

0903684 [2009] RRTA 757 (17 August 2009)

DECISION RECORD

CATCHWORDS: Review of Protection visa refusal - Pakistan - religion - originally Sunni Muslim - conversion to Ahmadi faith

RRT CASE NUMBER: 090 3684

DEPT REFERENCES: CLF2009/17524; CLF2001/033360

COUNTRY OF REFERENCE: Pakistan

TRIBUNAL MEMBER: Danica Buljan

DATE: 17 August 2009

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

In accordance with s.431 of the *Migration Act 1958*, the Refugee Review Tribunal will not publish any statement which may identify the applicant or any relative or dependant of the applicant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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

2. The applicant, who claims to be a citizen of Pakistan, arrived in Australia [in] January 2009. [In] February 2009 he lodged an application for a Protection (Class XA) visa with the Department of Immigration and Citizenship (the Department). [In] April 2009 the delegate refused to grant the applicant a Protection visa and notified the applicant of the decision and his review rights by letter posted on the same date.

3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

4. [In] May 2009 the applicant applied to the Refugee Review Tribunal (the Tribunal) for review of the delegate's decision.

5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under subsection 411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under section 412 of the Act.

RELEVANT LAW

6. Under subsection 65(1) of the Act a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a Protection visa are those in force when the visa application was lodged, in this case 16 February 2009, although some statutory qualifications enacted since then may also be relevant.

7. Subsection 36(2) of the Act relevantly provides that a criterion for a Protection (Class XA) visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. The 'Refugees Convention' and 'Refugees Protocol' are defined to mean the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees respectively: subsection 5(1) of the Act. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the *Migration Regulations* 1994 (the Regulations).

Definition of 'Refugee'

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

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

9. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 205 ALR 487 and *Applicant S v MIMA* (2004) 217 CLR 387.

10. Sections 91R and 91S of the Act now qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
11. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
12. Second, an applicant must fear persecution. Under subsection 91R(1) of the Act persecution must involve “serious harm“ to the applicant (subsection 91R(1)(b)), and systematic and discriminatory conduct (subsection 91R(1)(c)). The expression “serious harm“ includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: subsection 91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
13. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
14. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: subsection 91R(1)(a) of the Act.
15. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded“ fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear“ of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance“ is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
16. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
17. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

18. The Tribunal has had regard to the following material:

T1 - RRT case file 090 3684, folio numbered 1-56.

D1 - Departmental file CLF2009/17524, folio numbered 1-118.

D2 - Departmental file CLF2001/033360, folio numbered 1-127.

The Tribunal has also had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

The Protection Visa Application

19. According to information provided in the Protection visa application, the applicant was born in [location deleted in accordance with s431(2) of the Migration Act as this information could identify the applicant], Pakistan [in] 1969. In his application the applicant stated that he belongs to the Pakistani ethnic group and that he is an Ahmadi Muslim. He also stated that he speaks, reads and writes Urdu. The applicant further stated that he lived at the one address in [location deleted: s431(2)], Gujranwala district, Pakistan from January 1969 until December 2008. In addition, the applicant stated that he received 15 years of primary and secondary education. He also indicated that he had completed [trade deleted: s431(2)] qualification in 1989 and that he had been employed as such from January 2001 to December 2008 with "[employer deleted: s431(2)]".

20. In relation to his family composition, the applicant stated that he was married in February 1992 and that he had two daughters aged 15 and 11 years respectively, and a son aged 10 years. The applicant indicated that his father and three sisters live in Pakistan, that his brother [Brother B's name deleted: s431(2)], resides in Dubai and that another brother, [Brother A's name deleted: s431(2)] (born [in] 1977) resides in Australia and is an Australian citizen.

21. The applicant stated in his Protection visa application that he left Lahore, Pakistan [in] December 2008 and arrived in Australia [in] January 2009. He stated that he travelled to Australia as the holder of a Pakistani passport that was issued [in] November 2005 and valid to [a date in] November 2010.

22. In support of his Protection visa application the applicant submitted a statutory declaration, dated [in] January 2009, in which he stated, in part, the following:

...

2. Our father raised us as Sunni Muslims until our teenage years.

3. At this time, an Ahmadi Muslim from the next village came to our town and visited our shop and later our home. He spoke to my two brothers, [applicant's brothers] and I and said that the Sunni faith was wrought with corruption and greed and that it did not focus on true religious principles. He explained that the Ahmadi denomination is much more humble and does not concern itself with lavishly decorated mosques and such decorated muftis. I felt that what he said was true and that the Ahmadi denomination was a better religion.

4. My brothers and I started to attend regular prayer sessions in another Ahmadi Muslim's house in a nearby village. We did this in secret and tried not to be noticed by the authorities or others in our region.

5. In 1992, I married my wife, [applicant's wife]. We now have three children, [children's names] They all now practice as Ahmadi Muslims also.

6. In approximately 1999, some people in our village found out that [applicant's brothers] were practicing as Ahmadi Muslims. People had noticed us leaving the village often and one day followed them to see where we were going. They saw my brothers at the home where we would go to pray and recognised this family as Ahmadi Muslims. I wasn't with [applicant's brothers] on that particular day and no one seemed to suspect yet that I was also practicing the Ahmadi faith.

