

071229728 [2007] RRTA 153 (1 August 2007)

DECISION RECORD

RRT CASE NUMBER: 071229728
DIAC REFERENCE(S): CLF2005/81894
COUNTRY OF REFERENCE: Pakistan
TRIBUNAL MEMBER: R Mathlin
DATE DECISION SIGNED: 1 August 2007
PLACE OF DECISION: Sydney
DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

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

[Applicants visa application history deleted in accordance with s431 of the Migration Act as this information could identify the applicant]

RELEVANT LAW

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

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

Definition of ‘refugee’

Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

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.

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

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

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

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

In considering this application, the Tribunal took into account information contained on the Department's file, CLF2005/81894 and Tribunal files relating to the proceedings.

Information on Department's file

According to information provided in the protection visa application, the applicant is a married man in his late thirties. He travelled to Australia using a passport issued in his own name. He stated that he resided at the same address in Pakistan for his entire life, and attended school for a number of years. He stated that he was self employed from a particular year until his departure from Pakistan.

He claimed that he joined the Pakistan Muslim League (Nawaz Group) (PML-N) because he was impressed with its manifesto, and because all of his friends and relatives supported the party. He stated that the party gained the maximum number of parliamentary seats for the district in both houses of parliament before the military coup.

He claimed that initially he had difficulties with supporters of the Pakistan Peoples Party (PPP), which was strongly opposed to the PML (N).

He claimed that he was in the front line of opposition to the military dictatorship and support for democracy. He claimed that he participated in demonstrations and distributed leaflets. He claimed that he was the most senior worker of the party in the local district within his own unit, and as such he was a target for persecution by the leaders of his party who had been blackmailed into joining forces with the military regime. He was harassed many times by members of his own party and by army persons. He claimed that he was taken to the police station and bashed, that he was told not to engage in activities any more or false cases would be made against him, and that he would be declared a terrorist and killed

Delegate's decision

The application was refused by the delegate who considered that the applicant's claims were vague and lacking in relevant details such as dates. The delegate had regard to country information indicating that while there was some harassment, including short term detention, of PML(N) members and supporters following illegal protests, none had suffered serious harm such as capital punishment. The delegate found that the party had not been banned, and continued to field candidates in elections in October 2002. After that, support for the party had fallen away and there was little interest by the authorities in the activities of the party. The delegate considered that the applicant did not have a significant political profile, and had apparently left Pakistan without difficulty, never having been charged with any offence. The delegate therefore concluded that the applicant did not have a well founded fear of persecution.

[Applicants visa application history deleted in accordance with s431 of the Migration Act as this information could identify the applicant]

Evidence at first hearing

The applicant appeared before the Tribunal at a hearing to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Urdu and English languages.

The applicant presented his current passport. He said that he had problems obtaining this passport, it had taken many months for it to be issued even though he paid the fee. The applicant said that he had applied for the passport several days after losing the first one, and had paid the fee at that time. I drew his attention to a receipt which was appended to the passport; he agreed that this was for the application fee. I noted that the date of issue of the passport was the same as the date on the receipt, said that this indicated that the passport was issued immediately. The applicant said that this was not the case, there had been a delay. I asked whether he knew the reason for any such delay and he said that the authorities must have made inquiries.

The applicant said that a friend had completed the protection visa application for him. The applicant said that he was aware of the information contained in the form.

I asked the applicant whether it was correct that he had resided at the same address until his departure from Pakistan. He said that in fact, the address in the protection visa application was his family home which had been sold, to fund his trip, months before he left. The applicant said that he lived somewhere else in the months prior to his departure, and provided that address. However, he said that this family has moved again since he has been in Australia, and he does not know their current address.

He said that he left Pakistan because his life was in danger because he joined a political party, the Nawaz Sharif Group, and it was a problem for him to leave that party later on.

