REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 70315/96

B A J

AT AUCKLAND

Before:	A R Mackey (Chairman) D Plunkett (Member)
Counsel for Appellant:	S Laurent
Representative for NZIS:	No Appearance
Date of Hearing:	5 February 1997
Date of Decision:	6 March 1997

DECISION

This is an appeal against the decision of the Refugee Status Branch (RSB) of the New Zealand Immigration Service, declining the grant of refugee status to the appellant, a citizen of Pakistan, of the Christian faith.

INTORDUCTION

An Urdu interpreter was provided by the Authority. At the commencement of the hearing, the appellant stated that his English was quite fluent and he would not require the services of an interpreter. The appellant's counsel and the Authority were satisfied with the appellant's English language ability and therefore the interpreter did not remain in the hearing.

Shortly before the hearing, Mr Laurent presented his synopsis of submissions on behalf of the appellant and two recent letters received from Pakistan by the appellant. The first was a letter from his friend, AK, dated 15 November 1996 and the second (in English) was a letter from his mother, dated 22 January 1997.

The Authority also ascertained that Mr Laurent had available to him the same country information and copies of prior decisions of the Authority that were held by the Authority.

THE APPELLANT'S CASE

The appellant is a 31 year-old single man. His father died some years ago. His mother remains in Karachi with his younger sister and the appellant's older brother, H, who returned to Pakistan in 1994, after a two-year study programme in New Zealand. The appellant also has an elder sister who lives in Hong Kong and Scotland. She is married to an airline pilot and has lived out of Pakistan for many years, returning from time to time for holidays.

The appellant arrived in New Zealand on 9 January 1993 on a student visa. He came to New Zealand to study at a polytechnic where his brother, H, was already a student. The process of applying for his student visa had taken place over the period September to November 1992.

The appellant remained in New Zealand on a student permit until July 1994. He completed one year of his course at the polytechnic, but did not go on to complete his second year.

Subsequent to the expiry of his student permit, he was served with a Removal Order and, on 5 January 1995, he appealed against that Removal Order, presenting submissions to the Removal Review Authority (RRA). After setting out academic reasons why he wished to remain and complete his study, the appellant also stated in those submissions:

> "I am a practising Catholic and a member of the Sacred Heart parish in Timaru. My home city of Karachi is predominately Muslim, and life is extremely difficult for Christians. At present there is serious violence between various Muslim factions making life not only difficult but dangerous for Christians. The enclosed newspaper clippings illustrate the present situation in Karachi."

On 13 May 1995, the appellant lodged an application for refugee status. He stated that he had taken this course after speaking with an Iranian refugee applicant from whom he obtained some details of the Refugee Convention. His refugee status interview with the RSB was held on 14 March 1996. This was followed by a subsequent interview (after the first officer left the RSB) on 12 July 1996. A letter

of decline was sent to the appellant by the RSB on 13 October 1996. He then appealed to this Authority.

In support of his student visa application, the appellant had provided a character certificate signed by the Senior Superintendent of Police in south Karachi, dated 29 September 1992. This stated that the appellant had lived at an address in Karachi from 1966 to 1992 and there was nothing adverse on his record with the local police. Details of his identity card number were provided. That number is the same as the one shown in his passport, dated 9 May 1994, and issued in Canberra. The appellant's previous passport was issued in 1989. He told us that the May 1994 passport had been required as his previous passport had expired.

Also with his RRA application, the appellant presented a further police certificate from the Deputy Inspector General of police in Karachi. This also stated that he had lived in Karachi for the period 1966 to 1992 and there was nothing adverse on his record at two police stations in Karachi. His photograph, details of his passport and identification card were also included in that certificate, which was dated 21 December 1994.

Three other documents were also submitted at the same time. These were:

(a) a copy of a certificate from the Pakistan Institute of Tourism and Hotel Management, dated 31 August 1992. This stated the appellant had completed a hotel front-office course at the Institute, from 2 March 1992 until 21 July 1992.

(b) A letter dated 1 September 1992, from the same Institute, also confirmed this situation and that he had worked at Hotel P in Karachi. His marks in the "final examination" were also recorded.

(c) The other document presented was a letter from Hotel F and restaurant, dated 26 December 1994. This stated that the appellant had worked in the front office of the hotel from January 1991 to 1992.

The appellant's schooling consisted of 10 years of primary and secondary education, which he completed in 1981. This was followed by two years at a private college until 1984.

The appellant presented a statement with his original refugee application. A detailed interview took place with the appellant at the RSB on 14 March 1996, and a copy of this report is contained on the Authority's file. A further RSB interview to clarify some outstanding points took place on 12 July 1996, and details of that are also held on the Authority's file.

The appellant reported that he had been unable to obtain a permanent job after completing his education, although he had applied for some positions with hotels. He carried out odd jobs working with a friend, carrying out repairs and maintenance work on motor vehicles and venetian blinds. He was able to obtain one position as an office assistant in which he had hoped to continue. Unfortunately, not long after taking up the position, the manager died and he was no longer able to keep the job. He considered that he had not been successful in obtaining positions because of his Christian background.

In the late 1980s, a Muslim friend of his, M, began to introduce him to the activities of the recently established political party, the Mohajir Qaumi Movement (MQM). After attending several meetings and rallies with M during 1989, the appellant took up the offer made by M to formally join the MQM party. The appellant said that he had explained his unemployment problem to M on several occasions and M suggested to him that by joining the party and making a commitment to its ideals, he would be able to obtain good employment.

The appellant said that he knew his friend, M, was an influential member of the MQM in 1989 and that he worked as a bodyguard for the MQM leadership of Altaf Hussein.

In January 1990, the appellant went to the headquarters of the MQM, known as "09", with M. There he was introduced to the leading people in the MQM. M vouched for him at the headquarters. After a few days, the appellant said he was offered a job as a bodyguard to S, one of the senior members of the MQM hierarchy.

The appellant explained that, although he was a Christian, he could be considered as a Mohajir, as his family had come from India to Pakistan, and his father's relatives were Muslim, although his father had converted to Roman Catholicism and become a Christian after marrying his mother, who was from a Christian family. The appellant explained that some nine million of the 12 million people in

Karachi were Mohajirs. At the height of his power, he considered that Altaf Hussein, the founder and leader of the MQM, was so powerful that prime ministers of Pakistan used to come to visit him, rather than the other way around.