7. From this time onwards, [applicant's brothers] began to be harassed by others in our village. Our family was quite well known in the town before this because we owned a small [type] shop that is attached to a [processing plant]. After our religion was discovered everyone started to boycott our business. When people did come to our business and abuse us, saying that [applicant's brothers] were not real Muslims and that they should be killed.

8. I was very worried about [the applicant's brothers] and we began to organise for them to leave Pakistan. I borrowed money from everyone I knew and we paid a people smuggler to take [Brother A] out of the country. We sent [applicant's Brother B] away to hide in another region where we thought he would be safer since no one knew him.

9. In the meantime, my brother [Brother A] had arrived in Perth as an asylum seeker and was placed in detention for approximately a month. After that time he was released on a temporary protection visa. Since then he has married an Australian and has become an Australian citizen.

10. After [Brother A] was settled in Australia he sent us more money to organise for [Brother B] to also leave. We arranged for him to flee also and he is now living in Dubai.

11. After my brothers left I continued to practice the Ahmadi faith in secret. I would still attend regular prayer meetings with my wife and children. We are not able to display our faith in any other open way because of the potential repercussions.

12. In 2006 I visited my brother and his wife in Australia I wanted to meet her before they got married in 2007. I stayed for approximately ten weeks at this time. Things then were not so bad for my family and I was not yet afraid to return to Pakistan.

13. Suddenly, in early 2008, I started to receive threatening phone calls. The people said that they would kill my family because I was Ahmadi. These people called repeatedly and I eventually became very frightened.

14. One day, during May 2008, when I was at home with my family, a car I did not know came past and began shooting at the house. They shot through all the windows and sprayed the front of our home before driving off. Luckily no one was hurt at this time.

15. I went to the police and filed a report about everything that had been happening. They wrote a report which I have attached to my protection visa application. Despite this, the police did not investigate the attack or who was behind it. I believe this is because they realised I was Ahmadi and did not care. General feeling against Ahmadis is very strong in Pakistan and is so pervasive that it includes the authorities.

16. I was so fearful for myself and my family and was particularly worried about my children leaving the house. I made sure that they stayed inside as much as possible. We continued to receive threats during this period. Eventually we stopped attending the Ahmadi prayer sessions because we were too frightened to travel to the next village.

17. My brother, [Brother A], and his wife in Australia, began to help us make arrangements for my wife and our children to go into hiding. They have been staying with different Ahmadi friends in various areas through Pakistan, moving from time to time so that they will not be found out.

18. During 2008, my brother [Brother A] and his wife began to organise a sponsored tourist visa for me. They knew that I could only apply for protection as a refugee once I had left Pakistan. My tourist visa was granted in approximately October 2008 and I arrived in Australia on [date]January 2009.

19. Since I arrived in Australia I have tried to be in sporadic contact with my wife and children. I am extremely worried and fear for their safety.

20. I cannot return to Pakistan because I fear for my life and that of my family as an Ahmadi Muslim. The situation for us is very dangerous and I believe we would be killed. I hope that you will grant me protection here so that I can rebuild my life in safety with my family.

(D1, f.33-35)

23. The applicant submitted the following evidence in support of his Protection visa application:

- An untranslated copy of a document said to constitute his Ahmadi membership card (D1, f.36);
- Certified extracts from the applicant's Pakistani passport (D1, f.37-39 & 60-78);
- A copy of the applicant's marriage certificate (Nikah) issued under the Pakistani Muslim Family Ordinance 1961 (D1, f.41); and
- A translated copy of a police report dated [in] May 2008 from the applicant stating that [in] March 2008 he had reported that he had received a telephone threat to kill him and his children. The report states that [in] March 2008 the applicant received a demand to pay 300,000 Pakistani rupees to the caller and that the applicant's family was threatened with death if he informed the police of the threat and failed to delivery the extorted sum requested. The report also refers to a third telephone threat received by the applicant [in] March 2008, during which the applicant was abused with foul language in the presence of other residents of his village. In addition, the report refers to the fact that [in] May 2008 unknown persons opened fire on the applicant's home, whilst he had a guest in his home, with bullets hitting the shed and fence. The report further states that the applicant had

done his best to identify the perpetrators without success and was therefore making a request to the police for further investigation. The report indicates that the police had received this statement from the applicant and had sent it to a senior investigator for further investigation (D1, f.42).

24. In a submission dated [in] February 2009 the review applicant's representative referred to extracts from the *United Kingdom Home Office Operational Guidance Note on Pakistan* (15 March 2007) and the *United States Department of State International Religious Freedom Report* (2007) that Ahmadis are prevented by law from engaging in the full practice of their faith. She stated that following a Constitutional amendment in 1974, the Ahmadi religion had officially been declared to be a non-Muslim religion under Pakistani law and therefore Ahmadis "...cannot register as Muslims for political/official purposes." In particular, these laws are "used by the Government and anti-Ahmadi religious groups to target and harass Ahmadis..." and that the "...blasphemy laws have been abused, in that they are often used against persons to settle personal scores." The representative noted that the Guidance Note highlighted that:

"Ahmadis have been banned from holding public conferences, preaching or travelling to Saudi Arabia for the Hajj and/or other religious pilgrimages. Additionally, Ahmadi publications have been banned from public sale, though they have published religious literature in large quantities for a limited circulation. Ahmadis have also faced restrictions on establishing places of worship and the authorities reportedly continue to conduct surveillance on Ahmadis and their institutions. Between July 2007 and June 2008, several Ahmadi mosques reportedly were closed; others reportedly were desecrated or had their construction stopped."