He said that he joined the party; he was a child and joined for no particular reason, but all his family supported that party. Before he came to Australia he wanted to leave the party but was not allowed to. He lived in hiding at his sibling's and other places for months before he came. During that time he obtained his visa to Australia. I noted that the applicant had previously given me an address at which he said he had lived with his family for the months prior to his departure, and following the sale of the family home. The applicant said that in fact he was moving around to stay with different relatives.

I asked the applicant why he wanted to leave the PML(N). He said that rallies were held to support the return of Nawaz Sharif from exile and the army created trouble and would not let them march peacefully. His relative could not cope with these problems and suggested that he leave the party at any price.

He said that he was detained by the police a number of times. He said that he could not remember exactly when he was detained because it was so long ago. When I pressed the applicant to at least recall the years, he said that it was during a few years, "or something like that". I asked for how long he was detained and he said that on the first occasion it was a couple of days; on the second occasion it was a few weeks; and on the third occasion it was several days. I asked whether he was detained three times altogether and he said that it was even more than three times. I asked how many times and he said "[number]". I noted that he had just told me when and for how long he was detained on three occasions, and asked for how long he was detained on the others. He said that he thought it was about a week; his relative could not withstand it so he came here. I asked whether all the detentions had taken place over the period stated. He said that the time frame was several years; he thought one detention was a few years ago.

I asked the applicant to tell me about the latest detention. He said that they came to his home. Asked for more information, he said that a number of police vans came to his home at

midnight. He said that he was at home alone. I asked where the other members of his family were and he said that they were at home; he said that he had misunderstood when he had said that he was alone. I asked if he knew why he was detained. He said that it was because of a demonstration. I asked whether it was a particular demonstration and he said that they were all fabricated allegations. He then said that he had taken part in demonstrations; there were lots in support of Nawaz Sharif. I asked what the fabricated allegations were. He said that they called him a traitor. I asked what other fabricated allegations were made. He said that they said that the demonstrations were illegal. I asked again whether any other allegations were made, apart from his participation in demonstrations and that he was a traitor. He said that he could not remember because it has been so long.

He said that on this occasion he was detained for a number of days. He said “They release you after they bash you and after a while your family members demand your release”. I asked whether he was ever formally charged with any offence and he said that every time he was detained the police wrote a report; he was never taken before a court.

I asked whether he was involved in other activities with the party. He said that he used to put up posters and raise funds. I asked what he liked about this party and he said that his whole family was oriented towards this party. However, no other members of his family had similar problems because they did not attend demonstrations.

I asked why he continued to be involved with the PML(N). He said that he was young, excited and energetic. I noted that he had not yet given me any reason for this keen support except to say that he was a child when he joined and his family supported that party. I asked why he continued to be active even after being detained and bashed by the police and he said that the party had many supporters who were college students; they harassed and bashed him if he did not attend demonstrations. He said that he stopped participating in demonstrations months before he came to Australia. The beatings by students started months before he came to Australia; they came to his house looking for him; he was beaten a few times.

I said that I found it hard to believe that anyone would notice if the applicant simply did not attend a demonstration. He said that he was one of the main organisers and played an important role in those rallies.

I asked why the applicant could not simply move to another part of Pakistan. He said there was no money. I noted his evidence that the family home had been sold to send him to Australia and asked why the money could not have been used to relocate the family in Pakistan. He said that a family member did not want to move; indeed she did not want to sell the house but the rest of his family convinced her. I asked whether the applicant would have been safe elsewhere in Pakistan. He said that maybe for a time he would be; but the party people have connections everywhere.

I noted that the applicant had said that he was one of the main organisers of the party and asked him to tell me more about it. He answered in rather vague terms, saying that when the party was in government it was peaceful and there was less crime; when Musharraf came to power, Nawaz Sharif was exiled and party members kept protesting for his return. I asked whether the PML(N) was united with any other party. The applicant said that when he was there it was not; he does not know about the present time. I asked whether the PML(N) was involved with any other party during a two year span. The applicant said that two parties came from the Muslim League – Qaif and Noon.