He accepted the job as a bodyguard and was involved thereafter, along with some 15 to 20 other guards, in providing protection to S and also, together with other bodyguards, going to organise security at the venues where rallies or speeches by MQM senior party officials were to be made. He was given no training but, as he was well-built, and a good friend of M, he considered that there was nothing unusual in him being offered the position, although he was the only Christian in the bodyguards that he knew of. He was paid, irregularly, quite good money. He was given a pistol, and offered the use of a rifle which he did not take up. He was given brief training in the use of the pistol, and carried it with him as a guard, although he did not use it on any occasion.

After joining the MQM, he soon came to realise that within the MQM, if any person made a wrong move, they would soon be exterminated. He stated:

> "If you disrupt MQM or any of its rallies you will be taken away and killed or taken to the torture unit."

The appellant told us that at the time he joined the MQM, he knew that they were a violent group, and that M was a bodyguard and influential member. However, he did not know the details of their torture units. He took the job because he was desperate to be employed, although he claimed he did not want to be involved in violence.

In addition to his duties, providing security for S and at meetings and rallies of the MQM, the appellant said that from time to time, he was taken off in a van with other guards to pick up people whom MQM senior officials considered were not giving appropriate support or were acting against MQM principles. They would pick up these people and take them back to 09 headquarters, where the detained person would be taken to the torture cell and severely beaten and often tortured. Over the period 1990 to 1991, when he was involved with the MQM, he took part in these detentions and torture sessions on some four or five occasions. He was unsure of the total number of people he had picked up. He reported that there were four torture cells that he knew of and, at these, he assisted in tying people up, kicking, slapping and generally abusing the people detained. Other guards burned the detained people with cigarettes and hung them upside down and, on

occasions, pushed a heated iron bar against them, burning their skin in a horrible manner. The detained people were not questioned very much, but just beaten, tortured and told that they had broken the code. He said that many of the guards took out their frustrations on these people and treated them as a "punching bag". He considered "too much" was done to these people, especially with the iron bar.

When asked why he did not immediately leave the organisation, when he found out about their methods, the appellant said he simply could not think of it. When he did speak of the torture cells on some occasions, with other bodyguards, they said to him that the only way out of the MQM was by death. The appellant was also asked why he had not complained to M, if the activities had been far more violent and horrific than he had anticipated. The appellant replied that he had not complained to M, as M had helped him to get the job and one year later, in January 1991, had given him further help in arranging a position at the Hotel F.

The appellant explained that he obtained the job at Hotel F after one year, and that M had explained to him that it was necessary "to show loyalty to MQM" before a good job could be offered to him. He said this took a year and then he was offered the job at the hotel. The appellant considered that after one year he had proved his loyalty and that M had been able to get his superiors to arrange a job for the appellant. He told us that he did not expect originally to get the job as a bodyguard, but he really wanted the hotel job and so had accepted the bodyguard position and it was only after joining that he found out the depth of the violence that was carried on within the party.

He told us that he had not discussed the depth of violence that went on with his family, but his mother had wanted him to leave. He had not discussed the matter with his elder brother, H. However, the family became aware of his activities at a later time when the MQM abused the family and placed H under enormous stress when they pointed a gun at his head. This had taken place in December 1991, and it was after that H travelled to New Zealand to undertake his course.

While he was working for Hotel F, he took considerable time off to work for the MQM as and when required. Indeed, from October to December 1991, he did not work at the hotel although his reference stated that he did. In October 1991, he was told by MQM leaders that he was to go to S, to help a Mohajir group of people there who were having problems with Sindh nationalists. He travelled to S along with approximately 100 other MQM supporters. After establishing themselves in S

over a period of two or three days, they then organised a procession in the city, to show their strength. The procession quickly turned violent and a number of the MQM supporters started to ransack Sindh houses and to set fire to them. The appellant was given a torch and told to set fire to a house. He refused, as he considered there might have been children or defenceless people in the home. As a result of this, he was beaten, kicked and punched by other MQM people in a violent manner and was rendered unconscious.

The next he knew, he said, he woke up in the corridor of a community hospital in S with two MQM people guarding him. He was able to stay at that hospital for one month while he recuperated, but a guard from Karachi kept a watch on him at all times. As a result of the beating, he said, his tooth was broken, he had cuts to his face and nose and his body ached all over. It was a government hospital and he was not well treated but eventually was looked after by the medical people within the hospital.

After delaying his return to Karachi as long as possible, he was taken back to Karachi by two of the bodyguards. They took him straight to the MQM headquarters and into the torture cells. For one week after his arrival nothing happened, and M tried to get him released. However, unfortunately, after that week, he was told “the time is up”. He was then tied up and kicked, slapped and raped by the bodyguards who were guarding the torture cells. He said the sexual abuse happened on two occasions. He said he was also burned on his right foot with the iron bar. Because of his weak state, he was unable to retaliate. The kicking and abuse continued for some two weeks, when eventually M was able to obtain his release, after asking a personal favour from the top people in MQM. M came to the torture cells and took him out and back to his family home. His family had vaguely known where he was but had no details. His mother, an ex-naval nurse, then nursed him back to good health over a period of approximately one month.

During that month, the appellant had a number of discussions with M, who told him he was planning to leave the MQM at an early date. The time that the appellant was staying at home recuperating was December 1991 and early January 1992.

In January 1992, M rang him and told him that they would soon be leaving. He was told that he should go away to another city. On 9 January 1992, another friend of his from the MQM, S, took him by train to L in another province of

Pakistan. At this time, many MQM members were leaving Karachi and the MQM Haqiqi faction was being formed as a split-off from the original MQM group led by Altaf Hussein. M and some of the appellant's other friends joined the Haqiqi group.

The appellant and S stayed in L for one month, trying to find work. This proved to be difficult. Because of the appellant's language, accent and Christian background, he considered himself to be unpopular with the local people in L. He and S stayed in cheap accommodation and, after approximately one month there, S said he had decided to return to Karachi. As the appellant did not wish to remain alone in L, he returned to Karachi with S and went to stay at the home of one of S's uncles. He and S then adopted disguises and grew beards. They considered that they would confuse the MQM(A) and its supporters by returning to Karachi when it was expected that the supporters of the Haqiqi group who were trying to splinter off from the MQM, would have gone out of the city. He said that it was about this time that the MQM raided his family home, abused his mother and sister, and threatened his brother.