25. The representative noted that the *United Kingdom Home Office Operational Guidance on Pakistan* (4 February 2009) stated:

The Ahmadi community claimed that between July 2007 and June 2008, 45 Ahmadis faced criminal charges under religious laws or because of their faith: 7 under the blasphemy laws, 23 under Ahmadi-specific laws, and 15 under other laws but motivated by their Ahmadi faith. Although no one has yet been executed by the Government under the blasphemy laws, some persons have been sentenced to death. *Several of those accused under the blasphemy laws have reportedly been attacked, even killed, by vigilantes, including while in police custody.*

[Representative's emphasis]

26. In addition, the representative submitted that the growth of religious extremism in Pakistan had resulted in increased persecution of Ahmadis in recent years and that attacks on Ahmadi families by civilian and various extremist groups were well documented in the above reports. She also argued that the pervasiveness of anti-Ahmadi sentiment within Pakistani society and its authorities was such that effective state protection is not available and therefore the applicant had a well-founded fear of persecution on the basis of his religion (D1, f.43-46).

Movement Records

27. Departmental movement records indicate that the applicant first arrived in Australia [in] August 2006 as the holder of a visitor visa and that he departed Australia [in] October 2006 (D1, f.48-51). The passport stamps in the applicant's passport, provided with his

Protection visa application, confirm his arrival in Australia [in] August 2006 and [in] January 2009 (D1, f.37-38, 68 & 70).

The Primary Decision

28. [In] April 2009 the delegate refused the Protection visa application (D1, f.84-90). The delegate accepted that the independent country information indicates that Ahmadi Muslims are systematically discriminated against in Pakistan and that under its Constitution they are denied the right to freely practice their religion. The delegate also accepted that Ahmadi Muslims face regular and routine acts of violence and intimidation in Pakistan. However, the delegate noted that the copy of the Ahmadi registration card that had been provided was a poor copy and not an original document. In addition, the applicant's passport did not indicate his religion as Ahmadi and there was little other evidence to establish that the applicant was a practising Ahmadi Muslim in Pakistan. The delegate took into account the fact that the applicant's brothers had left Pakistan, whilst he had remained in Pakistan working as an electrician, operating his own business since 2001 and enjoying freedom of movement. The delegate also noted that the applicant had not provided any detail regarding how he had attended secret Ahmadi prayer meetings with his spouse. In addition, the delegate observed that the applicant had not lodged a Protection visa application during his 2006 visit to Australia and had voluntarily returned to Pakistan at that time.

29. In relation to the applicant's claims to have received various threats in 2008 the delegate stated:

Country information (DFAT advice of 27 January 2004, Country Information Report 09/04, CISNET CX88786) indicates that in Pakistan "law enforcement authorities are required to extend protection to any Pakistani facing a specific threat, irrespective of religious affiliation, although they are generally poorly trained and equipped. There is no reason to suspect that the religious affiliation of a complainant would be a significant factor in determining whether such protection was extended. Pakistan is a violent and volatile country." The applicant's account of his experiences in Pakistan in 2008 is consistent with the country information reports of deteriorating human rights and increased violence. There is no evidence that the attempt was anything other than random criminal acts. It appears that he fears harm in a country where crime, a high incidence of lawlessness is unrelated to Convention grounds.

In respect to the document dated [date] May 2008 submitted by the applicant, he tried to trace the accused persons and did not report it to the police on [date] May 2008 when his house was attacked. I have given the applicant the benefit of the doubt to the extent of accepting that, as he claims, unknown persons opened fire on his house and fled away, however, I am not satisfied that this demonstrated that the applicant would be at risk of harm for a Convention reason if he were to return to Pakistan. There is no indication in the information submitted by the applicant as to the identity of the attackers. There is nothing to indicate that the police failed to take action when the crime was reported. The applicant's evidence is that nothing has happened in this case, the fact that no arrests may have been made does not demonstrate that the police have denied his protection. Therefore, I am not satisfied that the applicant has a well-founded fear of persecution because of his religion.

(D1, f.85)

30. Accordingly, the delegate was not satisfied that the applicant had suffered serious harm in Pakistan in the past as a result of his religion. Therefore, the delegate was not

satisfied that there is a real chance that that the applicant would be targeted for serious harm for his religion if he were to return to Pakistan, or that the Pakistan authorities would fail to protect him against random acts of criminal violence.

