

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 73729

AT AUCKLAND

<u>Before:</u>	L Tremewan (Member)
<u>Counsel for the Appellant:</u>	S Bhardwaj
<u>Appearing for the NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	20 July 2004
<u>Date of Decision:</u>	5 August 2004

DECISION

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellant, a national of the Islamic Republic of Pakistan ("Pakistan"), of the Christian faith.

INTRODUCTION

[2] The appellant arrived in New Zealand on 16 October 1999. He applied for refugee status on 29 November 1999.

[3] The appellant was never interviewed by a refugee status officer of the RSB. For the record, it is noted that he was scheduled to be interviewed on 18 April 2002, but his ill health prevented this. According to medical evidence before the Authority, he has suffered from ongoing (specified) medical problems since his arrival in New Zealand. Whilst he filed a medical certificate to the RSB in support of an adjournment of his interview, the certificate (completed by a doctor who was not his usual Practitioner) was too brief and did not comply with the relevant procedural requirements.

[4] In the circumstances, a decision declining his application for refugee status was published on 18 April 2002. This was on the basis that, in the appellant's absence, no findings of credibility or fact could be made and it therefore could not be determined whether the appellant was a refugee. It is from that decision that he has appealed to the Authority.

THE APPELLANT'S CASE

[5] The following is a summary of the appellant's case as presented. It is followed by the Authority's credibility assessment.

Background

[6] The appellant is a widower aged in his early 50s, who was born in M, about six years after the partition of India. He was the eldest of three sons. The family is Roman Catholic and was the only Christian family in their particular area, the others being Muslim.

[7] The appellant has five children aged between approximately 14 years to 20 years, who remain in Pakistan. He retains some occasional contact with them by telephone. He understands that they live in straightened circumstances, working as servants in the homes of relatives, in exchange for their keep.

[8] His father and other brother have both died, in separate incidents, directly as a result of attacks on Christians, by Muslim extremists. The appellant also attributes the death of his wife (following his arrival in New Zealand) as being caused by the stress arising from the family's problems stemming from anti-Christian hostility. The appellant has an elderly mother living in M and a brother whose whereabouts is unknown.

The appellant's upbringing

[9] The appellant went to a school some four kilometres away from the family's home. There were no undue problems at school, although his father gave him a Muslim name as a "first name" when he started school, so as to give an appearance that the appellant was "the same as them". His father explained to

him in later years, that he had done that because he was “afraid of their circumstances”.

[10] It was however, quite obvious locally that the family was not Muslim. For example, they did not attend the mosque, as Christians they used slightly different greetings (and also gestures) than the Muslims, they celebrated Christian festivals and the men did not cover their heads on special holy days in the Muslim calendar (unlike even those Muslim men who usually had uncovered heads).

[11] On occasion local Muslims “dropped hints” that the family should convert to Islam. In later years, the appellant’s father – an “old resident” since 1947 - was invited to attend the Grand Mosque and told that arrangements could be made for him to be looked after and given a lot of publicity, and that others might follow his example. The appellant’s father, a proud man, declined any such invitations and declared that he wanted to “die a Christian”.

[12] In later years the appellant’s parents told him that they regretted their decision to move to Pakistan at the time of the partition, rather than remaining in India. Christians were very much in the minority in Pakistan - especially in their area - and were regarded as being of the lowest caste.

[13] On occasions, graffiti and posters were put up in the nearby city streets of M at night, saying *kafir* (“infidels”). These were targeted at the Shia’a as well as Christians.

[14] M has, the appellant estimated, a population of some 300-400,000 people. There was a Catholic Church about three kilometres away from their home, which the appellant’s parents, particularly his father, would attend. They would not, however take the children. Rather, it was thought safer and better for the children to go, several times yearly, on the 40 kilometre bus trip to Shantinagar¹ in Khanewal – an entirely Christian community of about 100 to 150 families - to worship there. The children were all confirmed into the Catholic faith there.