At that point the hearing was adjourned. On resumption the applicant said that he was not feeling well and could not continue. The hearing was rescheduled to resume. Unfortunately, it was not possible to proceed with the hearing on the rescheduled date, as the Tribunal considered that the interpreter was not competent. The hearing was again rescheduled.

Evidence at second hearing

At the hearing the applicant gave the following evidence. He said that he left Pakistan because of “the party”; he feared for his life. The party was the PML-N, which he said, after a long hesitation, that he joined in a particular year. He said that he joined because all of his family members were involved with this party; he was not mature at the time, and simply joined on the instruction of others. I asked the applicant several times to elaborate on the aims or policies of the party that he supported, but he was unable to tell me anything about what it stood for, except to say that when Nawaz Sharif was in power he built a lot of roads in Town A.

The applicant said that his activities included attending meetings and protest marches. I asked several questions to elicit whether he was involved in other activities, which received little response. I asked the applicant whether he organised any activities or just attended them. He said that he was a very special member of the party. I asked several times how he was special and eventually he replied that he was very active in the activities of the party; he did all the jobs he was given such as printing posters and decorating halls for meetings. He said that he was not an organiser, he did what his seniors told him, naming a particular person. I asked what position that person held in the PLM-N, and the applicant responded that he has not left the country. I repeated the question and the applicant said that he was the most senior person in the party.

I asked the applicant to tell me about some important events in the history of the PML-N. He said that it started at the time of Qaid-e-Hazem. He asked whether I wanted to know anything else. I asked the applicant whether the PML-N was now or had in recent years been associated with any other party. After I repeated and rephrased the question numerous times, the applicant finally responded that it was not. I put to the applicant information from the United States Department of State *Country Reports* (see below) stating that since about 2004 the PML-N has been associated with the PPP in seeking the restoration of democracy. The applicant said that he had already told me that when Musharraf came to power he ousted “them both” (by which he meant the leaders of the PML(N) and the PPP); they had both tried to come back but they were not allowed. I asked again whether the parties were aligned, leaving aside their leaders. The applicant said that since 1996 he did not think so. The two parties are totally against each other. If they appear to collaborate, it is just for show. I asked the applicant what significant event had occurred in 1996. He said that the PPP won the election.

I asked whether the applicant was involved in the 2002 elections and he said that he was. I asked how the PML-N fared in those elections and he said that Musharraf was ruling the country and Nawaz Sharif was in Saudi Arabia. I asked whether the applicant recalled those elections and he said that he did. I asked whether the PML-N stood candidates. He said that they did. I asked what the election results were for the PML-N. The applicant replied “nothing special”. I asked whether the PML-N had won any seats. After a long pause the applicant replied that he did not think so. I put to him that in fact the party had won fourteen seats. The applicant responded that it was all pre-planned and they had only won a few seats; all the people working in the government are Musharraf’s people.

I asked the applicant whether he stood by his claim in his protection visa application that he was the most senior party worker in Town A. He said that he was an active member rather than a senior leader.

I asked the applicant what problems he had in Pakistan. He said that he was arrested several times and beaten up several times. He said that he was arrested twice in one year; once a few years later; once again a year later; and once again a few years after that. He could not remember any other occasions. He said that after that, he was just hiding from place to place. I noted that the PML-N would have been in power in 1997 and 1998. I asked whether he could recall any arrests. He said that he was arrested but he could not remember the date. Eventually he recalled it. It was just one arrest because after that he was not active, he was in hiding. I asked about the circumstances of the arrest. He said that he was taking part in a protest march for the return of Nawaz Sharif; the police used tear gas to break up the protest and the applicant was detained for a few days. I asked him whether he stopped his political activities after this arrest. He said that he was also working; his partner was an Ahmadi and the applicant's party objected to him associating with an Ahmadi. I asked the applicant why he had not mentioned this before. He said that whatever he remembered he wrote. I asked the applicant what problems his association with Ahmadis caused. He said that the party dislikes them because they don't believe that they are Muslims. I asked again what problems it caused him. He said that they came to his business and tried to force him to end the association. He said that he also had an association with a girl and his relative sold the house and sent him here.

