

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75948

REFUGEE APPEAL NO 75949

REFUGEE APPEAL NO 75950

REFUGEE APPEAL NO 75951

AT WELLINGTON

Before: R Towle (Member)

Counsel for the Appellants: S Kelly

Appearing for the NZIS: No Appearance

Date of Hearing: 20 & 21 November 2006

Date of Decision: 12 March 2007

DECISION

[1] These are appeals against decisions of a refugee status officer of the Refugee Status Branch (RSB) of Immigration New Zealand (INZ) declining the grant of refugee status to the four appellants, all citizens of Pakistan.

INTRODUCTION

[2] This is the second time that the first, second and third appellants have applied for refugee status. Their first appeals were dismissed by the Authority (differently constituted) on 20 December 2005.

[3] The fourth appellant was born in New Zealand on 20 April 2006. Her

refugee claim was filed on 9 May 2006 and declined by the RSB on 8 September 2006. Unlike the other appellants, this is her first claim and no jurisdictional issues arise under s129O of the Immigration Act 1987 (The Act).

[4] The first, second and third appellants' second refugee application was lodged with the RSB on 9 May 2006. The first and second appellants were interviewed on behalf of all the appellants on 8 June 2006. In decisions dated 14 June 2006, the RSB accepted that the first, second and third appellants' application crossed the jurisdictional threshold for second (or subsequent) applications prescribed by s129J of the Act. However, the RSB then declined each of their claims on substantive grounds.

[5] Each appellant has appealed against those decisions. The determinative issues in these appeals are:

- a. whether, in relation to first, second and third appellants' claims to refugee status, the Authority has jurisdiction to consider the appeals under s129O(1) of the Act; and, if so,
- b. whether, in relation to each of the four appellants, their respective fears of harm because of their conversion to Christianity are well-founded.

[6] Pursuant to s141B, C & D of the Act, the first and second appellants are responsible adults for the third and fourth appellants. They have agreed that all these appeals can be considered conjointly and that the evidence can be used in relation to each of the claims.

[7] Each appellant claims that he/she will face harm from parts of the Pakistani community because of their conversion from the Islamic to the Christian faith after they arrived in New Zealand.

JURISDICTION TO CONSIDER SECOND CLAIMS FOR REFUGEE STATUS

[8] The Act permits a second (or subsequent) application for refugee status to be made provided certain jurisdictional criteria are met.

[9] The jurisdiction of the RSB to consider second claims is found in s129J of the Act.

[10] The Authority's jurisdiction to hear and determine an appeal from decisions of the RSB relating to a second claim is found in s129O(1) of the Act;

"129O Appeals to Refugee Status Appeals Authority

- (1) A person whose claim or subsequent claim has been declined by a refugee status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that circumstances in the claimant's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer's decision."

[11] In the past, the Authority has articulated two somewhat different approaches to the question of jurisdiction.

[12] Under the first approach, originally articulated by the Authority in *Refugee Appeal No 2245/99* (28 October 1994) pursuant to the terms of reference (30 August 1999) under which the Authority then operated before the Immigration Amendment Act 1999 came into force on 1 October 1999, the question of jurisdiction to hear and consider second refugee claims is a mixed one of fact and law. This approach was largely reaffirmed by the Authority in *Refugee Appeal No 75576* (21 December 2006) as being the appropriate test pursuant to s129O(1) of the amended Act.

[13] A second approach was taken by the Authority in *Refugee Appeal No 75139* (18 November 2004). In that decision, the Authority considered that the jurisdictional question under s129O(1) of the Act is assessed simply by comparing the first claim with the second claim, as asserted by the claimant.

[14] Under this second approach neither the RSB, at first instance, nor the Authority, on appeal, is required to have regard at all to the truthfulness of the second claim. If the second claim, as asserted by the appellant, meets the jurisdictional threshold then jurisdiction is established and the Authority would then embark on the determination of the merits of the second (or subsequent) claim for refugee status.

[15] For the reasons that follow, the Authority finds that under either approach the first, second and third appellants have satisfied the jurisdictional threshold established by s129O(1) of the Act. The jurisdictional issue does not arise in the appeal of the fourth appellant as this is her first claim.

FIRST CLAIMS BY FIRST, SECOND AND THIRD APPELLANTS

[16] The first, second and third appellants arrived in New Zealand on 12 March 2004 and applied for refugee status to the RSB on 13 May 2004. They were interviewed by the RSB on 7 September 2004 and their claims were declined in decisions dated 28 October 2004.

[17] They lodged appeals to this Authority (differently constituted) on 12 November 2004 and their appeals were heard by that panel on 19 and 20 July 2005. Appeals under their first claims were all declined in decisions of the Authority dated 20 December 2005.

[18] The summary of those claims is as follows: the three appellants were practising Muslims living in a city, X, in Pakistan; both the first and second appellants were teased at school because they were physically different from others in Pakistan society. The second appellant in particular, had a fair complexion and blond hair. The couple was frequently mistaken for foreigners.

[19] The first appellant worked for a company and was constantly threatened, harassed and intimidated by unknown assailants whom he assumed were Muslim fundamentalists. On one occasion in January 2003, he was stopped by unknown assailants, robbed and accused of inappropriate association with foreigners. He reported his concerns to the police but they took no real interest in his complaints.

[20] The second appellant had similar problems in early 2003 when she was stopped by masked men and assaulted. This pattern of threats and abuse continued until the first, second and third appellants left the country and travelled to New Zealand in March 2004.

[21] These unknown assailants continued to send threatening notes to the family's apartment even after the appellants came to New Zealand and these continued until March or April 2005.

[22] The first, second and third appellants feared that they would be killed or would be sent back to Pakistan because they are thought of as foreigners and not Pakistanis and have been threatened because of this in the past.

[23] The Authority considered that the first appellant's claim to have experienced threats, physical attacks and robberies was not credible but accepted that because of their physical appearance the second and third appellants did attract undue notice in Pakistan and were subjected to low levels of harassment, particularly while they were at school.