The Review Application

31. [In] May 2009 the review applicant applied to the Tribunal for review of the delegate's decision (T1, f.1-5).
32. The application was constituted to the Presiding Tribunal Member [in] May 2009 (T1, f.19).
33. By letter dated [in] June 2009 the Tribunal invited the applicant to provide the original, with translation, of the Ahmadi registration card he had submitted to the Department (T1, f.20-21).
34. By letter dated [in] June 2009 the Tribunal wrote to the applicant advising that it had considered all the material before it relating to his review application, but it was unable to make a favourable decision on that information alone. Accordingly, the applicant was invited to appear before the Tribunal [in] July 2009 to give oral evidence and present arguments in support of his claims (T1, f.28-30).
35. [In] June 2009 the applicant's representative advised the Tribunal that that they did not have original Ahmadi registration documents, only a receipt and that they would submit a letter from the Australian Ahmadi Muslim Committee stating that the applicant was a member, together with an explanatory statutory declaration (T1, f.31).
36. [In] June 2009 the applicant's representative informed the Tribunal that the receipt that was previously submitted to the Department was "a simple indication of his membership within the Ahmadi congregation in Pakistan which is issued when members make voluntary donations". The following evidence was also submitted to the Tribunal:
 - The original receipt submitted to the Department, without translation (T1, f.39);
 - A letter dated [in] June 2009 from the Ahmadiyya Muslim Association Australia Inc. stating that they verified that the applicant is a member of the Ahmadiyya Muslim Community (T1, f.39); and
 - A statutory declaration dated [in] June 2009 from the applicant stating, in part, the following:

...

In my first statement I had explained how we (my two brothers and I) changed our religious faith. Furthermore, I would like to explain that when my brothers and I converted to the Ahmadiyya Religion we had to keep this a secret. For around 6 months we were able to keep the secret from our parents and family. When my father first found out about our conversion he was very upset and extremely angry. At first he asked us (three boys) to leave the family home and shunned us. Approx. one month had passed my father realised he was unable to care for the family/business without our help. My father allowed us back in the house provided we promised not to tell any of our extended family or friends about our conversion. Our return home was conditional and this was the only way my father and our nuclear family would

not be implicated, targeted or isolated. The society we were living in would completely destroy each individual including the future marriage prospects for our three sisters. The pact was so important that even our late mother was not privy to it. She died not knowing our actual conversion.

My mother died when my youngest sister ([name]) was around 8 years old. I married 2 years after her death in 1992. My wife ([name]) and I became the head of the family taking care of all of my young brothers and sisters. When my own children came along nothing changed except the number of people in my care.

All my siblings were born in Pakistan and we are Pakistani nationals. I am the oldest male child of my family. Our father continues to live with me in my household.

My marriage to [name] was [sic] arranged marriage between my father and her parents. Since the death of my mother we were missing a "mother figure" and my father was concerned that a step-mother would not care for us enough therefore he chose not to remarry ever. Marriages [sic] commitments are forever in our culture. [Applicant's wife's] family were Sunni Muslims and my father did not disclose my Ahmadi conversion to her family. After our marriage this kept the charade going for as long as it did.

After our first child was born and our relationship had developed into a trusting/loving relationship I confided in my wife of 2 years that I was indeed a practising Ahmadi. [Applicant's wife] had taken an Oath not to divulge this secret to anyone - including her own siblings and parents before I told her even than [sic] this caused great tension between us. So much so that [applicant's wife] took off and went back to her parents' home. The fact that this sharing of my true faith happened immediately after the birth of our first child - no questions were asked of her why she had returned home. It was in keeping with tradition after the birth of a child in our culture. [Applicant's wife] only returned once she calmed down and because we had a joint commitment in our marriage.

We live in a village where there is no industry and all people are depended on farming but they have electricity. Repairing small alliances was my business and so I was well respected for that. I did house calls to fix electrical problems as well and therefore I was not targeted even if I went to do a job in the Ahmadi's household in nearby villages. I was busy in the business therefore it did not allow much spare time for obvious religious practice.

The three of us continued to practice our religion in secret as my father feared for our lives and its impact on the lives of the rest of the family. When my brother [Brother B] was seen attending prayer at different locations he was suspected of practicing the Amaddiya faith. He was then attacked and I realised I needed to get him out of the country as his life was in danger. [Brother B] is a builder and I hid him while he applied for a visa to Dubai. Upon receiving the visa [Brother B] left immediately.

My brother [Brother A] was also found out and his life was at risk so I had to borrow money and try to get him out of the country. I had to pay an agent to get him out of the country. After nearly one month hiding in Karachi the agent got [Brother A] onto a plane to Australia.

The fact that I was married into a Sunni muslim family was such a good cover for me. Some 7 years later I was still able to continue hiding my religion and was extremely careful not to be seen entering or exiting the Ahamddiya meeting places.

In the meantime, my brother [Brother A] was granted temporary protection visa and finally he was granted a Permanent Protection Visa in 2005. He met [brother's wife] and they organised my trip to Australia in 2006. Our father by now was very much older and very frail. As the family head, [Brother A] wanted me to meet [brother's wife] before their pending marriage.

During that trip I did not apply for a protection visa as I was not in any obvious danger because no one suspected my conversion to Ahmadiya faith.