[15] Shantinagar was later burnt, in circumstances which will be shortly outlined.

¹ also referred to as Shanatinagar, Shanti Nagar and Shanati Nagar.

[16] In the mid-1970s the appellant married a maternal cousin from N and they went on to have their five children.

[17] In about 1980, the appellant set up a small dry-cleaning business not far from his home. Over the years he built the business up. By 1990 he was able to afford to buy the business premises – which he had been renting – and then expand the business.

The appellant's father's death

[18] In early April 1995, the appellant's father and about seven others were attacked whilst coming out of church at New M. The attackers were calling "What are you Christians doing in our country".

[19] The appellant received a message to go to the M City hospital, where his father had died of his injuries. The others had survived, but were badly injured.

[20] The appellant went to the police concerning his father's death. He was told to take his father's body away and that the police would "take action against those who need action taken against them". Four or five days later, the appellant revisited the police, enquiring as to the progress of their investigation. He was abused and told "you deserve this" and then told to go away. No one was ever held accountable for his father's death.

The appellant's brother's death

[21] About two years later, the appellant's brother was visiting friends at Shantinagar when, in early February 1997, the town was attacked and burnt down by Muslim extremists. A number of people were killed, including the appellant's brother. Many others were very seriously injured.

[22] The appellant explained that before that attack on the town, the extremists had accused one of the town's residents of defiling the Koran, by tearing it. They responded by attacking the town, whose residents then attacked a mosque in another nearby town, tearing down a wall. In revenge, the Muslim mob rioted in Shantinagar, setting the town alight and attacking the townspeople.

[23] Afterwards, government ministers apologised for the attack and reparation and compensation was paid. The appellant visited the town once after it was rebuilt. He was told by those with whom he spoke, that the government had “rehabilitated them” and given them compensation. Some extremists faced charges for the riot at Shantinagar but were released on bail and no further action was ever taken.

[24] The appellant added that although at the time, the ‘official’ figures of those who had died was only eight or nine, many more had actually died, both from being attacked or being trapped in burning buildings.

[25] The appellant stated that those responsible were Sunni extremists who were referred to as *Jamir-Dulba-e-Islam*. This was the “same group” which was always attacking Christians, often identified, he said, by their green caps. While only some people belonged to the group, many others in the community armed its members with information about, for example, individual Christians.

[26] The Authority notes here that it located country information concerning the Shantinagar incident, which set the appellant’s evidence in context.²

² The *Pakistan Annual Report 2002* (May 2003) published by Christian Solidarity Worldwide at p24 stated:

“Since the implementation of Shari’ah in 1991, non-Muslims have been facing escalating intolerance and hostility from Islamic fundamentalists. In 1997, the Christian village of Shanti Nagar in southern Punjab was attacked by a mob of 30,000 Islamic extremists. 1,500 homes were looted. 80% of the village was torched. Fourteen churches in nearby Khanewal were also destroyed. Often, as in the case of Shanti Nagar, the police are reluctant to offer protection or to investigate crimes associated with religious tension. The unwillingness of the government to act on behalf of non-Muslims further promotes an atmosphere of impunity”.

The UK Home Office *Country Report : Pakistan* (April 2004) (at 6.102) also referred to the Shantinagar incident, which it stated began when mosque speakers were used “to broadcast a rumour that Christians had desecrated pages of the Koran”. It also referred to a report that the federal government had later paid US \$735,000 for repairs and compensation.

According to a report from the Asian Human Rights Commission – *Human Rights Solidarity* (<http://www.ahrchk.net/hrsolid/mainfile.php/1997vol07no02/262/>), in the incident “at least 70 people were abducted, and most of these were young girls and women who were forced to spend one or two nights in the custody of the Muslim culprits. It is evident that they were raped, and a couple of them forcefully married to Muslims...”. It also reported that after the attack, local administration forced the town residents to close their hunger strike camp and remove black flags which they had set up to condemn the event as well as to list their demands. This report also referred to the attackers as having poisoned the town’s drinking wells.