The appellant stated that he lived with S and his uncle for some months without problems and, during this time, undertook the hotel front office training course between March 1992 and July 1992. One day in early July, however, before the actual completion of the hotel course, the appellant and S were in a small restaurant when the appellant noticed three or four people looking at them and suddenly one of this group fired a shot towards them. The bullet went past the appellant's face and he and S immediately ran away from the restaurant into a nearby compound of buildings. The appellant said he thought the attack was from either MQM or possibly PPP supporters who had recognised him.

Unnerved by the attack, the appellant and S remained at the uncle's home for two or three days and then returned to L. Over the following five months, the appellant said he moved around between L, R, M and I, cities well away from the Sindh province.

During this time, he said he telephoned his own uncle on a number of occasions to tell him where he was and to request money to be sent to him. It was also during this time that his uncle and other members of his family arranged for his student visa to travel to New Zealand. During September to December 1992, he signed a number of papers related to his visa application. He stated that his uncle sent

these to him for completion and signing before they were sent off with the visa application.

When asked how he could have received his final certificate from the hotel course if he did not sit the final examination, the appellant explained that he had almost completed the four-month course at the time that he went to L the second time, and many of the examinations had been sat from time to time during the period of the course. Therefore, it was not necessary for him to sit the final examination.

During the period July to December 1992, the appellant became sick of running away and wanted to return to Karachi and give himself up. In addition to his own problems, the family were being harassed by PPP and MQM supporters. However, his uncle counselled him against returning and proceeded with the obtaining of the student visa.

In the five month period in 1992, he said he found temporary work in various places and stayed in accommodation as a type of "backpacker". He told the Authority that he never visited Karachi during all of that time, until he returned in early January for a few days before leaving for New Zealand on 9 January 1993.

Since the appellant has been in New Zealand, he had received some correspondence from his mother, who had advised him not to return to Pakistan. As stated, he produced a further letter from his mother, dated January 1997. That letter stated:

> "The life over here is horrible. Since the last two years. I have not seen M. No news about him. His own family does not know his whereabouts or whether he is alive or not. I get telephone calls asking for you. Sometimes they come home. I keep the doors and windows closed. People enquire from neighbours, they all say we haven't seen B (the appellant) for 2-3 years. We know nothing. I will ask someone to post this letter from far away PO. I hope you are OK. Please never ever come here. The government is changing but the situation is same. Don't come here. You will be killed. Please B God will help you. Lots of love and kisses to twins. They must be walking by now." (sic)

(The reference to the twins refers to twin children the appellant fathered to a woman in T (New Zealand) during his time there).

The appellant also produced a letter from his friend, AK, who the appellant explained, was an MQM member who had been based at their headquarters when they had both been working for the organisation. AK was the man who made up the duty rosters and had also been a bodyguard. The Authority noted that the

date shown at the bottom of the letter - 15/11/96 - had quite clearly been written with a different pen from the original script of the letter which was written in Urdu. Another date had been originally in the letter but this had been obliterated so that it was not possible to show the actual original date.

This letter reported that the writer had been unable to visit his home for three years as "boys from the party still visit my home, but due to the abnormal situation I keep on hiding myself in different parts of the country". It goes on to state:

> "The bad news is that two of our friends, S and I have been killed. You, me and some of our friends have also been falsely accused by the police in many cases. No-one knows what will happen. It is good that you are not in the country and you'd better not return because the situation is very bad and unstable.
>
> I met your brother. He said that he was also taken by the MQM people and was beaten quite badly. And they were enquiring about you. Your brother also said they had accused him of being affiliated with anti-MQM activities, and they threatened that they would kill him."

The appellant did not produce the original envelope in which the letter had been sent. He said it was the only letter he had received from AK and presumed it had been sent because AK had met with the appellant's brother, H, and through him, had obtained the appellant's address. He said S, referred to in the letter, was the same person with whom he had travelled to L, and both S and I were friends of his from his time in the MQM.

The appellant was then questioned closely by the Authority about the date he had joined the MQM, his visit to S, the dates that he had worked for the Hotel F and also when he had had his course in hotel training, because there had been different dates presented by him in his original application, his interviews with the RSB and with the Authority. He explained that he sometimes became confused with dates and would suffer loss of memory, particularly since his time in the torture cell. He wished to confirm to the Authority that he had been in the torture cell in 1991 not 1992, that he had been employed by the Hotel F for all of 1991, despite the fact that from October 1991 when he went to S, until January 1992, when he went to L for the first time, he had not actually gone to work at the hotel. He was able to keep the employment because he was with the MQM and the owner therefore had "no choice" but to keep on employing him. Thus, while the certificate on the file stated that he had worked for one year, in reality, it was only eight months.

The Authority, noting the submissions of his counsel on the question of relocation, which stated:

> "It is admitted that, outside the Sindh district of Pakistan, he is not likely to suffer merely for being associated with either of the MQM factions. It has recently been reported in an Australian Refugee Review Tribunal case (RRT reference :V 96/04741 (25 October 1996)) that:
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> "It is apparent that there continues to be a risk of harm of, in particular, prominent MQM members in Karachi. The situation elsewhere in Pakistan is considerably more settled and previous concerns that violence directed at MQM workers in Karachi may become rife in other major centres, has not been borne out.""

The Authority therefore asked the appellant whether he could relocate to other areas of Pakistan outside of Karachi or the Sindh province. He replied to this stating that if he had been able to get a 9 to 5 job without being "hassled" in other parts of Pakistan, he would not have come to New Zealand. He considered that he would be hassled because he was a Christian and a Mohajir and would suffer discrimination as a result. His Christian background and accent readily identified him. He also said:

> "I would not be spared if I went to other parts of Pakistan. I am not different to my friends in the Haqiqi like S and I. I cannot say what it would be if I was in Karachi or outside in other provinces."

The appellant was also asked whether he considered the police had any interest in him in Pakistan. In response to this, he said that when the MQM were in power, the Karachi police worked for them but the police were mainly not from the Mohajir thus, if they found him, as an ex-MQM bodyguard, they would be interested in him and his Christian background heightened the risk.

When asked how he was able to obtain clear police certificates on two occasions, the appellant said that his uncle had obtained these for him by arrangements with the uncle's employer.