[24] On that basis, the Authority concluded that whatever harm they did face was not of sufficient gravity to amount to persecution in terms of the Refugee Convention.

SECOND CLAIMS BY THE FIRST, SECOND AND THIRD APPELLANTS

[25] The first appellant is in his late 30s. He was born in X city in Pakistan and raised by his family as a practising Muslim. The first appellant is the oldest son in the family. He has two brothers: one who is married and lives in X city, and another, ZZ, who has recently married and lives in the family home also in X city. The appellant's father is deceased. The first appellant's two younger sisters are unmarried and live in the family home under the nominal care and control of his brother, ZZ.

[26] The second appellant was also born and raised in Pakistan. She is of Kashmiri ethnicity and has a fair complexion. She was born and raised as a Sunni Muslim.

[27] The first appellant's father died in the mid-1980s and, as the eldest son, the first appellant took over the role and responsibilities as head of the family. His father's previous property and business was managed by the family and the proceeds used to support their various needs. The property remained in the name of the first appellant's deceased father although the first appellant was nominally in charge of the family's estate and assets.

[28] The first appellant's mother did not go outside because of Pakistan traditions and the principal responsibility rested on the first appellant to ensure the safety and protection of his family, particularly his two youngest sisters.

[29] His deceased father's business interests included a profitable clothing business in the central city area of X and a flat. Although the first appellant was paying the bills, the business and property remained in his father's name and his mother was the lawful "owner". The first appellant was raised in a normal Muslim family. His mother undertook prayers five times a day and respected Ramadan. The first appellant, himself, prayed frequently and observed Ramadan. At the time, his other brothers also respected normal Muslim traditions but not to any excess. In the last period before the first, second and third appellants left Pakistan in 2004, the first appellant noticed some changes in his brother ZZ. He was becoming increasingly conservative in his outlook and tried, in subtle ways, to

discourage the second appellant and their sisters from wearing modern western clothes. Instead, he tried to persuade them to wear modest and more traditional Pakistani attire.

[30] After the first, second and third appellants came to New Zealand in early 2004, ZZ took over responsibility for caring for the family still living in the family home, particularly his mother and two younger sisters.

[31] For the first year after their arrival in New Zealand, the first appellant kept in contact with his family, particularly his sister, UU. He did not speak with ZZ because of the time differences when his brother was at work. After the family came to New Zealand, the first appellant became aware that ZZ's whole demeanour and attitude was becoming increasingly conservative and devout. His sister, UU, told him of these changes. He had grown a beard and demanded that they watch less television and wear a veil or scarf when going out. These changes were particularly noticeable in 2005.

[32] In 2005, the first appellant learned from his other brother that ZZ was associating with more extreme "fundamentalist people". ZZ was also showing conservative changes in his personal life and he insisted that members of the family follow strict Islamic practices.

[33] At the time, the first appellant was not perturbed by his brother's change. He felt he was an educated man and was able to choose his own religious path. The first appellant was not aware of the precise nature of his brother's involvement with more extreme Islamic groups but heard that he was in some way affiliated with the Muttahida Majils-e-Amal Pakistan (MMA). Again, the first appellant was not particularly perturbed by these developments until he became aware that it was having a negative effect on his own family.

[34] Despite these concerns, he did not raise the issues with ZZ or his other brother. He was far from Pakistan and not directly concerned with the day-to-day events of his family members and, in any event, they would have taken no notice of his opinion.

RELIGIOUS CONVERSION IN NEW ZEALAND

[35] In July 2005, the first, second and third appellants travelled to Wellington to attend the hearing of their first refugee appeal. They stayed in a backpackers'

hostel and met another family also staying there. In a casual conversation, the first appellant asked about the age difference of the three children in the family that he had met. He was told by the family that their youngest child had been brought to them by the grace of God through Jesus Christ.

[36] This advice struck a chord with the first appellant because he and the second appellant had tried unsuccessfully for many years to have another child after the birth of the third appellant in 1995.

[37] While they were still in Pakistan, the first and second appellants had consulted various medical specialists to identify why they were unable to conceive a second child.

[38] The couple in the backpackers' hostel told the first appellant that they could pray to Jesus Christ.

[39] As all the medical advice had failed, the first and second appellants returned to their room and decided to pray to Jesus Christ. They did not know how to do this and were unfamiliar with Christian rites and prayers.

[40] Two days later, after the hearing, they returned to the town where they were staying and continued their lives.

[41] In late November 2005, the second appellant noticed the changes in her body and went to see a medical practitioner. She was informed that she was pregnant. Delighted, the family immediately made the connection between what they saw to be a miracle of a second child and the prayer to Christianity that they had made in July.

[42] In the intervening four month period, they did not pray to Jesus Christ. However, some time later the first appellant had a dream that he had done the right thing.

[43] Prior to leaving Pakistan, the first appellant was a practising Muslim. He believed in God, observed Ramadan and prayed at home. After he came to New Zealand, he continued to pray but not as frequently as before. Initially there was no place of worship for Muslims nearby and his interest in devout Islamic faith began to wane.

[44] In 2003 and 2005, the second appellant's two siblings came to live in New

Zealand. Initially the first and second appellants used to socialise with their family on a regular basis. They would meet every 10 days or so and when those relatives established a mosque in the North Island town in 2005, the first appellant was invited to attend on a regular basis.

[45] In 2004, the first appellant observed Ramadan but not strictly and did not observe Ramadan at all in 2005.

[46] After the meeting with the New Zealand family at the backpackers' hostel in July 2005, the first appellant did not say any Islamic prayers "as his heart wasn't in it".

[47] In late 2005, the first appellant learned through his sister, UU, that ZZ was getting married to the daughter of a fundamentalist cleric. He was not formally invited by his brother but UU sent printed cards to the first appellant to advise the date and location of the wedding.