I asked the applicant for details of his business dealings with the Ahmadi man. He said that he paid rent and worked in a shop owned by the Ahmadi man, who he referred to as his partner. The applicant was associated with him for a number of years; then the Ahmadi man left the country and went to Country A. This was in a particular year. The applicant worked the business for several more years after he left. He stopped working a number of months before he came to Australia.

I asked whether he continued to have problems after his partner left the country. The applicant said that they had a very good relationship, they considered themselves as brothers. After he left, the applicant continued to associate with his siblings because they also worked in the main bazaar. He went to their homes and their place of worship. His own family was scolding him. I asked why the applicant went to the Ahmadis' place of worship. He responded "nothing special". I repeated the question, and he said that it was to listen to speeches delivered from overseas that were played on television. I asked why he wanted to do this, and he said that he just wanted to listen to what they were saying, but other people advised him to leave the country. Later I asked the applicant to tell me what he knew of the Ahmadi faith. He said that they never told him anything; he thinks they believe in Allah but their style is different. I asked whether he attended his mosque and he said that he went rarely, but not for any reason.

I asked what problems he had because of his association with Ahmadis. He said that he had so many problems, people blamed him and said that he was one of them. He said that he had a girlfriend but she was already married. I asked whether he had any problems apart from the fact that people "blamed" him. He said that a couple of times his friends tried to beat him up. I asked why the applicant simply did not stop associating with the Ahmadis. He asked how could he, the man was his partner and they were good people. I pointed out that he had said that his partner had left Pakistan a few years ago.

I asked the applicant to clarify his claim that he was in hiding prior to his departure. He said that he hired another person to look after his business while he hid at his siblings and his relatives.

I asked whether he had stopped his activities with the PML-N because of the problems caused by his association with the Ahmadis. He said that also his relative did not like his political activities, and asked him to stop. I asked when he stopped and he said that it was after he associated with the Ahmadis. I asked when exactly this was, and he said that it was several months before he came to Australia. I put to him that he had said that his association with the Ahmadis dated back to a particular year. He agreed that he had known them over several years. I asked when he first had problems because of his association with them. He said that he could not remember, he could not even remember when he came to Australia; several months before he came here he had lots of trouble. Before this nobody knew about his association with them because he did not go to their place of worship as often.

I asked what trouble he had faced in the months before coming to Australia. He said that he was in danger because people don't like Ahmadis. I asked the applicant three more times to specify the trouble or problems he was having at that particular time, and he continued to speak generally about how Ahmadis are disliked. I warned the applicant that if he did not provide a specific answer to the question I would assume that, in fact, he had no trouble. He said that Muslims don't like Ahmadis. His friends were torturing him. I asked him to describe what happened with his friends. He said that a couple of months before he left his friends attacked him; also people belonging to the party asked what he was doing. He said that his partner advised him to leave the country.

I asked the applicant whether he had told the police about the incident when his friends attacked him. He said that he had, but "nothing special" happened. A truce was worked out through the elders. The police arrested his friends, but released them under pressure from the elders. His relative did not want him to pursue it because she was afraid that it would lead to animosity.

I asked the applicant again when he stopped his political activities. He said that it was several months before he came. His relative said that that if he carried on he might be killed. I noted that he left in a specific month and asked whether he could remember the month of his last arrest. He said that he thought it was the year before.

I asked the applicant what he thought would happen if he returned. He said that he thought he would be killed because of his problems from political parties and because of his association with Ahmadis. If he stopped his association with the Ahmadis, the Ahmadis would become his enemy. The PML-N people do not like him because he stopped working for them. He stopped because his relative asked him to. I asked why he could not have informed the party that his relative was ill and this was why he was ceasing his activities. He said that they would not believe him. Another problem is that his girlfriend's husband had threatened to kill him. I explained to the applicant that this was not Convention related harm.