Upon my return to Pakistan I was very content in the thought that [Brother A] was safe and happy in Australia. I continued to practise the Ahmaddiya faith and continued attending at the rotating Ahamddiya meeting places.

One Friday afternoon when I was exiting one such meeting place, I noticed some people from my village watching me. I did not have any tools of my trade with me and I started experiencing persecution from then on - my business was vandalised, my customers diminished and I had people verbally abusing me and my family.

Around the 5th of May 2008 I was attacked not far from my home. They ambushed me whilst I was running an errand to go to our other plot where we keep our farm animals for milk. It was night time. They hit me with a stick "danda" and when I started running they shot at me but fortunately it missed. I kept running and in my anxiety I couldn't make out the voice of the perpetrators. I ran and hid in one of my relatives [sic] houses closeby.

I then began to get threatening phone calls from unknown parties. They stated that they were going to kidnap my children and kill them. My first reaction was to ensure safety for our children. We stopped sending them to school and my children did not leave the house without me. Security was most important and we kept the doors locked at all times. I feared for my own safety and the safety of my family.

I can't say for certain who was behind these threatening calls but there is a stronghold of Jama'at Islami (fundamentalists) in our area. Of course, Sunni community resents and inflict terrible human right abuses to anyone of the Ahmadi faith.

My fear was great and I immediately called [Brother A and brother's wife] in Australia to tell them what was happening and they were very concerned for us.

After making various enquiries with UNHCR, the Minister's office in Canberra and the Australian Refugee Association, the information they received was that no one could assist unless we were out the country and away from the danger.

Within that same week we were attacked at approx. 11 pm on the [date] of May 2008 at home. A motor vehicle drove passed and we could hear several people screaming abuses and firing machine gun at our home and business. They were shouting abuses saying that we were not Muslims and non Muslims should be killed.

The front of our home is the shop and fortunately we were all in bed at the back. I immediately took all of my family and went into hiding as I was in fear for myself and my family.

I reported this incident/attack to the local police. I also told them of the threatening phone calls. I rang the police several times every week. They kept saying to ring back in several days time when they would have some results for me. This went on until I

left for Islamabad in December 2008. They did not have any information for me until then.

...

My sister-in-law ([sister in law]) back in Australia put in an application with the immigration department to sponsor myself to Australia. The application took several months and during this time my family and I had to move around so that the perpetrators would not find us.

My visa was granted and the Australia Embassy wanted me to forward my passport for visa evidencing. I waited for two months to get my passport back from the Australian Embassy. I tried many time to contact them via telephone calls but this went unanswered.

It became so difficult that [Brother A] flew over to Islamabad, Pakistan. I met [Brother A] in Islamabad. [Brother A] attempted to call the Australian Embassy for an appointment but could not get through. It was very frustrating. [Brother A] then went into the Australian Embassy in Islamabad and he refused to leave without my passport.

The Embassy gave the passport to [Brother A] and we came to Australia the next day. I had left my family a few days earlier. I had given them guidance to move into safe and trusting homes. This was a very traumatic time for me as I had to leave my family behind in hiding and I was not sure if I would ever see them again.

I fear for my life and the lives of my family. I cannot return to Pakistan because the government or the authorities are unwilling or unable to protect me and my family because of our chosen religious belief. I will be targeted and killed if I were to return to Pakistan.

(T1, f.35-38)

The Tribunal Hearing

37. A hearing was held [in] July 2009 and [the applicant], and [Brother A], gave oral evidence. An interpreter in the Urdu language was engaged to facilitate oral evidence at the hearing. The applicant's representative represented the parties at the Tribunal hearing. A summary of the evidence at the Tribunal hearing is as follows.

The Applicant's Oral Evidence:

(i) Personal Details:

38. The applicant gave evidence that his name is [applicant's name] and that he has not been known by any other name. He confirmed his date of birth [date deleted: s431(2)] and that he was born in [location deleted: s431(2)], Tehsil Wazirabad, Gujranwala district, Pakistan . He also told the Tribunal that he speaks Punjabi and reads Urdu. The applicant stated that his country of nationality is Pakistan and that he is not a citizen of any other country, apart from Pakistan. The applicant also stated that he was an ethnic Mogul.

39. In addition, the applicant informed the Tribunal that he completed primary school to grade 6 and that he was [trade deleted: s431(2)], who had primarily worked in his local and surrounding villages. The applicant gave evidence that he had been employed in his father's

[business deleted: s431(2)] and had earned approximately 7,000-10,000 Pakistani rupees per month (\$AUD 107.75 - \$AUD 153.93).

40. The applicant told the Tribunal that, apart from [location deleted: s431(2)] village, he has not lived anywhere else in Pakistan. He gave evidence that Gujranwala was the major city closest to [location deleted: s431(2)]. He also advised that [location deleted: s431(2)] is approximately [number deleted: s431(2)] kilometres from Lahore, [number deleted: s431(2)] kilometres from Islamabad and [number deleted: s431(2)] kilometres from [town deleted: s431(2)]. The applicant gave evidence that his neighbours in [location deleted: 2(431)] village belonged to the [ethnic group deleted: s431(2)] and were either Sunni Muslims, or Lashkar-E-Taiba Muslims, another offshoot of the Islamic faith.