[48] The first appellant did not send any direct congratulations to his brother but did so indirectly through his sister, UU.

[49] The first and second appellants' attraction to Christianity was gradual. Their next exposure to Christianity came at Christmas 2005. The family had recently received the negative decision on their first appeals from the Authority and were depressed by the outcome. They were invited to the home of their New Zealand neighbours whom they knew to be Christians. They told the story of their lives and their neighbours assured them that, as Jesus Christ had answered their prayers in the pregnancy, perhaps He would help them find a good outcome in their status in New Zealand. The neighbours gave the first and second appellant some books to read.

[50] In January 2006, the first and second appellants read the books and materials that the neighbours had lent them. They were moved and attracted by what they read and wanted to learn more.

[51] In January 2006, the first appellant called his mother in Pakistan to tell her about his wife's pregnancy and that he had "seen the light" and intended to convert to Christianity. Although he told his mother in January that they intended to convert, they did not finally decide to do so until the following month.

[52] The first appellant anticipated that his mother would be upset by the news

but did not expect the more extreme consequences that were to follow. On 24 January 2006, the first appellant's mother wrote to him threatening to end their relationship if he did not change his mind.

[53] The second appellant decided not to tell her own family about their plans to convert.

[54] On the recommendation of their neighbours, the first and second appellants approached the vicar of a local church at the end of February 2006. He invited them to attend what was to be their first church service on the first Sunday of March 2006. Until that time, neither the first nor the second appellant had ever seen a Bible or attended a church and their knowledge of Christianity was largely confined to what they had read in the books lent to them by their neighbours in December the previous year.

[55] After their first visit to the Church on the first Sunday in March 2006, the first, second and third appellants attended Bible study classes on Wednesdays and Thursdays for the next few weeks and, on 26 March 2006, they were formally baptised at the church.

[56] On the evening of the baptism, the first appellant contacted his sister, UU, in Pakistan and told her what had just transpired. Prior to this, he had not informed his sister of his developing interest in Christianity nor his intention to convert.

[57] As the first appellant was telling UU of his conversion on 26 March 2006, he heard a big commotion on the speaker phone and the line was suddenly cut. He re-established contact with his sister and found out that ZZ had pulled the plug on the machine and threatened to kill the first appellant because of what he had done. She said that ZZ was going to contact his father-in-law to get advice on how to get a *Fatwa* against the first appellant for his religious conversion and that the court would make a declaration. She also said that the family intended to place a public notice in the newspaper denouncing the appellant and his family.

[58] A week later, UU sent a text message to the first appellant informing him that "these people have prepared everything against you". The first appellant then asked her to send to him all information about what his family had done. In a letter dated 4 June 2006, UU sent the first appellant a clipping from a newspaper containing the family's notice denouncing him, a copy of the religious opinion

(*Fatwa*), some photographs of ZZ sporting a beard and dressed in traditional Islamic attire, a photocopy of ZZ's passport and a copy of the court declaration.

[59] The first appellant asked UU to send these documents because he wanted to see what ZZ looked like. At the time, he did not ask UU to send the documents to him for the purposes of supporting a new refugee claim but, in due course, after the documents arrived, he realised their value and submitted them with the claim in May 2006.

[60] In May 2006, the first and second appellants decided to apply for refugee status a second time. They were sent the relevant application forms by INZ in April and lodged a formal application in May.

[61] At the time of the family's conversion at the end of March 2006 and at the time he asked UU to send him these various documents, the first appellant did not know whether he would be able to lodge a second claim for refugee status nor the legal basis for it. He was, however, concerned about the problems his family would face if they were to return to Pakistan in light of the hostility and ostracism that his family had shown.

[62] Since that time, the first appellant has not received any other threats from his family in Pakistan. He keeps in regular contact with UU but none of his other family members in Pakistan. Somehow the news of the family's conversion has reached the second appellant's two brothers living in the same town in the North Island. They have been greatly upset by the news and no longer have any contact or communication with them.

[63] On 20 April 2006, the second appellant gave birth to a daughter, the fourth appellant. About eight days later, the fourth appellant was baptised in the local Christian church.

[64] On the day of the fourth appellant's baptism, the second appellant's two brothers and their families came over to the house. They were angry when they had learned about the young girl's baptism. The first and second appellant attempted to placate the situation but this was not possible. Finally, the first appellant ordered them to leave the premises. Since then they have had almost no contact with them. Although the town in which they live is relatively small, the second appellant's relatives assiduously avoid any contact with them. The first appellant attempted some rapprochement with one brother-in-law but was asked

to leave his office because “he had abused and shamed the family and that they could not longer lift their heads”.

[65] The first appellant is concerned for the safety of his family if they were to return to Pakistan. They would not have any family or community support because they have been ostracised and he is concerned about what his brother, ZZ, might do against them. He has become more extreme in his religious views and has a strong temper.

[66] The first appellant does not discount the risk that ZZ, or people with whom he associates, will be malevolent towards his family because of their conversion.

[67] He would try to join the Christian church and is aware that there are a number of Christian churches in X. He would also try to get his children enrolled in Christian schools in their home town or some other major city.

SECOND APPELLANT

[68] The second appellant was raised in an average Muslim family. Her father was involved in the import/export industry and frequently travelled abroad. Her mother had her own shop and apartment. Since then, various siblings have travelled and lived in different parts of the world. Two of her brothers reside in the United Kingdom and two have moved to New Zealand in 2001 and 2003. One sister travels on occasion to London. This sister is a modern Pakistani divorcee who lives in X. A second sister lives in Lahore. Another sister lives in the United States and is married to a Pakistani national. A fourth sister lived for a long time in the United Kingdom and subsequently divorced. She returned to live in Pakistan.

[69] As a child, the second appellant’s blond looks attracted often unwanted attention and she was frequently treated as a foreigner.