After the hearing, , the Tribunal wrote to the applicant pursuant to s.424A of the Act, inviting him to comment on information that would, subject to any comments he might make, be the reason, or part of the reason, for deciding that he was not entitled to a protection visa. The information was as follows:

- At the hearing he claimed that he had faced problems in Pakistan because of his association with members of the Ahmadi community, however, he did not mention this claim in his protection visa application, or at any time prior to the Tribunal hearing. His application for refugee status was based entirely on his claimed political activities.
- At the hearing he claimed that he feared returning to Pakistan for fear that he may be killed by the husband of his girlfriend. He did not mention this claim in his protection visa application, or at any time prior to the Tribunal hearing.

The Tribunal received the applicant's response, in which he stated that he did not agree with the Tribunal's 'decision' because his life is genuinely threatened. He stated that he had relations with the Ahmadi community and was "threatened to be killed" because of this. Another issue is that his girlfriend's husband had found out about their affair and had beaten the applicant, bruising him severely, and had threatened to kill him. The applicant stated "I could not explain these issues earlier as I am not fluent in English and I did not get a chance to come in front of [the Tribunal]...I have proper evidence to support my case but I need some time to get it from Pakistan". The applicant requested the Tribunal not to take any decision for the time being.

Country information

The following information is provided as background to the applicant's claims.

According to the US State Department *Country Reports on Human Rights Practices*, Pakistan, 1988 to 2003, and the Europa Regional Surveys of the World, *The Far East and Australasia*, Pakistan, 2000 and 2003 (on which the Tribunal relied and which remains relevant), following the death of President Zia-ul-Haq in 1988, the Pakistan Peoples' Party (PPP) won national elections and its leader, Benazir Bhutto, was sworn in as Prime Minister. In 1990 she was dismissed by the President, who declared a state of emergency. The PPP was defeated at elections in 1990. A Government was formed by the Islami Jamhoori Ittehad (IJI) coalition, and Muslim League leader Nawaz Sharif was sworn in as Prime Minister. The Government of Nawaz Sharif was itself dismissed and replaced in 1993 with a caretaker government, which drew members from the Pakistan Muslim League factions and the PPP. Elections in 1993 returned Bhutto to office.

In 1996, following sustained criticism of the government in relation to corruption, law and order and the economy, the President dismissed Prime Minister Bhutto and dissolved the National Assembly and the provincial assemblies, calling elections for 1997 which were decisively won by the opposition Muslim League.

Plagued by political rivalry, incompetence and corruption, the Muslim League government of Prime Minister Nawaz Sharif was overthrown in 1999 by a bloodless military coup triggered by Sharif's attempt to dismiss the Army Chief of Staff, General Pervez Musharraf. In April 2000 Nawaz Sharif was found guilty of treason and other charges; in December 2000 he was exiled for 10 years.

Musharraf designated himself as Chief Executive, and suspended the Constitution, the Parliament and the provincial assemblies. Between December 2000 and August 2001 local government elections were held on a non-party basis and the Government announced that national and provincial elections would take place in October 2002. Musharraf was sworn in as President in June 2001.

The Musharraf Government did not ban political parties, and the parties active prior to the coup, including the PML(N), continued some activities. During 2002 the Government forced both the PPP and the PML (N) to elect leaders other than Benazir Bhutto and Nawaz Sharif by refusing to register any parties whose leaders had a court conviction. In May 2002 President Musharraf won a referendum to extend his rule for a further five years from October 2002. In national elections held on 10 October 2002 the PML (Quaid-e-Azam) or PML(Q), the party backed by Musharraf and the army, won 72 seats; the PPP (Parliamentarians) or PPPP won 62 seats; the Muttahida Majlis-i-Amal (MMA), an alliance of religious parties, won 42 seats; the PML (N) won 14 seats; and the Muttahida Qaumi Movement (MQM) won 12. Mir Zafarullah Jamali of the PML(Q) was chosen as Prime Minister in November 2002.