Mr Laurent then asked the appellant when he left Karachi the second time, going to L and then other parts of Pakistan, what had motivated him to move about. The appellant replied that it was difficult for him as he had no family, was a Christian and had difficulty finding a job. Thus, he moved about looking for employment. He said the further north he went in Pakistan, the more poorly educated people were; they did not like Christians, and thus tended to discriminate against him. He said it was difficult for him to get jobs because of his accent and Christian background, and even after he had obtained a job, he may then lose it.

He was also asked by counsel how he felt about his background as an MQM bodyguard involved in the activities in which he had taken part. He said that he was relaxed now but had been disturbed and used to lie awake at night. He said he had been well brought up by his family, but was the "black sheep of the family".

In his final submissions, the appellant's counsel addressed credibility issues and submitted the appellant had a genuine problem in remembering actual dates, but was now satisfied that accuracy had been achieved. He also submitted that the steps taken by the appellant in joining the MQM, when he had no political background, but knew of their violent inclinations, could be seen as unreasonable, but he submitted that this was a case where the appellant had made a decision he may later have regretted and that was a mistake, but nothing else should be read into it. The appellant did not have the intention of getting involved in violent terrorist activities but, having entered, was powerless to remove himself, and it was not until a lot of people left, when the Haqiqi group was set up, that the appellant was able to extricate himself.

In respect of relocation, counsel stated that this was a most difficult issue to address in this case, and that there was little information showing a distinct danger outside the Sindh province. He submitted that there was ample evidence, in several human rights reports relating to Pakistan, of police brutality and maltreatment of suspects and extra-judicial killings. If the appellant's full story ever came out, even in another province, the appellant could be exposed to this risk. He also submitted that in respect of the appellant's Christian background, there was evidence of discrimination against Christians in several parts of Pakistan and that non-Muslims faced discrimination and often the blasphemy laws were used as a pretext to persecute Christians. Finally, he submitted that it would be an affront to the personal dignity of the appellant if he was forced to relocate, particularly as he was now a person who wished to disassociate himself from all political activities.

COUNTRY INFORMATION

As it is essential to establish an understanding of the appellant's case, detailed background of the MQM is set out at this point in the decision.

MOHAJIR QAUMI MOVEMENT (MQM)

Some details of this party, apparently founded in 1984, are set out in the Authority's decision in Refugee Appeal No 2420/95 Re FZ (24 May 1996). That decision refers to a British Foreign and Commonwealth Office report "Pakistan: Country Brief for Adjudicators (Compiled March 1995)" at 9 to 11.

Several responses to information requests, together with their source documentation, from the Documentation Information and Research Branch of the Immigration and Refugee Board, Ottawa, Canada, give a pertinent background to this organisation over the period 1989 to 1996. Because of the appellant's involvement with this party, the Authority sets these out in detail below:

> "Response to Information Request
> Date: July 19, 1990
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> During the 1970s, Mohajir students, among whom were Altaf Hussein, Imran Farooq and Farooq Sattar, founded the Mohajir Student Federation (MSF) to defend the interest of the Mohajirs against the rise of Sindhi nationalism (Malik, p46). Hussein and his colleagues also founded, in 1978, the All-Pakistan Mohajir Student Organisation (APMSO) at the Karachi University (McDonald, p14).
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> The Mohajir Qaumi Movement (MQM) was officially created in March 1984 (Malik, p46; Amin, p280; Ahmed), although one source indicates that the movement started in 1986, the date from which the MQM's activities began to flourish. (Degenhardt, p265). The MQM stemmed from a group of Karachi University students and started to predominate on the political scene of urban Sindh after a large gathering on the Karachi campus in August 1986 (Lamb). MQM headquarters are located in a Mohajir district of Karachi and the movement is led since its creation by Altaf Hussein (Far East, p 850). The MQM's President is Azim Ahmad Tariq and its Secretary General Imran Farooq (Far East, p 850)."

> "Response to Information Request
> Date: 28 February 1990
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> The Mohajir Qaumi Movement (MQM) represents the ethnic interest of Mohajirs in Pakistan's parliament. It seeks the creation of a "fifth nationality" comprised of Mohajirs. It also wants to abolish the quota system, under which Mohajirs have been eased out of civil service jobs. The system was implemented so that the demographic make up of the bureaucracy would correspond more closely with that of the country as a whole. (Lamb, "Kalashnikov rule"). According to a report in the Far Eastern Economic Review, MQM's demands for increased ethnic rights have been "frequently backed with violence". (Salamat Ali, "Polarised politics", Far Eastern Economic Review, 21 September 1989, p20).

> "Response to Information Request
> Date: 27 February 1990
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> Reports on the situation in Pakistan indicate that the Mohajirs have been engaged in the inter-ethnic violence which was engulfed all major ethnic groups in the country. With reference to a Mohajir army, please refer to the article by Barbara Crossette, "Pakistani Minority Become Political Powerhouse", (13 November 1988, The New York Times), which alludes to the Mohajir Qaumi Movement's "fortified

headquarters" in Karachi. Although Mohajirs are armed, there is no mention as to whether this is a formal "army" or "militia".

The inter-ethnic tensions in Karachi have resulted in mob violence against various groups, including Mohajirs. Another article, by Hafeez Siddiqui, ("Pakistan Rioters Burn Cars, Shops Death Toll Mounts to 170", Reuters, 1 October 1988), refers to an incident where hundreds of Mohajirs "took to the streets in poorer parts of Karachi and attacked police" in response to news of a massacre of at least 145 fellow Mohajirs in Hyderabad. It should be noted that violent actions by individual Mohajirs are not necessarily connected to the Mohajir Qaumi Movement. However, in "Pakistan Unity on Kashmir Shaken by Karachi Riot Deaths", (Malcolm David, Reuters, 11 February 1990)the author alleges that "scores of people were shot and wounded as troops and police battled activities of the Mohajir Nationalist Movement (MQM), some of them armed with Kalashnikov assault rifles"."

"Response to Information Request
Date: December 18, 1992

Soon after the replacement of the Sindh chief minister in March 1992, the leader of the Mohajir Qaumi Mahaz's (MQM) labour union, who was a prominent member of the ruling Islamic Democratic Alliance (IDA), was killed in Karachi (UPI 21 Mar. 1992).