The appellant's own troubles begin

[27] The appellant went to Shantinagar and, after identifying his brother's badly defaced body at the local police station, he brought it back home to his shop. Bringing his brother home, however, caused the appellant difficulty because on learning this, the extremists then associated the appellant with the events in Shantinagar (which, it will be recalled, had also involved an attack on a mosque).

[28] Shortly afterwards, a mob of about 40 to 60 men came to the appellant's shop, calling "your brother went there to fight" and that they should "destroy [the appellant's] family". Some, armed with weapons, then severely beat the appellant, causing him to lose consciousness. They also destroyed the shop and everything in it including the customers' garments.

[29] In the beating, the appellant suffered injuries which included lacerations to his left shoulder and scalp, one of the scalp wounds leaving a deep indentation. The Authority was shown the relevant scarring on the appellant's back and head.

[30] The appellant stated that he believes that a further motivation behind the beating and subsequent problems was the success of his business which had caused jealousy among some local shopkeepers.

[31] Three of these shopkeepers, IM, ID and MR, who had links to the extremists, had been clearly antagonistic towards the appellant. Of the other shopkeepers, no one could afford to show sympathy to the appellant.

[32] After the beating, the appellant received medical treatment. He did not approach the police about what had happened as he feared the consequences of doing so and in any event considered it pointless.

[33] Hoping that matters had become more settled, the appellant then decided to rebuild the shop (or otherwise lose all of his customers and livelihood). He rebuilt the shop, with considerable assistance from his family as he was still recuperating. After some time he returned to work. He paid compensation to those customers who had lost clothes in the attack on the shop.

The appellant is accused of dishonouring the Koran

[34] Life continued on for the next 16 months with no serious problems. There were, however, graffitied death threats written on the walls of the shop. On occasion the appellant was also verbally insulted and told to “sell up and move” but he did not consider that, even if he did so, life would be very different elsewhere. Instead he tried to get by, by being “apologetic” and his mother was often trying to appease those apparently offended by the family’s presence - if there was a problem she would “beg for mercy”.

[35] Then one day in early June 1998, when the appellant was sitting at his work, a police inspector and two constables arrived at the shop and arrested him, taking him to the local police station by jeep.

[36] He was told that informations had been registered against him for having dishonoured the Holy Koran and that three witnesses had specifically reported that, in their presence, he had “disrespected the Holy Koran and torn it”. When the appellant arrived at the station, he saw sitting there, the three local shopkeepers he knew, IM, ID and MR, who had clearly “framed him” on these charges.

[37] The appellant was told that another of the charges registered against him alleged that he had sent his brother to Shantinagar to preach against Islam and abuse Muslims.

[38] At no time was the appellant taken to court or given any documents.

[39] In custody, the appellant was badly beaten by a particular constable, who waited until the Inspector, a more kindly gentleman, had gone home. He was kicked with heavy boots and one of his toes was broken. He was stuck with a sharp weapon causing lacerations to one of his legs and a hand (relevant scars from which were shown to the Authority).

[40] The Inspector subsequently privately told the appellant that if his family wanted to ensure his safety, they should pay him Rs50,000 and then take the appellant abroad. The inspector told the family that otherwise, “those people will kill him”. The family arranged for the bribe to be paid and the appellant was

released – five days after his initial arrest. The inspector advised him however, that if he was later found he would be accused of having absconded.

[41] The appellant believes that if he had not been able to escape then he would have been killed “while being taken to court” (by those behind the false charges).

[42] The appellant, with assistance from family and friends, was taken to C, about 150 kilometres away, where he remained in hiding for six months, until arrangements were made through an agent for him to leave the country. The shop was sold in M, to meet travel costs.

Departure from Pakistan

[43] At the start of 1999, the appellant was taken by his agent via K, for a night, before departing Pakistan. The agent accompanied him to Malaysia where the appellant remained for about 10 months, before coming to New Zealand, via three other nations en route.

