even probability, that it will be realized. ... A real chance is one that is not remote, regardless of whether it is less or more than 50 per cent.¹⁶

and Toohey J stated:

A "real chance" ... does not weigh the prospects of persecution but, equally, it discounts what is remote or insubstantial.¹⁷

Similarly, according to McHugh J:

[A] fear may be well-founded for the purpose of the Convention and Protocol even though persecution is unlikely to occur. ... an applicant for refugee status may have a well-founded fear of persecution even though there is only a 10 per cent chance that he will be ... persecuted. Obviously, a far-fetched possibility of persecution must be excluded.¹⁸

¹⁵ (1989) 169 CLR 379 at 389.

¹⁶ *Chan v MIEA* (1989) 169 CLR 379 at 397-398.

¹⁷ *Chan v MIEA* (1989) 169 CLR 379 at 407.

¹⁸ *Chan v MIEA* (1989) 169 CLR 379 per McHugh J at 429. However, this does not mean that the Tribunal must consider whether a 10 per cent chance of persecution has been established. In *Altintas v MIEA* (unreported, Federal Court of Australia, Nicholson J, 23 January 1997) the Court held at 10: 'The ratio decidendi of *Chan* did not require the Tribunal to consider whether a 10 per cent chance of persecution was established. Rather the Tribunal was required to consider whether, on all the evidence before it, a "real chance" was established'.

39. Thus, as the High Court confirmed in *MIEA v Guo, Chan* establishes that a person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.¹⁹
40. Having carefully considered the applicant's evidence, circumstances and the available country information, the Tribunal is satisfied that there is a real chance that the applicant will face persecution amounting to serious harm should she return to Pakistan now or in the foreseeable future. The Tribunal did not share the delegate's concerns regarding the applicant's credibility, finding that, given the applicant is [age] years of age, her evidence was generally open and direct, and was corroborated by her son, who was also open and direct in his evidence. A number of issues of concern to the delegate, including the proximity of the mosque to the applicant's house and that the mosque in question is an Ahmadi mosque, were clarified to the Tribunal's satisfaction. The Tribunal was also satisfied that the applicant held religious gatherings for Ahmadi women at her residence, and that her using an agent who submitted false family details and supporting statements/documents in her [temporary] visa application to enable her to get a visa to enter Australia, should not impact on the assessment of the credibility of her claims to protection. In relation to the available country information, it is very clear that there are elements within the majority Sunni Muslim community with a strong and aggressive anti-Ahmadi agenda and that anti-Ahmadi sentiment is easily stirred up, supported by highly discriminatory anti-Ahmadi laws and blasphemy laws. It is clear that anti-Ahmadi propaganda is freely on public display in Lahore. It is also clear that Ahmadis are not free to practise their religion openly as they would wish and the broad scope and vague wording of anti-Ahmadi legislation can mean that relatively trivial transgressions such as a misplaced comment or greeting potentially can have dire consequence for any Ahmadi. It is also clear from the available country information that many police actively collude with or at best are indifferent to threats of and actual harm directed at the Ahmadi community. While the applicant has not been seriously harmed to-date, and it can be said that, in the context of the size of the Ahmadi population in Pakistan, the numbers who have been killed in recent years is relatively low, the available country information indicates that Ahmadis in Pakistan continue to face extremely severe official and community discrimination, are liable to prosecution for blasphemy, including being subject to arrest, detention and mistreatment, and if they come to the adverse attention of one of the numerous Sunni extremist groups that operate throughout the country, which the information indicates is not an uncommon occurrence, they face a real chance of being subjected to significant physical mistreatment for reasons of their religious beliefs, practice and identity as Ahmadis.
41. Having accepted that the applicant is a genuine and committed member of the Ahmadi faith, the Tribunal accepts that, in the event she returned to Pakistan, she would wish to continue to practice her faith consistent with her past and current practice of her faith. The Tribunal also accepts that the activities of the applicant's son as part of [an] Ahmadi [group], and the applicants activities allowing other Ahmadi women to undertake religious activities in her house, both shows the family's commitment to practising their Ahmadi beliefs and raises the risks of the applicant coming to the adverse attention of anti-Ahmadi groups or individuals. For these reasons, on the evidence and information before it, the Tribunal is satisfied that there is a real rather than remote chance that the applicant would come to the adverse attention of non-state actors and/or the Pakistan authorities and be subjected to significant physical mistreatment. Accordingly, the Tribunal accepts there is a real chance the applicant would suffer serious harm for reasons of her religious beliefs, practice and identity as an Ahmadi if she returned to Pakistan now or in the reasonably foreseeable future. The

¹⁹ *MIEA v Guo* (1997) 191 CLR 559 at 572. It is important, however, that this should not be viewed as an alternative test that there must be a risk of persecution shown on the probabilities, as that would involve an incorrect and more onerous test: see *PW87/2001 v MIMA* [2001] FCA 1083 (Hely J, 10 August 2001) at [7].

Tribunal considers that the persecution which she is at risk of suffering involves 'serious harm' as required by s.91R(1)(b) of the Act, in that it involves significant physical harassment or ill-treatment. The Tribunal finds that her religious beliefs, practice and identity as an Ahmadi are the essential and significant reasons for his fear of persecution as required by s.91R(1)(a). The Tribunal is satisfied that the persecution she is at risk of suffering involves systematic and discriminatory conduct, as required by s.91R(1)(c), in that it is deliberate or intentional and involves selective harassment for a Convention reason.

42. As the agents of persecution feared by the applicant includes the Pakistani authorities, the Tribunal finds that she would not be able to obtain state protection from the harm she fears.
43. As the Tribunal considers that the harm the applicant fears is present throughout the country the Tribunal therefore finds that there is no part of Pakistan to which she could reasonably be expected to relocate where she would be safe from the persecution she fears.

Does the applicant have a well-founded fear of persecution if she returned to Pakistan?

44. Having considered the applicant's claims individually and cumulatively, for the reasons given above, the Tribunal finds that the applicant has a well-founded fear of persecution for the Convention reason of her religion, if she returns to Pakistan now or in the foreseeable future.
45. Accordingly, the Tribunal is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

DECISION

46. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

Paul Windsor
Member