Operation "Blue Fox", whose objective was to round up "bandits and terrorists" in Sindh, started in June 1992 when MQM factions began fighting with one another (FEER 2 July 1992, 23). The army was sent to several cities including Karachi and Hyderabad, and to the countryside in order to re-establish law and order (Asiaweek 5 June 1992). The army proceeded to dismantle the MQM and arrested members of political parties as well (FEER 6 Aug. 1992, 18). Protests and public meetings were officially banned in Sindh (AFP 29 July 1992). The government had previously been supportive of MQM's activities in Sindh in order to counter the influence of the Pakistan People's Party (PPP) and of Sindhi nationalist parties (Asiaweek 5 June 1992); 28 Aug. 1992; FEER 2 July 1992, 23). Following the army intervention in Sindh, the MQM left the IDA and its main leader, Altaf Hussein, has been in self-imposed exile in London (FEER 6 Aug. 1992, 18; AFP 29 July 1992). Although the army has promised to be impartial in the conflict between the MQM and other groups in Sindh, it has reportedly crushed the Mohajir movement and revealed torture cells used by the Mohajirs against their opponents (The Economist 3 July 1992; FEER 6 Aug. 1992, 18). The president of Pakistan has granted the army a personal immunity from civil and criminal liability during the operation in Sindh (FEER 6 Aug. 1992, 19). The MQM is currently on uncertain grounds, mostly due to the fact that it disassociated itself from the government and that it is divided by an internal power struggle (Carnegie Endowment 17 Nov. 1992). The Pakistani minister of interior, Chaudhary Shujet Hussein, has categorically stated, on 6 October 1992, that the army would not withdraw from Sindh before law and order was fully restored in the province (BBC Summary 9 Oct. 1992). The MQM took over the municipal governments of Karachi and Hyderabad in the late 1980s (FEER 6 Aug. 1992, 18). In Karachi, the police was therefore controlled by the Mohajirs, and policemen were mostly Mohajirs (Department of Political Science, Wake Forest University 10 Nov. 1992). However, since the army intervention in Sindh, the municipal corporations have not been functioning, and elected representatives are barred from effective control of the cities (FEER 17 Nov, 1992). The police forces in Karachi and Hyderabad have also undergone changes in the government "Operation Clean-up" (The Economist 3 July 1993). A splinter group, the MQM Haqiqi, has developed in 1992 within the MQM and has distanced itself form the militant views of Altaf Hussein (FEER 6 Aug. 1992, 19)."

"Response to Information Request
Date: April 20, 1993

According to sources available to the DIRB in Ottawa, the Haqiqi group is a pro-government breakaway faction of the Mohajir Qaumi Movement (MQM) (Reuters 10 Sept. 1992). The MQM is an urban party run by Urdu-speaking Indian who migrated to Pakistan following the partition of British India (Far Eastern Economic Review 6 Aug. 1992, 18). Dissension appeared within the MQM when a personality cult developed around its founding leader Altaf Hussein and the organisation began to exert coercion on the Mohajir business community (Ibid.). On 19 June 1992, fighting broke out between the two factions in Karachi, and following army intervention, MQM leaders went underground (Ibid.)."

"Response to Information Request
Date: March 3, 1994

Amnesty International reports that in November 1992 and March 1993, 19 MQM leaders, including Altaf Hussein and Imran Farooq, were declared proclaimed offenders after several people field complaints against MQM leaders of murder, kidnappings and torture of party dissidents or political opponents (Dec. 1993, 40). These complaints followed the discovery of alleged MQM torture centres (Ibid.). the name and the rank of these MQM leaders were not given in the report. Information on the "Unit in Charge" could not be found among the sources available it the DIRB in Ottawa."

"Response to Information Request
Date: 29 September, 1994

The most comprehensive reports on the MQM can be found on the attached April and May 1994 The Herald articles on recent clashes between the police and MQM activities in Karachi. According to The Herald and several other media reports, at least 14 members of the MQM (Altaf) and (Haqiqi) activities were killed dur9gn the clashes, and several more were arrested by the police (AP 27 May 1994; BBC Summary 6 May 1994; The Herald June 1994, 28; Keesing's May 1994, 4009; also see Radio Pakistan network 5 May 1994). A 27 May 1994 Associated Press report states that arrested MQM supporters were being held in prison, but few have been brought before a court. These arrests added to the mass arrests of MQM supporters and their relatives since 16 March 1994, as reported by Amnesty International (AI) (5 Apr. 1994)."

"Response to Information Request
Date: 11 January, 1996

According to a 7 March 1994 AFP report, the MQM emerged as the second largest group in the PPP-dominated Sindh Assembly in the October 1993 elections. A 14 February 1995 AFP report states that the MQM has demanded "powersharing" with the PPP. Another AFP report states that the MQM and the Pakistani government have held seven rounds of negotiations since July 1995 to discuss the MQM demands (10 Sept. 1995). According to the 14 February 1995 AFP report, "the top leadership of the MQM has been in jail since last May under assorted charges of terrorism, arson and rioting". Yet another AFP report maintains that in September 1995 the MQM boycotted the Sindh Provincial Assembly session demanding the termination of the alleged "excesses" against Mohajir women and the release of MQM jailed activists (10 Sept. 1995)."

(A full bibliography of source material provided).

The Research Directorate of the Canadian IRB published a lengthy paper on the MQM "Pakistan, the Mohajir Qaumi Movement (MQM) in Karachi January 1995 - April 1996" (November 1996). This publication repeats a considerable amount of the information disclosed above but updates the situation, outlining the activities of both the MQM(A) and the MQM(H) factions. This report (pages 4 and 5) discloses that there were several escalations of violence and killings between government security forces (controlled by the PPP) and violent clashes between the MQM factions during 1995, and at times "government control effectively collapsed in large sections of Karachi's central, east and west districts". Literally hundreds of people have been killed in this violence and "vendetta killings between the two MQM factions were common place". The report also states that although the MQM was organisationally "in a shambles" by the end of Operation Clean-up, sources

> " … indicate that its mass support among Mohajirs has grown tremendously and army excesses committed in Operation Clean-up have alienated Karachiites, strengthened the hands of extremists on all sides, and precluding the possibility of a more moderate leadership emerging within the MQM."

Amnesty International sources quoted within the report state that there have been disappearances and incommunicado detentions, particularly of relatively high profile MQM members and that often, such people are released after payment of considerable bribes to the police. The sources quoted in the report also indicate that "many women have reported being harassed, threatened and abused during household searches" in areas of Karachi and

> " … several sources indicate that when MQM activists cannot be found, relatives and friends of family members are sometimes arrested to pressure suspects to surrender."