Events since arrival in New Zealand

[44] The appellant has suffered health problems in New Zealand, and also considers himself to be “disturbed”. He has not mixed with Pakistanis here. He has, however, been befriended by an Indian Sikh family, with whom he communicates in Punjabi. They take him on occasions to a church near to their home, where he can pray. Sometimes there have been services going on there, although the appellant cannot understand them. These friends also sometimes take him to their *gurudwara*.

[45] In October 2000, the appellant’s wife suddenly died, which the appellant attributes to the stress over all that had happened and her husband’s continued absence from Pakistan. Further, even after the appellant’s departure some extremists and also police personnel had come to the home (before it was later sold to meet expenses) enquiring as to the appellant’s whereabouts and making threats.

[46] The appellant and his children have maintained some degree of contact by telephone. They express their fears and concerns to him which he finds upsetting.

[47] The appellant does not know where his other brother is – his whereabouts has been unknown since the time when the appellant had charges registered against him. He believes that his brother left for his own safety.

[48] The appellant maintains that if he returned to Pakistan he would be immediately apprehended upon arrival. He has never held a legal Pakistani passport (the one he departed on having been obtained by his agent) and his arrival would be irregular. In any event, his details would reveal that he has unresolved informations, or charges, registered against him in relation to which he officially absconded and for which the authorities are still looking for him.

[49] The appellant asserts that Pakistan has increasingly sophisticated, computerised means of ascertaining information about individuals of interest. He fears that he would be incarcerated and would somehow be killed in connection with that situation. He particularly fears the extremists in this regard.

THE ISSUES

[50] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

"... owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

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

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

ASSESSMENT OF THE APPELLANT'S CASE

Appellant's credibility

[52] Before turning to the issues as framed, it is necessary for the Authority to assess the credibility of the appellant's account.

[53] The appellant's account was highly detailed, consistent and accorded with country information. He appeared as a despondent yet cooperative witness. The Authority has no reason to doubt the account, indeed, it was apparent that the appellant has been affected by his past experiences. The account is accepted in its entirety.

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

Country Information

[54] The general issues raised in this case have been previously considered by the Authority. In *Refugee Appeal No 70222* (5 February 1997) and *Refugee Appeal No 71955* (31 August 2000) the Authority recorded the growing religious intolerance in Pakistan and noted, for example, the well documented misuse of the blasphemy laws against the Christian and Ahmadi communities.

[55] Looking more generally, a recent report of the International Crisis Group (ICG) *Unfulfilled Promises: Pakistan's Failure to Tackle Extremism* (16 January 2004) described the ongoing existence, and even resurgence of, domestic extremism. This is evidently due to the Government's inaction - and even promotion of - such extremism:

"It has been more than two years since President and Chief of Army Staff Pervez Musharraf pledged to reform Pakistani society by reversing the trend of Islamist extremism...Two years on, however, the failure to deliver to any substantial degree on pledges to reform the madrasas and contain the growth of jihadi networks means that religious extremism in Pakistan continues to pose a threat to domestic, regional and international security....

...

President Musharraf had promised to crack down on terrorism and end the jihadi culture in Pakistan...While several Pakistani groups were banned, their leaders were not prosecuted...One extremist leader was allowed to run for parliament and

indeed won a seat though more than twenty charges of violent crimes were pending against him. Many secular politicians were disqualified for much less, including not having a higher education. Banned groups were allowed to continue under new identities with the same leadership. Many, though banned a second time in November 2003, continue to function unhindered and are likely to resurface under new names again.

...

Pakistan's laws on terrorism and extremist groups remain muddled and opaque. While the government claims to be cracking terrorism, it has taken almost no steps towards restricting the extremism that permeates parts of the society...