[70] Her father was a very religious man but her mother not so. After her father died, her mother immersed herself in business and taking care of the various family members. Prior to the second appellant’s conversion in March 2006, she was in frequent contact with her many family members around the world.

[71] Although her mother used to pray five times daily, all of the siblings had their own minds and practices. The second appellant was not very religious but said prayers several times a day. Prior to her departure from Pakistan, she lived with her husband’s family and they all seemed to get on well. She noticed

changes in her brother-in-law ZZ but these were not extreme at the time.

[72] As to the circumstances that led to her religious conversion, the second appellant was deeply moved by her pregnancy in November 2005. She attributes this miracle in large measure to the prayers that they offered to Jesus Christ several months earlier. Her heart and mind was opened as she read the books that had been lent to them by the neighbours. In January and February 2006, she and her husband became increasingly attracted to Christianity and decided to attend church in early March 2006.

[73] Apart from a brief period after the birth of their daughter, the fourth appellant, the second appellant has been a regular participant in church activities. After the family were baptised in March 2006, the second appellant has had little, if any, contact with her family in Pakistan or elsewhere.

[74] The second appellant decided not to tell her family about their forthcoming conversion. She planned to wait until the child had been born and give them the good and bad news at the same time in the hope that the good news would offset the bad news for her family. After the child's baptism, she has had little or no contact with her family. They ignore her telephone calls and any efforts to meet them face to face.

[75] The second appellant does not wish to return to Pakistan. Her relatives and in-laws would have no contact with them and they would have no family or community support because of their religious conversion. She does not know what specific problems could befall her family but, she stated, "anything could happen".

[76] If the family does have to return to Pakistan, there should not be any problem in enrolling the children into an English-speaking Christian school. However, it would be difficult to move to any other part of the country because both the first and second appellants have extended family networks throughout the country, including the major cities, and news of their conversion would spread quickly.

THIRD APPELLANT

[77] The third appellant was born into an Islamic family but was converted to Christianity in late March 2006 with his two parents. He is well-established in New

Zealand school life and regularly attends church and church activities. All the family have prominent roles in their church's Christmas nativity play.

[78] The third appellant has religious instruction in a group on Wednesdays at the Salvation Army and goes with the family on a regular basis to all church-based activities.

FOURTH APPELLANT

[79] The first and second appellant gave evidence that the fourth appellant has been born and raised as a Christian in New Zealand. She is too young to have any idea of the kind of life that she might lead in Pakistan. She has a very fair complexion and, like her mother, may well face problems with discrimination and harassment for this alone.

[80] The fourth appellant's parents are also concerned that as a Christian child, with apostate Muslim parents, she would suffer harassment and possible physical harm as she grows up, particularly if the trend towards Islamic fundamentalism continues in Pakistan.

OTHER EVIDENCE SUBMITTED

[81] The appellants have also submitted:

- i. a range of documents and photographs relating to their conversion to Christianity in 2006 and baptism, their regular participation in services and other activities of their local church in New Zealand since that time, including the fourth appellant's baptism in May 2006;
- ii. documents concerning the third appellant's sporting and academic achievements in New Zealand;
- iii. letters and testimonials of support from friends, fellow parishioners, and senior clergy in their Diocese all attesting to the good character of the appellants and, in their opinion, the genuineness of their Christian faith;
- iv. a letter and affidavit dated 13 November 2006 from the vicar of their local church, averring to the genuineness of their Christianity and his opinion as to the risks for them in Pakistan;
- v. a letter dated 13 November 2006, from Douglas Pratt, Associate Professor of Religious Studies at Waikato University, averring in general terms to the risks for converted Christian asylum seekers who return to Pakistan. The evidence is offered in his capacity as a religious scholar and practising Anglican priest;

- vii. original newspaper cuttings illustrating the increased conservatism of Islamic practices in Pakistan;
- viii. a power of attorney for the first appellant, authorising his brother to act on his behalf in his absence;
- ix. an original letter dated 24 January 2006 from first appellant's mother (and English translation), expressing concern about his conversion to Christianity;
- x. a declaration of disinheritance by the first appellant's mother, signed and attested on 27 March 2006 and bearing a date of 22 March 2006;
- xi. a newspaper notice (and English translation) of the above declaration of disinheritance;
- xii. the original religious opinion (*fatwa*) dated 4 April 2006 (and English translation) at the petition of the first appellant's brother, that the first appellant's religious conversion would justify his disinheritance; and
- xiii. photographs of the first appellant's brother, ZZ, showing him in a 'pre-conservative' period (in a passport photograph) and later, in his current conservative period (dressed in traditional attire in front of a mosque).

[82] In addition to this evidence and that supplied to the RSB at first instance (23 June and 28 August 2006), the appellants' counsel has provided a helpful range of country materials and written submissions dated 15, 17 November and 22 December 2006 and 28 February 2007 and has drawn the Authority's attention to other decisions of the Authority relating to Christian asylum-seekers from Pakistan; *Refugee Appeal No 71955* (31 August 2000), *Refugee Appeal No 70222* (5 February 1997); *Refugee Appeal No 73729* (5 August 2004).

JURISDICTION TO DETERMINE THE FIRST, SECOND AND THIRD APPELLANTS' SECOND CLAIMS

[83] The first, second and third appellants claim that since the date of final determination of their first claim by the Authority on 20 December 2005, they have been attracted to Christianity, read books about the Christian faith, undertaken religious instruction and been formally converted into Christianity in late March 2006. Since then, they have been active and regular participants in the local community Christian church.

[84] They also claim that in 2006, various members of their families have issued threats against them, a *fatwa* has been issued against the family and a formal declaration of disinheritance has been made in the newspapers by the first appellant's mother. They also fear harm from extreme sectors of the Pakistan community and, in particular, from ZZ and his conservative family.

[85] Under either of the tests articulated by the Authority, it is clear that these second claims are based on circumstances in Pakistan that have changed to such an extent that their subsequent claims are based on significantly different grounds from their first claims. It is also clear that these events occurred after their first claims were finally determined.