Amnesty International is again quoted in the report (page 12) that

> " … although incidents of torture and extortion involving political activists are reported frequently in Karachi, the number of such incidents involving MQM suspects and their families suggests police believe they can do so with impunity. Some detainees have reportedly died from injuries inflicted while in police custody, even after the family has agreed to pay the required amount."

There are also reports of several dozen people dying from torture in police custody and sometimes these are covered up as faked encounter killings.

At page 19 of the Report, Human Rights abuses by the MQM are reported:

> "Amnesty International states that "human rights monitors and knowledgeable observers in Karachi indicate that MQM members have used violence to further their political ends"."

It also reports violence against party dissidents and political opponents. There are several reports of the running battle between the MQM(A) and Haqiqis. Again, the reports of MQM using torture cells against political opponents and party dissidents is reported. At pages 25 and 26, abuses against ordinary citizens and Mohajirs are set out, including the practice of collecting bhatta (protection money), which is then used to arm the militias and that:

> " … in the late 1980s and early 1990s, when the MQM and some PPP activists [came to] the forefront of this practice. The practice became especially prevalent in central and east districts [of Karachi] where it was considered a routine affair with the party goondas (muscle-men) approaching people at their residences. … While bhatta is collected by both MQM factions in Karachi … the Haqiqi faction has acquired notoriety for the practice."

Also on page 26:

> "Parts of Karachi reportedly "in a state of complete paralysis" with residents unable to return home after sundown because heavy fighting between the MQM(A) and MQM(H) and between both factions and the police. (Reports from 1994, 1995 and 1996)."

State response to the violence in Karachi is set out between pages 27 and 33 of the report. While this reports a very broad mandate being given to the Ministry of Law, Justice and Parliamentary Affairs, reporting directly to the Prime Minister, an Amnesty International report is quoted as stating it can do little to correct chronic abuses (page 27). A quote from Human Rights Watch - 1995 states:

> "Human rights organisations indicate that the government demonstrated a lack of resolve in addressing the Karachi situation and enforcing the rule of law in 1995."

The internal flight alternative (relocation) option is reviewed in the report at pages 33 and 34. While this states that the availability to Karachi residents is limited:

> "Evidence of any administrative or legal impediments to changing a place of residence or employment could not be found amongst the sources consulted.
>
> … According to Dr Anwar Syeed of the Department of Political Science at the University of Massachusetts, individuals concerned for their safety would be best to flee to another province rather than to outlying areas of the Sindh province. Dr Syeec states that many Mohajirs have escaped the situation in Karachi by fleeing to northern Pakistan. Another source indicates that the ID card counterfeiting rackets flourish in Pakistan, and that people who obtain such cards, which can be purchased for Rs500 to Rs2,000, can move to "various parts of the country under a new identity". This information could not be corroborated at the time of writing."

The restrictions on relocation set out in the report, all relate to movement within the city of Karachi rather than to other provinces.

For the sake of completion, it should be noted that the PPP (Benazir Bhutto) party was removed from office in late 1996 and, in the elections of early February 1997, the Muslim League Party of Nawaz Sharif has been returned to power in Pakistan, with a substantial majority. A report from the Dawn newspaper (February 1997) states that the PML obtained 254 out of a total number of 439 seats. The PPP obtained only 40 seats, and the MQM 27 seats. No split between the MQM(A) and MQM(H) was available.

THE ISSUES

The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly 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, is unable or, owing to such fear, is unwilling to return to it."

In terms of Refugee Appeal No. 70074/96 Re ELLM (17 September 1996), the principal issues are:

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?

2. If the answer is yes, is there a Convention reason for that persecution?

   Because the issue of relocation arises in this case, the decision of this Authority in Refugee Appeal No 523/92 Re RS (17 March 1995) requires two additional issues to be addressed:

   (a) Can the appellant genuinely access domestic protection which is meaningful?

(b) Is it reasonable, in all the circumstances, to expect the appellant to relocate elsewhere in the country of nationality?

3. As an over-riding additional issue in this case, is the appellant excluded from the protection of the Convention under the provisions of Article 1F?

ASSESSMENT OF THE APPELLANT'S CASE

In order to establish the facts upon which answers to the above issues can be concluded, it is firstly necessary to examine the credibility of the appellant in the presentation of his case. Items which concerned the Authority in the assessment of this appellant's credibility were:

1. The fact that the appellant did not lodge his refugee status application until he had been in New Zealand for two years and five months and, in his appeal to the Removal Review Authority, of January 1995, he merely made a very general statement that life was difficult for Christians in Karachi and that there was serious violence between Muslim factions, making life not only difficult, but dangerous for Christians. He made no reference at all to his prior involvement with the MQM and the complex case he presented to the Authority, based on his life over the period from 1989 to 1993, when he came to this country. The appellant's explanation for this has been consistent that, until he met with an Iranian refugee applicant in New Zealand in early 1995, he did not know of the ability to claim refugee status or its implications. Beyond this, the solicitor who advised him in T (NZ) in relation his RRA appeal, did not advise him of the ability to claim refugee status, but advised that he should present his RRA case primarily on the basis of wishing to continue his education in New Zealand and the problems of Christians in Karachi.

2. There were some inconsistencies in the dates upon which various events in the appellant's story took place between the original statement, his RSB interviews and this Authority. These inconsistencies were largely resolved during the course of the hearing before us and are now found by the Authority not to be significant enough to reject the totality of the appellant's case.

3. We find that the letter from his friend, AK, appears to have had the date altered in it. However, even if the correct date of this letter was at an earlier time, it is not considered to have a significant impact on the appellant's case. In particular, the Authority has no way of corroborating whether the appellant's friends, S and I, have been killed or otherwise. Country information in relation to conditions in Karachi, discussed below, certainly indicate a real chance of an ex-MQM bodyguard having a real risk of persecution from non-state agents (i.e. other factions of the MQM) in Karachi. As the letter does not state where or when the deaths took place, it accordingly adds or subtracts nothing to the appellant's story. The Authority, however, does not accept that this letter provides evidence that the appellant has been accused by the police on any specific charge. The statement made by AK in the letter is of a very general nature and the Authority considers it does not give sufficient evidence to conclude that the appellant has been charged by the police in Pakistan. There is simply no other evidence of the police having knowledge of the appellant's prior activities or involvement with the MQM. The Authority does not accept the appellant has any profile with the Pakistan police at all.