Musharraf's failure owes less to the difficulty of implementing reforms than to the military government's own unwillingness. Indeed, he is following the pattern of the country's previous military rulers in co-opting religious extremists to support his government's agenda and to neutralise his secular political opposition. Far from combating extremism, the military government has promoted it through its electoral policies and its failure to implement effective reform. Whatever measures have so far been taken against extremism have been largely cosmetic, to ease international pressure.

Government inaction has resulted in a resurgence of domestic extremism, including sectarian violence...

...The military-run government's failure to tackle the jihardi madrasa effectively is encouraging the growth of Islamic extremism, with all the attendant dangers to Pakistani stability and regional and international security."

[56] The ICG report *ibid*, noting the resurgence of banned Islamic terrorist groups, reported that the leaders of such groups have not been brought to trial and that their detained activists have been released under a general amnesty. A recent United States Department of State (DOS) *International Religious Freedom Report: Pakistan* (18 December 2003) also relevantly stated:

"In the autumn of 2001, the Government took steps to curb religious extremism and militancy, imposing some limits on freedom of association, religion, and movement and banning two of the country's groups known to incite sectarian violence and religious extremism...In January 2002, the Government banned five other groups...and arrested almost 3,000 party members. Most of those arrested were later released without being charged. During the period covered by the report, most of the banned parties re-named themselves, in order to subvert the ban and continue operations."

[57] There is ample information discussing the ongoing misuse of the blasphemy laws against religious minorities such as Christians. These provisions provide for such penalties as, for example, the death penalty or life imprisonment, for directly or indirectly defiling "the sacred name of the Holy Prophet Mohammed" or other prophets and holy books, under section 295 (c) of the Pakistani Penal Code (see for example, "Pakistan Insufficient protection of religious minorities" 15 May 2001; "Pakistani Christian sentenced to death" BBC News 18 July 2002). The DOS International Religious Freedom Report *ibid* detailed, *inter alia*,

“The Government fails in many respects to protect the rights of religious minorities. This is due both to public policy and to the Government’s unwillingness to take action against societal forces hostile to those who practice a different faith. The accretion of discriminatory religious legislation has fostered an atmosphere of religious intolerance, which contributes to acts of violence directed against minority Muslim groups, as well as against Christians, Hindus, and members of Muslim offshoot groups, such as Ahmadis and Zikris. The Government does not encourage sectarian violence and during the period covered by this report specifically condemned it; however, there were instances in which the Government failed to intervene in cases of societal violence directed at minority religious groups. The lack of an adequate government response contributed to an atmosphere of impunity for acts of violence and intimidation against religious minorities. Parties and groups with religious affiliations have been known to target minority groups.

Specific government policies that discriminate against religious minorities include the use of the “Hudood” Ordinances, which apply different standards of evidence to Muslims and non-Muslims and to men and women for alleged violations of Islamic law...and blasphemy laws...The number of cases filed under the blasphemy laws continued to be significant and more than 100 persons were detained for blasphemy offences as of the end of the period covered by this report. Several high profile blasphemy cases remained unresolved because the courts repeatedly postponed hearings and the Government did not press the courts to proceed. However the Lahore High Court overturned several lower court convictions, acquitting several blasphemy defendants, during the period covered by this report. Approximately 1,600 – 2,100 persons were imprisoned under the Hudood Ordinances as of the end of the period covered by this report.

Relations between different religious groups frequently were tense, acts of sectarian and religious violence continued, and scores of deaths were attributed to sectarian violence during the period covered by this report.

...

President Musharraf attempted to modify the blasphemy laws in April 2000. The attempted reform would have required complainants to register new blasphemy cases with the local deputy commissioners instead of with police officials, in an attempt to reduce the number of persons who are accused wrongly under the laws. Religious and sectarian groups mounted large-scale protests against the proposed change and some religious leaders stated that if the laws were changed, even just procedurally, persons would be justified in killing blasphemers themselves. In May 2000, in response to increasing pressure and threats, Musharraf abandoned the proposed reforms to the blasphemy laws.