[86] Accordingly, the Authority finds it has jurisdiction to consider the substance of their second claims. As this is the first claim of the fourth appellant, no such jurisdictional issue arises.

THE ISSUES

[87] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

[88] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellants being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

WELL-FOUNDEDNESS OF THE CLAIMS

CREDIBILITY

[89] Before the Authority considers these issues, it must first assess the credibility of their claims.

[90] The Authority finds that the first and second appellants have not been entirely candid about the circumstances and timing of their conversion to Christianity and that they have tended to exaggerate the adverse reaction this has elicited among members of their extended family, both in New Zealand and Pakistan. The Authority attempted to verify the genuineness of several key documents with their sources in Pakistan. No response has been received and it is appropriate to extend the benefit of doubt as to their authenticity.

[91] However, and despite its scepticism about their original motives and explanation for their attraction to Christianity in 2005, the Authority accepts that since their conversion in March 2006, each appellant has become a genuine and practising Christian in New Zealand. It is prepared to extend the benefit of the doubt to the appellants on this central issue because of the considerable support they have received in the form of testimonials from leading religious figures in New Zealand and their frequent and active participation in parish life of the church over the past year.

[92] The Authority also accepts that the appellants' conversion from Islam to Christianity has come to the attention of, and been poorly received by, members of their extended family both in New Zealand and Pakistan.

[93] In particular, the Authority finds that:

- a. the second appellant's family in New Zealand do not approve of their actions, particularly the baptism of the fourth appellant, and that they have shunned any meaningful social contact with the appellants ever since;

- b. the first appellant's mother in Pakistan disapproves deeply of his conversion and has taken formal steps to disinherit him from any legal property or other rights to which he, as the eldest son in the family, might otherwise have been entitled. The first appellant's two brothers, and ZZ in particular, stand to gain from any such disinheritance;
- c. ZZ and his own extended family-by-marriage are conservative Muslims who also disapprove deeply of the appellants' conversion. The Authority accepts that ZZ and his family-in-law may be linked to more extreme and fundamentalist elements in Pakistan although evidence on this matter was equivocal; and
- d. the first appellant's evidence concerning the timing and issue of a religious *fatwa* is not without its difficulties. It is odd that this religious opinion or edict, which rules that the first appellant's apostasy justifies his mother's declaration of disinheritance, post-dates rather than predates the alleged declaration of disinheritance itself. Nonetheless, in view of the broader conclusions it has reached about the animosity of the appellants' family to their conversion, the Authority is prepared to extend them the benefit of any doubt as to the authenticity of the *fatwa*.

[94] The question then arises as to whether the appellants, as converts from Islam to Christianity, are at risk of serious harm from their extended family members and/or from other parts of Pakistan society; and, if so, whether the Pakistani authorities are able or, indeed, willing to protect them from this harm.

COUNTRY CONDITIONS

The overall situation for religious minorities

[95] A useful summary of the general situation for religious minorities in Pakistan, is found in *Refugee Appeal No 73729* (5 August 2004) [54-63].

[96] More recent reports indicate that although religious freedom is protected by the Constitution and the government has taken a number of positive steps to improve the treatment of religious minorities, serious problems remain. In its annual report for 2006, (uscirf.gov/countries/publications/currentreport/2006annualRpt), the United States Commission on International Religious Freedom (US Commission) noted at page 212:

“Sectarian and religiously motivated violence persists in Pakistan, and the government’s response to this problem, though improved, continues to be insufficient and not fully effective. In addition, a number of the country’s laws, including legislation restricting the Ahmadi community and laws against blasphemy, frequently result in imprisonment on account of religion or belief and/or vigilante violence against the accused. These religious freedom concerns persist amid the wider problem of the lack of democracy in Pakistan, an obstacle the current government has done little to address. The absence of any meaningful democratic reform has been exacerbated by the current government’s political alliance with militant religious parties, which has served to strengthen these groups and give them influence in the country’s affairs disproportionate to their support among the Pakistani people.

Despite President Musharraf’s repeated calls for religious moderation and tolerance, religiously-motivated violence, much of it committed against Shi’a Muslims by Sunni militants, remains chronic in Pakistan. Ahmadis, Christians, and Hindus have also been targeted by Sunni extremist groups and mob violence. To its credit, the government has made some attempts to respond to these attacks; however, despite these efforts, religiously motivated violence continues to be a serious problem.”

[97] The United States Department of State *International Religious Freedom Report 2006: Pakistan* (IRF 2006) also provides a mixed report card over the past year:

“The Government maintained its public calls for religious tolerance, worked with moderate religious leaders to organize programs on sectarian harmony and interfaith understanding, maintained its ban on and actively attempted to curb the activities of sectarian and terrorist organizations at its most senior levels, [the government] continued to call for interfaith dialogue and sectarian harmony as part of its program to promote enlightened moderation ... [but it] failed to protect the rights of religious minorities. Discriminatory legislation and the Government’s failure to take action against societal forces hostile to those who practice a different faith fostered religious intolerance and acts of violence and intimidation against religious minorities.”

[98] The IRF 2006 report further states that:

“Relations between religious communities were tense. Societal discrimination against religious minorities was widespread and societal violence against such groups occurred. Societal actors, including terrorist and extremist groups and individuals, targeted religious congregations.

Religious leaders, representing the country’s six major Shi’a and Sunni groups, issued a religious injunction in May 2005 banning sectarian violence and the killing of non-Muslims. While there was a decline in sectarian violence during the previous reporting period, this reporting period’s levels remained unchanged. Sectarian violence and discrimination continued despite contrary calls from the Government, Islamic religious leaders, and some parts of the MMA.”