Noting the above concerns, and the appellant's explanations, the Authority has reached the conclusion that, with the one reservation, his case to us is presented as a credible one. While the Authority does not consider this appellant falls within the Inclusion Clause of the Convention, because of his ability to relocate to other parts of Pakistan, it is relevant to consider Issue 3, exclusion, early in this decision.

EXCLUSION CLAUSE

Before turning to the issues relating to the Inclusion Clause (Article 1A(2)), the Authority considers that this is a case where the appellant should be excluded from the protection of the Convention under the provisions of Article 1F(a) of the Refugee Convention.

Article 1F of the Refugee Convention provides:

> "The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:-
>
> (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations."

The Authority finds that this appellant committed crimes against humanity as defined in International Instruments. He was involved, directly and indirectly, in the torture of fellow citizens, such torture being classified as a crime against humanity under the provisions of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1984).

The relevant principles adopted by this Authority in the application of Article 1F(a) are set out in the Authority's decision in Refugee Appeal No 1248/93 re TP (31 July 1995) between pages 25 and 35.

The application of the Exclusion Clause is also discussed in Professor James Hathaway's Law of Refugee Status (1991) at page 216, where he sates:

> "A "crime against humanity" consists of fundamentally inhumane conduct, often grounded in political, racial, religious or other bias. Genocide, slavery, torture and apartheid are examples of crimes within this category."

In the Canadian decision Sivakumar v Canada (Minister of Employment and Immigration [1994] 1F.C.433 (FC:CA) at 443, Linden J. A. commented on the term "crimes against humanity" stating:

> "As one Canadian commentator, Joseph Rikhof, at page 30, has stated:
>
> "This requirement does not alone mean that a crime against humanity cannot be committed against one person, but in order to elevate a domestic crime such as murder or assault to the realm of international law, an additional element will have to be found. This element is that the person who has been victimised is a member of a group which has been targeted systematically and in a widespread manner for one of the crimes mentioned. …"
>
> Another historic requirement of a crime against humanity has been that it be committed against a country's own nationals. This is a feature that helped to distinguish a crime against humanity from a war crime in the past. (See the Flick trial, supra, as well as the Justice trial, supra). While I have some doubt about the continuing advisability of this requirement, in the light of the changing conditions of international conflict, writers still voice the view that they "are still generally accepted as essential thresholds to consider a crime worthy of attention by international law." (Rikhof, supra at page 31)."

The 1984 Convention Against Torture defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" for certain purposes, when "such pain or suffering is inflicted by or at the

instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity".

A recent paper from the UNHCR, Geneva "The Exclusion Clauses: Guidelines of their application" by Michael Petersen, UNHCR Geneva, (10 January 1997) included some very useful comments on the Exclusion Clauses and a number of possible crimes against humanity including torture. At 20 in the Petersen article, he states:

> "Torture deserves special mention as several recent recommendations for exclusion are based on acts of torture. The relevance of torture also lies in the fact that certain provisions of the Convention Against Torture are directly related to issues of exclusion. In particular, the UN Committee Against Torture, an international human rights treaty body established as a monitoring body under the Convention Against Torture, reinforces the principle of *non-refoulement*.
>
> The Convention Against Torture defines torture as (definition set out above), thus, to qualify as torture in the context of this Convention, an act must have been carried out with the involvement of a person acting in an official, rather than private capacity.
>
> It is evidence from the definition that acts of torture on a systematic scale against an indefinable group of persons, constitutes crimes against humanity under Article !F(a). Under other circumstances, acts of torture could constitute serious, non-political crimes under Article 1F(b).
>
> A considerable number of international Conventions proscribe torture, and the prohibition against torture is now also considered to be part of customary international law. Torture is described as a crime against humanity in the statutes of the International Criminal Tribunals for former Yugoslavia and for Rwanda, and in the draft Code of Offences of the ILC. The Convention Against Torture considers it a criminal offence which cannot be justified by any exceptional circumstances whatsoever."

The paper, at 21, also discussed defences to exclusion, including crimes committed under duress, self-defence, lack of knowledge of the nature of the actions, lack of responsibility due to, for example, immaturity or mental or physical handicap.

In respect of "superior orders", Petersen states:

> "A commonly invoked defence is that of "superior orders" or coercion from higher governmental authorities. However, it is an established principle of law that a defence of "superior orders" does not absolve individuals of blame. According to the Nuremberg principles,
>
> "The fact that an individual charged with a crime against the peace and security of mankind acted pursuant to an order of a government or a superior, does not relieve him of criminal responsibility under international law, provided a moral choice was, in fact, possible for him."

> Article 7(4) of the statute of the International Criminal Tribunal for former Yugoslavia provides "the fact that an accused person acted pursuant to an order of a government or of a superior, shall not relieve him of criminal responsibility"."

The Authority itself has held in its previous decision in Refugee Appeal No 1655/93 Re MSI (23 November 1995) at page 9, that the existence of the Convention against Torture, to which New Zealand is a signatory, lends support to the view that torture falls within the purview of Article 1F(a) as a crime against humanity, as defined in the International Instruments drawn up to make provision in respect of such crimes.

It should also be noted that in considering the applicability of Article 1F of the Refugee Convention, the Authority need not establish that the appellant in fact carried out crimes against humanity, but merely whether there are "serious reasons for considering" that he had done so. (See Refugee Appeal No 1248/93 Re TP (31 July 1995) at 32).

Noting the above jurisprudence and international commentators, we now consider the appellant's activities while he was a bodyguard in the MQM over the period 1990/1991.

This appellant entered the MQM after an association with his friend, M, whom he knew was a bodyguard and influential member of the MQM. From his informal association with the MQM during 1988 and 1989, the appellant said he had come to know of the violent nature of the MQM activities, even if he did not know specifically of their torture cells.

The Authority therefore considers that this appellant must have entered the MQM "with his eyes open". He also stated to us that he knew it was necessary for him to "show his loyalty". That proof of loyalty turned out to be acting as a bodyguard (in the country information apparently described as *goondas* or muscle-men) for the MQM full-time for the whole of 1990 and then quite regularly after that, when he obtained the hotel job in early 1991. The appellant states that he was compelled to remain within the MQM and would have been killed if he had attempted to leave once he had joined. This statement, which effectively raises a defence of "superior orders" or duress, the Authority does not considerable sustainable. As stated above, the defence of "superior orders" as defined in the Nuremberg principles, does not relieve an individual of criminal responsibility in international law where "a moral choice was in fact possible for him". This

appellant clearly had the moral choice of not joining the MQM in the first place, particularly when he had reasonable knowledge of their activities prior to joining.