When blasphemy and other religious cases are brought to court, extremists often pack the courtroom and make public threats against an acquittal. Judges and magistrates, seeking to avoid a confrontation with or violence from extremists, often continue trials indefinitely. As a result, those accused of blasphemy often face lengthy periods in jail and are burdened with increased legal costs and repeated court appearances. One example is the case of Younis Sheikh...Since September 2002, Sheikh’s appeal has been continuously postponed by the Lahore High Court because of pressure from religious groups.”

[58] An Amnesty International (AI) report on Pakistan in 2004, described a “sharp increase in sectarian violence” in the second half of 2003 and “human rights abuses against...religious minorities [which] continued to be ignored by the government”. Concerning the blasphemy laws, the report stated that these:

...continued to be abused to imprison people on grounds of religious belief, contributing to a climate in which religiously motivated violence flourished. President Musharraf had announced in 2001 that the law would be amended to make it less open to abuse. This move had been fiercely resisted by religious political parties and groups and the amendment was hastily shelved. The law continued to be abused to settle all kinds of personal scores.

[59] The AI report *ibid*, cites an example of a blasphemy case ³. Other publications, such as International Christian Concern: Pakistan (updated 15 June 2003) (<http://persecution.org/Countries/pakistan.html>) and AI report *Pakistan: Insufficient protection of religious minorities* (15 May 2001) list numerous alleged cases of individual attacks on Christians including those accused under the blasphemy law. It suggests that “Christians who are accused of blasphemy are often killed while awaiting trial”.

[60] Another report, “Pakistan’s Christians fear backlash” *The Christian Science Monitor* (8 April 2003) <http://www.csmonitir.com/2003/0408/p10s01-wosc.htm> described the position as:

“Human rights activists say the minority [Christian] community is already discriminated against and marginalized [most belonging to the scheduled caste, or untouchables] and faces persecution by Islamic militants under the controversial blasphemy law, which prescribes the death penalty to non-Muslims who insult the Koran, the Holy Prophet, or Islam as a religion, with “nonexistent” evidence and proof, activists claim.”

[61] The most recent annual Human Rights Watch Report for Pakistan (Human Rights Watch *Annual Report: Pakistan* 1 January 2004) also refers to what it terms the rise in sectarian violence and legal discrimination against, *inter alia*, religious minorities, and specifically stated:

Discrimination and persecution on grounds of religion continue and an increasing number of blasphemy cases continue to be registered.

[62] Generally, the central protagonists of such are non-state agents. The state agents, in reference to generalised acts of serious harm are, at best, ineffective in terms of providing protection (which has clearly created a sense of impunity, said to further fuel the situation). Where however the risk is of, for example, misuse of the blasphemy law, state actors (such as those who create and enforce the laws) are complicit in these acts. Either way, there is clearly, at the very least a lack of effective state protection in such situations.

³ The case cited was that of Mushtaq Zafar, who was fatally shot by unidentified gunmen while on the way home from the High Court, on bail, for a blasphemy case brought against him. It is asserted that the case was brought by neighbours to intimidate him after a dispute between them in which the neighbours had been responsible for killing one of Zafar’s friends.

[63] The AI report “Pakistan: Insufficient protection of religious minorities” *ibid*, makes some relevant comments in this regard:

“Both Ahmadis and Christians have been subjected to a wide range of abuses. A ready tool of discrimination and harassment are the country’s blasphemy laws...which have been consistently used to harass, intimidate and detain members of the minorities...[these laws] continue to be used under the present government to arbitrarily detain members of the minorities...

...A common feature of accusations of blasphemy in Pakistan is the manner in which they are uncritically accepted by members of the criminal justice system who themselves sometimes face threats and abuse if they do not accept them.

Amnesty International is concerned that the state not only permits the filing of charges which are manifestly unfounded, and involving the application of laws which openly discriminate against minorities in Pakistan, but that it has in the past year also consistently failed to protect the right of minorities against the infringement by private individuals...