41. The applicant stated that he was married [in] February 1992 and that he has three children aged approximately 15, 11 and 10 years. In relation to his family composition, the applicant stated that his widowed father, two married sisters and an unmarried sister all reside in Pakistan. However, he stated that he has not had any contact with his father since [a date in] May 2008. The applicant stated that he has one brother, [Brother B's name deleted: s431(2)], who is in Dubai as a construction worker and another brother, [Brother A's name deleted: s431(2)], who is living in Australia and who was granted a Protection visa in 2005 because he is an Ahmadi.

(ii) The Applicant's Passport:

42. The applicant gave evidence that he believed he was issued with a Pakistani passport in late 2005. He explained that he had applied for his passport at that time so that he could come to Australia to meet his brother, [Brother B's name deleted: s431(2)], bride. The applicant told the Tribunal that he did not have any difficulties in being issued with a passport because he had identified his religious affiliation as Islam, rather than Ahmadi. The applicant stated that his Pakistani national identity card also only identified him as a Muslim, rather than an Ahmadi. He stated that he had not declared his affiliation with the Ahmadi sect in these documents because his father had requested that he not do so, as to do so would mean that he would become a target for persecution in Pakistan, and the applicant had acceded to his father's wishes.

(iii) The Applicant's Departure from Pakistan and Arrival in Australia:

43. The applicant confirmed that he had travelled to Australia in 2006 for his brother's wedding, but that he had not otherwise travelled outside Pakistan before coming to Australia. He gave evidence that he legally departed Pakistan from Lahore airport [in] December 2008, using his Pakistani passport, without incident. However, the applicant stated that this was because he had taken care to ensure that no one was aware that he was an Ahmadi. In particular, he stated that in December 2008, only his spouse and children were aware of his plans to depart Pakistan.

44. The applicant stated that he lodged his Protection visa application in February 2009 and that it had been completed by his brother and sister-in-law on his instructions.

(iv) The Applicant's Religious Claims:

45. The applicant gave evidence that he fears harm if he returns to Pakistan because he is an Ahmadi Muslim and in Pakistan it is considered appropriate to attack and kill members of

this minority religious group, on the basis that such actions would be rewarded in the next life. In particular, the applicant stated that the government and authorities in Pakistan actively encourage mainstream Muslims to persecute Ahmadis.

46. The applicant stated that he first learned of, and converted to, the Ahmadiyya faith in approximately 1990, when he was aged about 20 years. The applicant stated that at the time he was working at the home of an Ahmadi in a neighbouring village and, during his discussion with the latter, he learned that the Ahmadi believe in peaceful jihad, rather than violent jihad. He explained that following these discussions he was attracted to the Ahmadiyya sect because it advances its religious beliefs through peaceful means, with love and respect for others, rather than the violence promoted by Sunni Muslims. The applicant informed the Tribunal that the founder of the Ahmadi was Mirza Ghulam Ahmad, whom the Ahmadi, unlike mainstream Muslims, believe was God's last messenger. He advised that the current leader of the Ahmadiyya sect is Mirza Tahir Ahmad, who is based in the United Kingdom, and that the vast majority of Ahmadi in Pakistan are based in Rabwah. The applicant stated that at the time he converted to the Ahmadiyya sect he was not aware that the Islamic punishment for conversion was death; this was something he subsequently learned. However, he stated that despite this potential punishment, he did not wish to return to being a Sunni Muslim.

47. In relation to the practice of his religious beliefs, the applicant stated that he attended to his prayers at home, as it would have been dangerous to do so in public. He stated that once a month he would attend a prayer meeting in the private home of an Ahmadi in another village, but these locations were never revealed for fear of retribution from Sunni Muslims or the authorities. The applicant stated that he sometimes attended these prayer meetings with his brothers, but this was not always the case because to do so was to heighten the risk of discovery and the consequential danger to their lives. The applicant confirmed that this was how he had practiced his faith during the first two years of his marriage. The Tribunal asked the applicant why his spouse, a Sunni Muslim, had not questioned his failure to attend a Sunni mosque during this phase of their marriage. The applicant responded that he had told her that he was too busy with work to attend the mosque and she was satisfied with the fact that he attended to his prayers at home. He stated that after the birth of his first daughter, and once his spouse was aware of the true nature of his religious beliefs, he had simply continued to practice his faith in the same manner he had always done.

48. The applicant stated that [location deleted: s431(2)] has two mosques; a Sunni mosque and a mosque for the Lashkar-E-Taiba Muslims, but that there is no Ahmadi mosque, as these are not allowed by the Pakistani government. The applicant stated that he used to attend the Sunni mosque prior to his conversion to the Ahmadiyya faith, but afterwards he only occasionally went to the Sunni mosque when he was performing [trade deleted: s431(2)] repair work for the mosque. In addition, he stated that there was an Ahmadi mosque in the abandoned village of [location deleted: s431(2)] which he occasionally visited for prayer meetings.