The International Crisis Group (ICG) provides the following background on the PML-N:

The “Muslim League” label continues to be evocative, associated with the All-India Muslim League that is generally credited with having won Pakistan’s independence. A variety of right-of-centre parties have used variations of the name ... In the 2002 elections six parties entered parliament on Muslim League platforms.

Today, the two largest parties taking up the Muslim League mantle are the PML-N, a faction formed under Nawaz Sharif’s leadership in 1993, and its Musharraf-era offshoot, the PML-Q. Both advocate moderate economic policies centred on privatisation and deregulation. In the past the PML-N benefited from the military, corporate and bureaucratic patronage the PML-Q now enjoys. Party activists from both factions stress ideological attachments to the All-India Muslim League and its leader, Mohammed Ali Jinnah.

...

By its opposition to the military during its last term (1997-1999), the PML-N became the target of its former ally, and by joining forces with the PPP and other like-minded parties in the anti-military Alliance for the Restoration of Democracy, the party hopes to use democratic credentials to regain ground lost to the PML-Q.

The military-created PML-Q also claims the All-India Muslim League’s legacy. Its leadership is composed largely of former members of PML-N who joined the splinter group after the army ousted Sharif’s government in 1999. The new faction also usurped PML-N offices in Islamabad, Karachi and Lahore. The PML-Q is currently in power in the centre, the ruling party in Punjab, and a coalition partner in the Sindh and Balochistan provincial administrations. Dependent as it is on the military, however, it has had to dilute its party ideology ... (International Crisis Group 2005, *Authoritarianism and Political Party Reform in Pakistan*, Asia Report 102, 28 September, pp.11).

The ICG reports that the PPP is currently operating in alliance with the PML-N as the Alliance for the Restoration of Democracy (ARD), which opposes the regime of Musharraf and the ruling party, the PML-Q.

As to the situation of Ahmadis, according to the United States Department of State *Country Reports on Human Rights Practices* for 2006:

The law declares the Ahmadi community, which considers itself a Muslim sect, to be a non Muslim minority. The law prohibits Ahmadis, who claimed approximately two

million adherents, from engaging in any Muslim practices, including using Muslim greetings, referring to their places of worship as mosques, reciting Islamic prayers, and participating in the Hajj or Ramadan fast. Ahmadis were prohibited from proselytizing, holding gatherings, or distributing literature. Government forms, including passport applications and voter registration documents, require anyone wishing to be listed as a Muslim to denounce the founder of the Ahmadi faith. In 2005 the government reinstated the religion column for machine readable passports (see section 2.d.). Ahmadis were frequently discriminated against in government hiring and in admission to government schools and faced prosecution under the blasphemy laws.

On June 24, a mob attacked Ahmadi residents in Jhando Sahi near Sialkot district, Punjab, after allegations of the desecration of the Koran. The rumors alleged that Ahmadi men were seen burning pages of the Koran in public. The police arrested the accused Ahmadis, but a mob gathered and started burning houses, shops, and vehicles of Ahmadis. There were reports that prior to the incident, Muslim clerics had encouraged mobs to attack Ahmadis by calling out to Muslims on the loud-speakers of their mosques that non Muslims should not be allowed to live among Muslims. Reports indicated that two Ahmadis were injured, and about 100 Ahmadi villagers fled their homes where they had lived for 60 years.

FINDINGS AND REASONS

The applicant claims to be a national of Pakistan. Having sighted his passport at the hearing I am satisfied that this is the case. Accordingly, his claims to refugee status will be assessed as against Pakistan as his country of nationality.

The applicant claims that he faces persecution on return to Pakistan for three reasons. First, he was involved with the PML-N, and fears that he may be harmed by the government because of this political activity, or alternatively, that he may be harmed by members of the PML-N because he ceased his political activity before leaving Pakistan. Second, he claims that he associated with Ahmadi friends and could be killed because of this. Thirdly, he claims that his married girlfriend's husband will kill him if he returns.