[99] Overall, there has been a rise of sectarian violence and acts of Islamic extremists take place in an increasingly conservative and permissive environment. The Human Rights Watch *World Report 2006: Pakistan*, noted:

“Sectarian violence continues to increase. Those implicated are rarely prosecuted and virtually no action has been taken to protect the affected communities. While estimates suggest that over 4,000 people, largely from the minority Shi’a Muslim sect, have died in violence since 1980, the last six years have witnessed a steep rise in such incidents.

Discrimination and persecution on grounds of religion continued in 2005, and an increasing number of blasphemy cases were registered. As in previous years, the Ahmadi religious community in particular was the target for arrests under various provisions of the Blasphemy Law for allegedly contravening the principles of Islam, and attacked by religious extremists. On October 7 [2005] Ahmadi worshippers were attacked in a mosque near Mandi Behauddin in Punjab. Eight were killed and at least eighteen were injured. Other religious minorities, including Christians and Hindus, also continue to face discrimination.”

Situation for Christians

[100] Christians are a minority group in Pakistan comprising between 1.69 and 4 per cent of the population. According to the IRF 2006 report (*supra*):

“Christians, officially numbered at 2.09 million, claimed to have 4 million members, 90 percent of whom lived in Punjab. The largest Christian denomination was the umbrella Protestant Church of Pakistan, a member of the Anglican Communion. Roman Catholics were the second-largest group, and the remainder belonged to various evangelical denominations. The Catholic diocese of Karachi estimated that 120 thousand Catholics lived in Karachi, 40 thousand in the rest of Sindh, and 5 thousand in Quetta, Balochistan.”

[101] Christians are generally considered to be among the weakest and most marginalised groups in Pakistan society. Most have a low economic status that is caused in part by economic discrimination by employers unwilling to hire Christians. There are, however, a significant number of Christians employed in various professions in the main cities and some are economically well-off; Canadian Immigration and Refugee Board *PAK42533.E* (14 April 2004).

[102] Christians in Pakistan are at risk of a range of discriminatory practices. For example, in the view of the United Nations High Commissioner for Refugees (UNHCR), referred to in United Kingdom Home Office *Country of Origin Information Report: Pakistan* (26 January 2007):

“Discrimination is evident as many positions in both local and national government are specifically unavailable to Ahmadis, or are only available to Muslims willing to sign an affidavit attesting to the absolute finality of the Prophethood of Muhammad, which is a direct affront to the Ahmadi belief system. ...It is important to note that this culture of intolerance has been directed at all religious minorities within Pakistan, although particularly targeting Ahmadis and Christians.” (*emphasis added*).

[103] Similarly, the United States Department of State *Country Reports on*

Human Rights Practices for 2005: Pakistan (8 March 2006) noted:

“Christians and Ahmadis were the targets of religious violence...The Ahmadi, Christian, Hindu, and Shi’a Muslim communities reported significant discrimination in employment and access to education, including at government institutions.”

[104] Discrimination in employment based on religion appears to be widespread. In particular, Christians have difficulty finding jobs other than those involving menial labour, although Christian activists stated that the employment situation had improved somewhat in the private sector in recent years. Christians and Hindus also found themselves disproportionately represented in the country’s most oppressed social group, bonded labourers; illegal bonded labour was widespread; IRF 2006 Report (*supra*).

[105] The same IRF report also noted that:

“Many Christians reported discrimination in applying to government educational institutions due to their religious affiliation. Christians and Ahmadis reportedly have been denied access to medical schools, and societal discrimination against Ahmadis persisted at many universities...Police torture and mistreatment of those in custody remained a serious and common problem throughout the country and at times resulted in extrajudicial killings. It was usually impossible to ascertain whether religion was a factor in cases in which religious minorities were victims; however, both Christian and Ahmadi communities claimed their members were more likely to be abused.”

[106] Minority groups, including Christians, were also the victims of more extreme forms of discrimination and intolerance. For example, the US Commission report (*supra*) noted that:

“[In the past year], the minority Christian community also continued to be subject to extremist and mob violence. In November 2005, a mob of over 1,500 persons, incited by local Muslim clerics on the basis of a false accusation of blasphemy against a local Christian man, set fire to and destroyed several churches, schools, and homes of Christian families in the town of Sangla Hill, in the province of Punjab. Political leaders condemned the violence and perpetrators were arrested and reportedly will be brought to trial. In January 2006, the blasphemy charge was dropped.”

Apostates from Islam

[107] Although Pakistani law does not outlaw conversion from Islam, apostates often find themselves the victim of harassment, intimidation and violence from other sectors of Pakistani society; United States Department of State *International Religious Freedom Report 2004: Pakistan* (15 September 2004) (IFR 2004) noted:

“While there is no law instituting the death penalty for apostates (those who convert from Islam), social pressure against conversion is so powerful that most such conversions reportedly take place in secret. According to missionaries, police

and other local officials harass villagers and members of the poorer classes who convert. Reprisals and threats of reprisals against suspected converts are common.”

[108] In an article by Dr S Gill, *Apostasy from Islam in Pakistan*, Pakistan Christian Congress, the author refers to numerous examples of difficulties faced by apostates in Pakistan. These range from family and societal ostracism, loss of possessions (including disinheritance), limited employment and schooling opportunities, to more extreme forms of harassment, intimidation and violence, sometimes under false charges of blasphemy and the dubious legitimacy of religious edicts (*fatwas*); see also, “Woman raped for leaving Islam”, *Persecution. Com* (23 June 2006) and “Pakistan Trip Report – November 2004” *Christian Solidarity Worldwide* (CSW), csw.org.uk/Visits/print.php?id=3.

[109] The CSW Report (*supra*) concludes:

“It is extremely dangerous for a Muslim to convert. [it] was told of one case of a man who, upon informing his family that he had become a Christian, was beaten severely with metal rods and thrown from a roof to his death. Converts from Islam to Christianity in Pakistan often live as “secret converts”, not declaring their faith or identifying themselves to the wider community as Christians. CSW met one former Muslim preacher who converted, and now leads a group of secret converts. He was attacked by his family members, who destroyed his market stall and shot at him.”