49. In relation to his brothers, the applicant informed the Tribunal that his brother had been seen attending prayer meetings at various locations outside their village. On one occasion in approximately late 1999, [Brother B's name deleted: s431(2)] had been observed by [location deleted: sf431(2)] villagers attending the Ahmadi mosque in [location deleted: s431(2)] without his toolbox. The fact that he had done so aroused suspicion that [Brother B's name deleted: s431(2)] was an Ahmadi. As a result, [Brother B's name deleted: s431(2)] was physically assaulted and beaten on his way home from the prayer meeting. The applicant

stated that in 2000/01 similar suspicions were raised in respect of his brother, [Brother A name deleted: s43(2)], when he was seen attending an Ahmadi house in another village without his tools.

50. The Tribunal asked the applicant why, if members of his village had been suspicious that both his brothers were Ahmadis, similar doubts had not arisen in relation to him, particularly since he did not attend the local Sunni mosque. The applicant stated that he had been well respected within his village as an [trade deleted: s431(2)], he was married to a Sunni and he undertook [trade deleted: s431(2)] work at the mosque, and whilst there would read his prayers when prayer was called at the mosque. As a result, his conduct did not arouse suspicion.

51. In relation to his 2006 visit to Australia, the applicant stated that he had not felt the need to lodge a Protection visa application at this time because he had been happy and settled in his life in Pakistan with his family. He stated that at the time he was not suspected of being an Ahmadi and, as the eldest son, he had a responsibility to care for his frail father. As a result, given all of these factors, the applicant did not see any need to lodge a Protection visa application in Australia during his 2006 visit.

52. The applicant gave evidence that his fellow villagers began to suspect he might be an Ahmadi in early 2008. He stated that in March 2008 he began to receive threatening telephone calls regarding the safety of his family, but nothing actually happened until May 2008, because no one had seen any real evidence to confirm his involvement with the Ahmadi. However, in early May 2008 he attended a Friday Ahmadi prayer meeting in another village without his tools and was observed doing so by fellow [location deleted: s421(2)] villagers. The latter informed the mullahs in [location deleted: s431(2)] village of this and a public announcement was issued that he was an Ahmadi. [In] May 2008 the windows of his shop were broken and on the evening of [the following day], as he was returning home from tending to his livestock, he was attacked from behind and beaten with a stick by a number of people. The applicant stated that he managed to escape from this attack by running into a relative's home.

53. The applicant stated that following this particular attack further life threatening telephone calls were made to him, culminating in the attack on his business and home [in] May 2008, during which time bullets were fired into his property, verbal abuse was shouted at him and his family and threats were made to burn his family alive. In addition, his neighbours started to throw rocks at his home. The applicant gave evidence that these attackers were not able to break into his home because the door was well bolted, but once the attack was over he and his family left, moving to another village where they stayed in hiding with a friend.

54. The applicant told the Tribunal that, although he reported these attacks to the police a few days later, no action was taken. He stated that he contacted the police and the relevant senior investigating officer on several occasions regarding the progress of the police investigation, but they always responded that they were looking into the matter and then took no further action. The applicant stated that, in effect, he felt the police were indifferent to, and dismissive of, his concerns.

(v) *The Applicant's Religious Activities in Australia:*

55. The applicant gave evidence that he has attended Friday Ahmadi prayer meetings in Australia with his brother, [Brother A's name deleted: s431(2)], since his arrival in Australia. He stated that he first attended such a prayer meeting a few days after his arrival in Australia and that these meetings are generally conducted in the Urdu language, although some are also translated into English.

(vi) The Applicant's Membership of the Ahmadi Community:

56. The Tribunal noted that the applicant had submitted an original, but untranslated receipt, in support of the review application. The applicant responded that this document was evidence that he had paid a donation to the [location deleted: s431(2)] Ahmadi mosque. He explained that this was the evidence he had relied upon to establish to the Ahmadiyya Muslim Association Australia Inc that he was a member of the Ahmadi community in Pakistan. The applicant's representative undertook to provide a translation of this document to the Tribunal following the Tribunal hearing.

[Brother A's name deleted: s431(2)] Oral Evidence:

57. [Brother A's name deleted: s431(2)], gave evidence that he was born [in] 1977 in [location deleted: s431(2)] village and that he is an Ahmadi Muslim. He advised the Tribunal that he was granted a temporary Protection visa in Australia in 2001 on the basis of his religious beliefs as an Ahmadi, and subsequently received a permanent Protection visa in 2005.

58. In relation to his religious beliefs, [Brother A's name deleted: s431(2)] stated that he became an Ahmadi, with his brother [Brother B's name deleted: s431(2)], when he was aged approximately 16-17 years, after the applicant had initially converted to the faith. [Brother A's name deleted: s431(2)] confirmed that the founder of the Ahmadiyya sect was Mirza Ghulam Ahmad and that Sunni Muslims believe in jihad through the sword and gun, whereas the Ahmadi believe in a jihad based on words, love and respect. He also advised the Tribunal that the Islamic punishment for conversion is death.