In respect of coercion or duress, we consider this defence also is not available, because while he may have placed himself in grave or imminent peril by offering resistance or disobeying an instruction to take part in the torture sessions, he clearly as in a situation where he "contributed to the emergence of this peril" (see Draft 9 of the Draft Code of Offences of the ILC) by joining the MQM in the first place and subsequently by not complaining to M about the activities he was required to carry out and requesting that he should not have to be involved in such torture.

The claim that he was desperate to obtain employment and therefore joined the MQM to improve his chances of obtaining employment, the Authority considers, does not provide anywhere near a sufficient explanation for the appellant knowingly joining a violent terrorist organisation. Even after the appellant had joined, the appellant told us he had not attempted to reduce his role within the MQM or even to make a complaint to his powerful friend, M, who, it will be remembered, was later able to have him freed from the torture cells himself, reflecting that he was obviously a person of some infleuence within the MQM.

The country information set out above, also clearly indicates the violent activities and existence of the torture cells, and the bodyguards or *goondas* and their activities. The appellant's descriptions of the torture and maltreatment in which he and other bodyguards took part, at the 09 headquarters of the MQM are consistent with that country information.

The Authority reiterates, therefore, that there are serious reasons for considering that this appellant personally committed physical acts that amount to crimes against humanity and that, on the facts, there are serious reasons for considering he knew that crimes against humanity were committed by the MQM and he shared that organisation's purpose in committing those crimes. Complicity in those crimes is established by his informal, later formal, membership of the MQM and his role as a bodyguard within it.

INCLUSION CLAUSE

For the sake of completion, it is necessary for us to also consider the provisions of the Inclusion Clause and whether the appellant has a real chance of suffering persecution if he returns to Karachi.

Accepting his general credibility, and the country information referred to earlier in this decision, we have concluded that this appellant does have a real chance of suffering persecution from non-state agents if he returns to Karachi, or possibly even to other parts of the Sindh province. The Authority considers that in Karachi, the state (either the police or army) would not be able to offer protection to the appellant from persecution by non-state agents. Letters from his mother and friend, and country information, indicate a continuing conflict in various parts of the city of Karachi between MQM(A) and MQM(H) supporters and even, from time to time, supporters from the PPP. While it is noted in the February 1997 election in Pakistan, that the MQM has been able to secure a number of seats in the election and is obviously still a powerful force, this does not appear to eradicate the risk of continual sectional violence between the two arms of the MQM particularly.

The Authority does not find that there is a real chance that this appellant would be subjected to persecution from the police themselves. The generalised reference to possible police implications that is set out in the letter from AK is uncorroborated in any way. The appellant has had no involvement at all with the police in Pakistan prior to coming to New Zealand and there is no evidence of police interest in him in the letters from his mother. He has no profile with the police at all; his risk lies solely with the MQM(A) and remotely perhaps with PPP supporters.

The country information set out above indicates the authorities in Karachi can do little to correct chronic abuses and have "demonstrated a lack of resolve" to address the Karachi situation and enforce the rule of law. Indeed, as stated, "several sources indicate that Karachiites are so alienated and the police so hated and feared, that even common crimes are not reported". In this situation, the Authority considers there may be a remote chance of persecution at the hands of the police or other state authorities in Karachi, but this does not rise to the level of a real chance.

In respect of issue 2, we find that the appellant fears persecution should he return to Karachi for reasons of his past political associations with the MQM or imputed past political association with the MQM. The appellant was a member of the MQM and a strong supporter of that political movement over the period from 1990 until

late 1991. He was a known supporter of M and his group who defected to the MQM(H) in early 1992.

RELOCATION

In this case, however, it is now necessary to consider whether that real chance of persecution is localised to Karachi and possibly the Sindh province, or whether this appellant is able to obtain state protection in other parts of Pakistan.

From an examination of the country information discussed above, and the submissions presented by the appellant's counsel, we conclude that the appellant does have the ability to access domestic protection which is meaningful in other provinces of Pakistan away from Sindh. It is noted in the Canadian IRB November 1996 report (Ibid. 33 and 34) that information on the availability of the internal flight alternative for Karachi residents is limited but, with the exception of the occasional "externment order", citizens have the ability to enjoy freedom of movement within the country and impediments to changing place of residence or employment could not be found. The Authority also notes the quote from Dr Anwar Syeed reported at 34.

This appellant was able to successfully relocate to L and other cities on two occasions, and returned to Karachi of his own volition. The second time he remained for some five to six months in provinces outside Sindh. While he encountered discrimination and some difficulties in obtaining employment, he did not suffer any persecution. In these circumstances, the Authority considers that this appellant has the ability to relocate outside Karachi and Sindh province to genuinely obtain domestic protection in other provinces of Pakistan.

Finally, it needs to be determined whether it is reasonable, in all the circumstances, for the appellant to be expected to relocate. In this case, the Authority follows the guidelines set down in its previous decision in Refugee Appeal No 135/92 Re RS (18 June 1993). This appellant has a fear from non-state agents of persecution and, while his life as a Christian Mohajir may cause him some discrimination, there is no objective evidence upon which we can conclude that he would have a real chance of suffering persecution outside Sindh. The appellant has not suffered torture at the hands of the Pakistani state and there is no evidence of the MQM, either faction, seeking or having resources to find people who may have attempted to dissociate or leave the movement by going

outside of the Sindh province. Beyond this, this appellant was a reasonably low-level member of the MQM, some four years ago. The possibilities of him still being of interest at all to the MQM, outside of his home district, must be seen as remote.

As the appellant has the ability to relocate and it is reasonable to expect him to do so, he is not a refugee within the meaning of Article 1A(2) (Inclusion Clause) of the Refugee Convention.

CONCLUSION

1. The appellant is found by the Authority to have committed crimes against humanity and is therefore excluded from the protection of the Convention under Article 1F(a).

2. While the appellant has a well-founded fear of persecution from non-state agents of persecution in Karachi, we find that he has the ability to relocate to other provinces in Pakistan and it would be reasonable for him to undertake such relocation. He therefore is not a person who falls within the Inclusion Clause of the Convention.

As the appellant is not found to be a refugee within the meaning of the Convention, and is excluded from its protection, he is not a refugee. The appeal fails.

……..
Chairman