...

The state appears to...have been unable or unwilling to prevent religiously motivated violence...The state appears also to have been unable or unwilling to ensure legal redress after violent sectarian incidents...Fears of retaliation are well-founded as key witnesses of sectarian crimes as well as lawyers, prosecutors and judges have been murdered in revenge acts by the community of the accused. Consequently, cases of high profile sectarian killings remain pending for years as judges, lawyers and witnesses fear for their lives.

...

The blasphemy laws of Pakistan, while purporting to protect Islam and the religious sensitivities of the Muslim majority of Pakistan, are vaguely formulated and arbitrarily enforced by the police and judiciary; such as they permit, even invite, abuse and harassment and persecution of minorities in Pakistan.

...

The blasphemy laws have contributed to an atmosphere of hostility towards religious minorities in Pakistan which has been understood by some people to permit them to take the law into their own hands and to threaten or use violence against them.”

[64] We now turn to country information relating to the appellant’s assertion that Pakistan has increasingly sophisticated, computerised means of ascertaining information about Pakistani citizens and therefore individuals of interest. In short, there is clear and very recent information would support that contention.

[65] A publication from the National Database and Registration Authority of Pakistan (NADRA) dated 21 July 2004, accessed online (see: <http://www.nadra.gov.pk/history.html>) states that (*verbatim*):

“NADRA has been established with the objective of introducing a new, improved and modernized registration system for the entire population and things of Pakistan (Refer to NADRA Ordinance 2000 for details).”

It also states (*verbatim*):

“...Culminating among other things is the issuance of state-of-the-art National Identity Cards (NICs) to all adult citizens of Pakistan. These NICs shall be duly backed by the computerized database and data warehouse respectively called the Citizens’ Database and National Data Warehouse (NDW).

The concept was developed to help government in implementing a fact based system of good governance in the country by encountering evils of undocumented population growth and registration of items belonging to citizens and organizations. NADRA had completed the creation of a comprehensive Citizens’ Database by the new millennium based on National Data Forms. An upgraded version of citizen’s database is being collected now-a-days with the help of National Form Application for issuance of new computerized NICs.”

[66] NADRA reports that within “the recognized standards of security and durability” the National Identity Cards (NICs) are being produced at NADRA Islamabad at the rate of 100,000 daily.

[67] In terms of objectives already achieved by NADRA, it claims, *inter alia*, the following:

- NADRA has prepared a **Citizens’ Database**, based on National Data Forms collected during the Census 1998 and updated systematic inputs, providing for subsequent integration of entire population of Pakistan including Pakistanis living abroad. Thus computerizing major functions of Federal and Provincial Governments.
- Completed scanning and Data Entry of over 64 million National Data Forms (NDFs) and production of computerized ID cards for those who have met application requirements.
- Established a countrywide Data Communication Network (**NII – National Information Infrastructure**) linking the Central Database at NADRA Headquarters Islamabad to Provincial, Regional and District Headquarters, for online access to information. This network is being managed along the lines of Internet and shall be called “Pakistan Intranet of NII-National Information Infrastructure”. Provision of access to Government, semi-government and selected private agencies for usage and updating of data in National Data Warehouse.
- Established Swift Registration Centers in 26 cities all over Pakistan with 40 more coming up. All centers are linked to the central sites where data is uploaded to the central data warehouse facility.
- Setup Automatic Border Control on all major International airports in Pakistan which screens and validates all incoming and outgoing passengers holding either NICOP or POC.
- Providing assistance to the Directorate General Passports in preparation and issuance of computerized passports...

[68] NADRA reports that it is:

“...developing a sophisticated nation-wide data communication network for access to [the] National Data Warehouse. This has now become the nervous system for the purpose of standardization and circulating information to far distant users

through Intranet type environment. The modern trends of data warehousing and relational database management would be methodically adopted for developing an efficient query and reporting system. The Project has been contemplated as one of the largest citizen database[s] ever established in Asia, one of the largest in the world.”