The second and third claims were raised for the first time at the second hearing before the Tribunal. The applicant was advised in a letter following the hearing that the fact that he had not raised the claims at an earlier time might cause the Tribunal to conclude that they were not true. He was further advised that, in these circumstances, the Tribunal could conclude that he was not, in general, a credible witness, and that his other claims should also not be accepted. By way of response, the applicant stated that he could not explain these issues earlier because he was not fluent in English, and “[*information deleted in accordance with s431 of Migration Act as it may identify the applicant*]”. He requested additional time to obtain documents from Pakistan.

I do not accept the applicant's explanation for his failure to raise the claims about his Ahmadi association, or the difficulties with his married girlfriend, at any time prior to the hearing, and consider that he had ample opportunity prior to that time to raise these matters. He has been in Australia since a particular year, and lodged his protection visa application that same year. He gave evidence before the Tribunal that a friend who was fluent in English helped him to complete the application. He was offered the opportunity to appear before the Tribunal, with the assistance of an interpreter, but elected not to attend the initial hearing. He has since attended two hearings in relation to the proceedings. Although the first was adjourned at his

request because he said that he was unwell, when the quality of his evidence on that occasion is compared with that given at the second hearing, I am satisfied that any health issues on the first hearing day did not adversely affect his capacity to give evidence in any significant respect. His evidence on both days was essentially consistent; there are no obvious deficiencies in the evidence given on the first day, when it is compared with that given on the second day. I would expect, in all the circumstances, that the applicant would at least have raised in general terms the two issues which he has now raised, even if he had not provided details. The fact that he only mentioned them for the first time at the second hearing leads me to conclude that, even if there is some truth to the claims, these matters do not genuinely give rise to a well founded fear of persecution on the part of the applicant.

For similar reasons, I am not prepared to allow the applicant additional time to obtain documents from Pakistan. It is over a year since the applicant applied for a protection visa. He has been on notice since a letter from the Tribunal, inviting him to a hearing, that he had not provided sufficient information to support a finding that he was a refugee. He has not, since then, provided any additional documentary evidence. I consider that the applicant has had ample time to provide any genuine documents which might support his claims. I shall therefore proceed to determine the application on the basis of the information now before me.

Claim in relation to extra-marital affair

Given the late stage at which this claim was raised, and for the reasons set out above, I do not accept that the applicant in fact has a genuine fear of persecution as a result of an extra-marital affair. In any event, there is no suggestion arising from the applicant's evidence about this matter that any harm he might face in relation to such a matter would be directed at him for any of the Convention reasons. The applicant's evidence suggests that any harm would be private harm, arising from his personal behaviour and circumstances. While the applicant indicated that the police would not protect him, there is no suggestion that any failure of state protection would be for a Convention reason. Even if it were accepted, this claim does not fall for consideration under the Refugees Convention.

Credibility

The applicant's other claims (about his political activities, and his association with Ahmadis) potentially give rise to protection obligations, if they were to be accepted. The first step in assessing these claims, however, is to determine whether the applicant's evidence should be accepted. The mere fact that a person claims fear of persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is "well-founded" or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that all of the statutory elements are made out. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant himself or herself, in as much detail as is necessary to enable the examiner to establish the relevant facts. The Tribunal is not required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169-70.) In assessing the applicant's evidence I have had regard to the Tribunal's Guidance on the Assessment of Credibility. I have also had regard to the particular circumstances of the applicant, and how they may have impacted on his ability to provide a consistent and coherent account of his circumstances. The applicant claims that he is stressed because of unemployment, not well educated, and that he is unable to remember events in Pakistan well. However, I do not consider that these factors account for the highly

unsatisfactory nature of his evidence as a whole, and his inability to provide often basic information in support of his claims. I have concluded that significant parts of the applicant's account should not be accepted.