The Blasphemy laws

[110] The Blasphemy laws are set out in Chapter 15 of the Pakistan Penal Code, sections 295-298C, and are couched in very broad terms. For example, s295-C provides:

“Whoever by words, either spoken or written or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the name of the Holy Prophet Mohamed shall be punished with death, or imprisonment for life, and shall also be liable to a fine.”

[111] The broad and largely undefined nature of these laws has made them susceptible to manipulation and abuse. The IRF 2006 report noted:

“Specific government policies that discriminate against religious minorities include the use of the ‘anti-Ahmadi laws’, the blasphemy laws, and the Hudood Ordinances...The blasphemy laws provide the death penalty for defiling Islam or its prophets; life imprisonment for defiling, damaging, or desecrating the Qur’an; and ten years’ imprisonment for insulting the religious feelings of any citizen. These laws are often used to intimidate reform-minded Muslims, sectarian opponents, and religious minorities, or to settle personal scores.” (*emphasis added*).

[112] In a similar vein, UNHCR (18.21 Home Office report) *supra* noted:

“Many blasphemy cases are often filed due to personal or religious enmity which is illustrated by the fact that the majority of blasphemy cases are acquitted in court for lack of sufficient evidence ... Local trial judges under pressure from religious groups may also be more likely to find the accused guilty of blasphemy, while the charges are frequently dropped at the higher level where religious/political influence is less of a factor.”

[113] The IRF 2004 (*supra*) stated:

“Blasphemy laws and the anti-Ahmadi law (Sections 298(b) and 298 (c) of Ordinance XX of 1984) often target members of the Ahmadi community...The blasphemy laws also have been used to harass Christians and other religious minorities, often resulting in cases that persist for years. Religious extremists, who are often part of an organized group, also have killed persons accused under the provisions but acquitted. Local trial judges under pressure from religious groups may also be more likely to find the accused guilty of blasphemy, while the charges are frequently dropped at the higher level where religious/political influence is less of a factor.”

[114] According to the US Commission Report 2006 (*supra*):

“Blasphemy allegations, which are often false, result in the lengthy detention of, and sometimes violence against, Ahmadis, Christians, Hindus, and members of other religious minorities, as well as Muslims on account of their religious beliefs. The negative impact of the blasphemy laws is further compounded by the lack of due process involved in these proceedings. In addition, during blasphemy trials, Islamic militants often pack the courtroom and make public threats about the consequences of an acquittal. Such threats have proven credible, since the threats have sometimes been followed by violence. Although no one has yet been executed by the state under the blasphemy laws, some persons have been sentenced to death. Several accused under the blasphemy laws have been attacked, even killed, by vigilantes, including while in police custody; those who escape official punishment or vigilante attack are sometimes forced to flee the country. Already noted above are the incidents of serious mob violence against Christian institutions that occurred as a result of spurious blasphemy accusations against two Christian individuals.”

[115] The police and judiciary are still susceptible to bribery, corruption, intimidation or indeed religious extremism. The weakness of the blasphemy laws is not the procedure for investigation, but rather the definitions of the laws themselves. No definition of blasphemy, or of “word”, “action” or “body language”, is provided, and indeed Muslims have different interpretations. During its visit to Pakistan in 2004, the CSW (*supra*) found:

“Violent attacks on those accused of blasphemy during trial or imprisonment, and intimidation of judges and lawyers, are common. When a blasphemy charge is made, a whole family’s life changes forever. Even if the accused is eventually acquitted, the accusation of blasphemy makes them automatically a target for Islamic extremists and they have to live the rest of their lives in hiding, or seek asylum overseas. The families of those accused of blasphemy face significant pressure also. It becomes increasingly difficult, and often impossible, for a family of a blasphemy suspect to remain in their home area, because the Muslim community regards them with disgust and other Christians are afraid of being associated with them.”

[116] The overall number of persons charged under Pakistan's blasphemy laws is not great and the government has taken some steps to prevent them being used in a capricious or vexatious way. According to the IRF 2006 (*supra*) the government enacted a law in January 2005 that tried to prevent the filing of frivolous or abusive charges. The enactment requires senior police officials to investigate any blasphemy charges before a complaint is filed. In addition, the law provides that any speech or conduct that injures another's religious feelings, including those of minority religious groups, is prohibited and punishable by imprisonment.

[117] The article by Dr S Gill (*supra*) notes that the situation for apostates can be more difficult if the alleged Christian 'blasphemer' has property or a successful business:

"Ayub Masih languished in jail for years because of the land grabbers. After years, it was proved in the Supreme Court that a false case of blasphemy was designed against him to grab his property. There is a long list of similar cases of land grabbing of Christians under false accusations of defiling the name of Prophet Mohammed. Nearly all those Christians who had been implicated in blasphemy were innocent. All lost their respect, and properties before their arrests. Death punishment is awarded by courts if the matter is able to reach there. In most cases, the alleged blasphemer is either killed by the mob or by members of the family."

Fatwas

[118] A *fatwa* is a religious edict or decree which has traditionally been issued by an individual with religious knowledge and piety. However, the "modern era" has also seen *fatwa* given by individuals who have no traditional training. This is causing some confusion among Muslim believers as to the status and authority of *fatwa*; see Canadian Immigration and Refugee Board *Pakistan: The issuance of fatwas; reports of fatwas issued against Muslims and non-Muslims* (19 November 2004).

[119] *Fatwa*, issued by diverse groups each claiming the necessary legal and religious authority to do so, are often simply a guise for inappropriate and/or personal attacks against a discredited person or group. For example, Amnesty International (AI), in article in Pakistan's *The Friday Times* IRB Response (*supra*) was of the opinion that:

"... *fatwas* are attempts to silence dissenting opinion by inciting the public to violence against the target ... and [serve] to create a "negative" image abroad by encouraging violent vigilantist practices and undermining the writ of the state."