[69] Turning now to the conditions of detention in Pakistan, it is noted that these were the subject of adverse comment in country information reports. Torture and ill-treatment by the police and prison officers remained routine and the perpetrators were rarely held to account. See, for example: *AI Report : Pakistan* (2004). The US DOS *Country Reports on Human Rights Practices for 2003: Pakistan* (25 February 2004) specifically stated:

“Prison conditions remained extremely poor and life threatening, and police arbitrarily arrested and detained citizens...Case backlogs led to long delays in trials, and lengthy pretrial detention was common. The judiciary was subject to executive and outside influences and corruption, inefficiency, and lack of resources remained severe problems...

The extrajudicial killing of criminal suspects, often while in police custody or in staged encounters, occurred....In August, the Interior Ministry reported that 548 persons were killed in police encounters in 2002, with 114 encounter deaths reported in the first 6 months of the year...

...Police failed in some instances to protect members of religious minorities – particularly Christians and Ahmadis – from societal attacks.”

Summary of findings

[70] The Authority has accepted that the appellant was specifically targeted by some individuals who were Muslim fundamentalists, in his home locality, M. The motivation appears to have been twofold. First, he is a Christian whom these particular individuals (to quote the appellant) consider as “enemies” and infidels in what is a strongly Islamic country. Secondly, there appeared to be jealousy, motivated by the appellant’s successful business.

[71] These individuals used the blasphemy laws to have the appellant arrested and detained. They knew that because he was a Christian, they could make false claims against him with impunity. By the time that the appellant managed to secure his release – by way of a bribe – after five days, he had not been brought before any court nor given a copy of the case registered against him. Nevertheless he saw his accusers and was told the nature of the charges. In light of the evidence and the country information set out above, the Authority has no reason to doubt the very real possibility that he has been “framed” pursuant to the blasphemy laws as he fears.

[72] On that basis, and in light of the fact that he failed to answer the charges, there will be an outstanding record of these. It follows, particularly in light of the sophisticated checking systems now used by the Pakistani authorities that he would be of immediate interest on return (especially as he has no valid Pakistani passport).

[73] It can be safely assumed that he would at the very least remain in custody, in severely adverse conditions. The Authority can have no confidence that he would have the opportunity of a fair trial in relation to the allegations (let alone the impact of a law which places less weight on his evidence, as a non-Muslim). He faces a real chance of lengthy and arbitrary detention for charges for which the death penalty is prescribed.

[74] Whilst the country information would also indicate that, in fact, the death penalty has been rarely, if ever, carried out in relation to blasphemy charges, it is nevertheless clear that these charges can be, and are used, as a tool of persecution.

[75] For clarity, despite the evidence of discriminatory problems faced by the Christian community in Pakistan (which comprises approximately 1.6% of the total population of 150 million, see: US DOS *International Religious Freedom Report: Pakistan* (18 December 2003)), being a Christian in itself would not presently be sufficient to establish refugee status. Each case must be determined on its own particular facts. In the present case, clearly the threshold of the Refugee Convention is met. The appellant faces a real chance of persecution on a return to Pakistan.

[76] The Authority also records that it has not found it necessary to assess whether there is an Alternative Protection Alternative (IPA) available to the appellant (as outlined in *Refugee Appeal No. 71684/99* (29 October 1999)), given the finding that he is likely to attract adverse attention on the point of re-entry into the country.

Convention Ground

[77] The relevant Convention Ground in the present case is religion. The facts indicate that the extremist shopkeepers acted out of religious hatred as well as for reasons of business rivalry – the nexus to a Convention ground need not be shown to be the sole, or even a dominant, cause of the risk of being persecuted. It need only be a contributing factor (see further *Refugee Appeal No 72635* (6 September 2002)).

CONCLUSION

[78] For the above reasons, the Authority finds that the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

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L Tremewan
Member