Claim in relation to religion – association with Ahmadis

I accept, on the basis of the extract from the *Country Report* above, that Ahmadis do indeed face serious discrimination in Pakistan. However, I do not accept, based on the applicant's evidence, that he had any significant association with Ahmadis in Pakistan which gives rise to a well founded fear of persecution. First, for the reasons discussed above, I consider that if the applicant was telling the truth about this matter, he would have mentioned it at an earlier stage. Secondly, his oral evidence about his Ahmadi connections and resulting difficulties was vague, inconsistent and confused. For example, despite his claim that he had been closely associated with Ahmadis, and had attended their place of worship for a number of years, he was unable to tell me any significant information about the Ahmadi faith or beliefs; nor was he able to provide a satisfactory explanation as to why he attended the Ahmadi place of worship. Even if the applicant had a business association with Ahmadis, I consider it simply not credible, in the absence of any explanation, that the applicant would attend their place of worship as part of this association, especially given the serious discrimination suffered by Ahmadis, and the serious consequences for converts or suspected converts from Islam. Given the potentially serious consequences for a person suspected of converting to the Ahmadi faith or associating with Ahmadis I find it inconceivable that a non-Ahmadi Pakistani would not only maintain, for no apparent reason, a relationship likely to lead to such problems, but would extend his association to, for example, attending Ahmadi worship. For these reasons I find that the applicant is not telling the truth about having been subjected to harassment and discrimination amounting to persecution because of an association with Ahmadis. I am satisfied that he does not have a well founded fear of persecution for reason of an association, or imputed association with Ahmadis.

Claims in relation to political opinion and activities

Finally, I shall deal with the applicant's claims to fear harm for reason of his political opinion, that is, his membership of the PML-N. The applicant's evidence in regard to his political activity was vague and inconsistent. While he stated in his protection visa application that he joined the party because he was impressed with its manifesto, and because his family members all belonged to the party, he gave oral evidence (at both hearings) that he joined as a child, or a person who was not mature, because his family were members and he did as he was told. He was unable to provide any information about the aims or policies of the PML-N, except to say, when pressed, that the PML-N government had improved the roads around Town A. The applicant appeared to know little about the history of the party. For example, the country information referred to above, which was put to the applicant at the hearing, states that since around 2000 the PPP and the PML-N have worked in a coalition to resort democracy and defeat the Musharraf government. The applicant appeared to be quite unaware of this, despite claiming to have worked towards these ends himself while in Pakistan; his evidence was that the parties were always opposed to each other. Similarly, the applicant was unaware of the PML-N results of the 2002 national elections. The applicant claimed in his protection visa application that he was "the senior worker" of the PML-N in his town; even though at the hearing he stated that a more accurate description was that of an active worker, I do not accept that the applicant was involved with the PML-N to any significant extent, given his lack of knowledge about the party. As noted above, he knew little or nothing about its policies or its history. He was unable to tell me why he joined, except to

say that all his family were members; and he was unable to provide a satisfactory explanation as to why he was more active than any other member of his family, or why he had problems as a result of his membership when they did not.

As I do not accept that the applicant was a member of, or politically active with, the PML-N, it follows that I do not accept that he faced any adverse consequences amounting to persecution as a consequence of such membership. In any event, his account of his claimed persecution as a consequence of his membership was inconsistent, vague and generally unsatisfactory. He was unable to provide a consistent account of the occasions when he claimed to have been arrested. Ultimately he stated that he gave up his political activities for no reason other than that he was asked to do so by his relative. While he also claimed that he was at risk of harm from other party members because he had left the party I do not accept that this is the case, because I do not accept that the applicant was a member of the PML-N at all, and certainly not one of such significance that his departure from the party would be of concern to other members. Based on his evidence, and for the reasons set out above, I find that the applicant does not have a well founded fear of persecution in Pakistan for reason of his political opinion or activity.

CONCLUSIONS

Having considered the evidence as a whole, I am not satisfied that the applicant has established that he has a well founded fear of persecution for any of the reasons put forward in writing or in his oral evidence. I am therefore not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

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

<p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act 1958</i>. Sealing Officer's I.D. PRDRSC</p>
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