[120] From this country information, the Authority concludes that ordinary Christians may be at risk of low levels of harassment, prejudice and intimidation

from parts of the Muslim community. They may also be disadvantaged in their access to and enjoyment of a range of socio-economic rights. However, even when viewed on a cumulative basis, these forms of harm are not likely to amount to persecution. Christians, like other minority religious groups, may be at risk of random and occasional acts of violence from more extreme Islamist elements. Such incidents flare up in often spontaneous ways in Pakistan society (such as the 'Danish cartoons' incident in February 2006). However, the risk of such events is largely unpredictable and would not, ordinarily, rise to the level of a 'real chance' of persecution under the Refugee Convention; *Refugee Appeal No 70366* (22 September 1997).

[121] The situation for apostate (former Muslim) Christians is far more acute. They are viewed with greater disquiet, and often disgust, by larger parts of the Muslim majority. They face a higher risk of being identified and harassed by extreme Islamist groups and their socio-economic marginalisation makes them more vulnerable to abuse by relatives or others seeking to profit personally at their expense, particularly apostate businessmen of wealth. Whilst apostates are not likely to face formal allegations of blasphemy - the incidence of such cases now being relatively small - they may nonetheless be seen as blasphemous by conservative sectors of the Muslim community in Pakistan. Where more extreme elements decide to take the law into their own hands, the law enforcement agencies and judicial courts are unlikely to be sympathetic or provide protection and relief to the alleged apostate.

[122] Whether the risk of serious harm crosses the evidentiary threshold identified in *Refugee Appeal No 70366* will depend on the particular facts of each case. The nature and magnitude of the harm feared will also vary greatly depending on the facts of the case.

WELL-FOUNDEDNESS OF THE APPELLANTS' CLAIMS

[123] The Authority has carefully assessed the appellants' claims against this country information. With regard to the harm faced by the appellants on return to Pakistan by reason of their apostasy, the Authority makes the following conclusions:

- a. The appellants are at risk of social ostracism from their immediate and extended families, former Muslim friends and associates. Their loss of a support network at the community level would increase their exposure and

vulnerability to more extreme Islamist elements in Pakistani society. Although over time the appellants might find a degree of security and comfort among the Christian community, their apostasy would ensure this support and protection would be of limited value.

- b. The *fatwa* and declaration of disinheritance would exacerbate the appellants' social and economic marginalisation.
- c. The appellants are at risk of suffering harassment and intimidation, including physical violence, by ZZ and/or his conservative extended family. ZZ could be motivated both because of his deep disgust at his brother's apostasy and the prospects of personal gain in the family inheritance at the first appellant's expense.
- d. It is unlikely, to the point of remoteness, that the appellants would be formally charged with blasphemy.
- e. ZZ's links to more extreme (and possibly violent) Islamic elements is a decisive issue in these appeals because it increases both the degree of risk of harm and the severity of the harm itself. As a result, the appellants are at risk of serious threats and/or actual violence from more extreme and fundamentalist elements in Pakistanis society to whom apostasy would be seen as a blasphemy against Islam. These elements would use the *fatwa*, declaration of disinheritance and Pakistani society's general sanction against blasphemy, as the pretext for their actions. In this context, the appellants are at considerably higher risk of serious harm than Christians whose religious affiliations are based on their birthright.
- f. Country information indicates that apostates such as the first, second and third appellants can expect limited, if any, effective protection or relief from the law enforcement agencies or judicial courts.
- g. In addition to the foregoing, the first and second appellants could face serious discrimination and prejudice in securing adequate employment.
- h. The third and fourth appellants would have difficulties in furthering their education. They might be able to find suitable Christian schools but the third appellant's very fair complexion could attract the same unwelcome harassment and discrimination that his mother, the second appellant, experienced at school.

- i. The second and third appellants' fair complexion is an aggravating factor in terms of drawing attention to them and the degree of hostility their conversion will attract.

[124] The Authority concludes that there is a real chance that each appellant would face harm which, if taken cumulatively, would amount to a sustained or systemic violation of their basic human rights demonstrative of a failure of state protection; *Refugee Appeal No 74665* (7 July 2004).

[125] For these reasons, both issues framed in [88] are answered in the affirmative. The Convention ground is the appellants' religion.

INTERNAL PROTECTION ALTERNATIVE

[126] Finally, the Authority must consider whether the appellants can genuinely access domestic protection in some other part of the country which is meaningful. The ingredients of that assessment are set out by the Authority in *Refugee Appeal No 71684* (29 October 1999) and are as follows:

- a. In the proposed site of internal protection, is the real chance of persecution for a Convention reason eliminated?
- b. Is the proposed site of internal protection one in which there is no real chance of persecution, or other particularly serious harms of the kind that might give rise to the risk of return to the place of origin?
- c. Do local conditions in the proposed site of internal protection meet the standard of protection prescribed by the Refugee Convention?

[127] As to the first limb of the test, the Authority notes that underlying prejudice and discrimination (albeit at low levels) against Christians exists throughout Pakistan and conservative Islamic groups are present and operate with relative impunity in most parts of the country.

[128] The Authority is satisfied that on the particular facts of their case, the appellants' marginalisation would make it difficult, if not impossible, for them to leave X city and find safety from their persecutors in some other part of Pakistan. As dislocated Christian apostates, the appellants would be conspicuous in any other part of the state, even if they were to find some support from other Christian groups in Pakistan.

[129] Against this backdrop, the Authority also concludes that ZZ's reach, and that of his extended family, may well extend beyond X city into other parts of Pakistan. If they were so motivated, it would not be difficult for them to track down the appellants and harm them. For the reasons given earlier, the Authority concludes that there is a real chance they would be so motivated.

[130] As the first limb of the test is not met there is no internal protection alternative available to the appellants.

CONCLUSION

[131] For these reasons, the Authority finds that each of the appellants is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeals are allowed.

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R J Towle
Member