59. [Brother A's name deleted: s431(2)] informed the Tribunal that in Pakistan he and his brothers practiced their faith in secret by attending prayer meetings in nearby villages once a month on a Friday. He advised that there was no Ahmadi mosque in [location deleted: s431(2)], but there was one in the abandoned village of [location deleted: s431(2)], which both he and the applicant attended from time to time. [Brother A's name deleted: s431(2)] explained that his brother [Brother B's name deleted: s431(2)] came under local suspicion in 1999 when he was seen attending different prayer meetings outside their village without his tools, at which time he was severely beaten. [Brother A's name deleted: s431(2)] gave evidence that in 2000 he was not working in the family business and often went to prayer meetings in other villages. As a result, he was seen on one occasion returning from one such prayer meeting and his conduct therefore raised the suspicion that he might also be an Ahmadi.

60. However, in relation to the applicant, [Brother A's name deleted: s431(2)] stated that he had always been busy with his work commitments and was constantly working in the homes of Sunni Muslims. Consequently, doubts regarding the applicant's religious beliefs and faith were not raised by his conduct. [Brother A's name deleted: s431(2)] confirmed that, prior to the applicant's conversion to the Ahmadiyya sect, the applicant attended the Sunni mosque in [location deleted: s431], but subsequently he only attended this mosque when he

was undertaking [trade deleted: s431(2)] works. As a result, no one suspected the applicant to be an Ahmadi.

61. As regards the applicant's 2006 visit to Australia, [Brother A's name deleted: s431(2)] elaborated that after he was granted permanent residence in Australia he met his current spouse and, having no family in Australia, he invited the applicant to attend his wedding, as their father was too frail to do so. [Brother A's name deleted: s431(2)] stated that in 2006 the applicant was happy with his life in Pakistan and he was the main breadwinner for his family. In addition, [Brother A's name deleted: s431(2)] told the Tribunal that, significantly, no one was aware the applicant was an Ahmadi and therefore there was no reason for him to lodge a Protection visa application in 2006. [Brother A's name deleted: s431(2)] stated this the applicant's situation changed in early 2008 when he came under suspicion because he had been observed attending a prayer meeting in another village without his tools. Following this, a public announcement was made denouncing the applicant as an Ahmadi, after which the applicant and his family received threatening telephone calls and were subjected to attacks upon their property and person.

62. [Brother A's name deleted: s431(2)] stated that there was now a real danger to the applicant's life in Pakistan if he were required to return there as a known Ahmadi. He also confirmed that he took the applicant to his first Ahmadi prayer meeting 3-4 days after the applicant arrived in Australia, and that they continue to attend these meetings together on Fridays.

The Tribunal's Oral Invitation to Comment or Respond to Information:

63. Pursuant to section 424AA of the Act, the Tribunal outlined for the applicant the information before it that was adverse to his case and how it was relevant to the review application. In particular, the Tribunal noted the following:

- According to the United Kingdom Home Office's *Country of Origin Information Report: Pakistan* (16 April 2009) a person's Ahmadi affiliation is easily identified in Pakistan, particularly in small communities, because they cannot attend the same mosques as other Muslims and cannot register as Muslims for political or official purposes. The Tribunal noted that according to this report Ahmadis are somewhat visible, yet he claimed to have remained invisible since at least 2000 in [location deleted: s431(2)]; and
- There was country information before the Tribunal that, although generally poorly trained and equipped, the law enforcement authorities in Pakistan are required to extend protection to any Pakistani facing a specific threat, irrespective of religious affiliation. The Tribunal observed that the applicant had been unable to identify his attackers in the police report he filed in May 2008 and therefore the police investigations held the inherent potential to be compromised.

64. The Tribunal noted that based on this information it might not accept the applicant's claims to be a member of the Ahmadiyya faith in Pakistan. In turn, the Tribunal might not accept that he had been subjected to past persecution on the basis of his religion, or that there was a real chance that he faced the risk of persecution in the reasonably foreseeable future. In

addition, the Tribunal might find that effective state protection was available to the applicant and that he therefore was not a ‘refugee’, as that concept is defined.

65. The Tribunal invited the applicant to indicate whether he wished to respond to these matters immediately at the hearing, or after an adjournment, or in writing. The applicant chose to respond at the Tribunal hearing.

66. The applicant stated that due to the nature of his work as an [trade deleted: s431(2)] in his local area, together with his marriage to a Sunni Muslim and the fact that he came from a Sunni family, he was able to remain “invisible” as an Ahmadi in his village. He explained that he and his brothers were the only Ahmadi in [location deleted: s431(2)] village, so it was less likely that other villagers would suspect his religious affiliation was that of an Ahmadi. [Brother A’s name deleted: s431(2)] confirmed this to be the case and stated that no Ahmadi ever visited their family home in [location deleted: s431(2)]. Instead, he, [Brother B’s name deleted: s431(2)] and the applicant always went to the homes of other Ahmadi living in other villages.

67. In relation to the issue of effective State protection, the applicant stated that this does not exist for Ahmadi in Pakistan. He stated that he had told the police which Islamic group he believed was responsible for the attacks on his home, but he had been unable to identify the specific individuals involved. The applicant stated that as an Ahmadi who had been publicly denounced he and his family faced a real danger in Pakistan and the authorities would not do anything to protect them. [Brother A’s name deleted: s431(2)] reiterated his belief that this remained the case in Pakistan.

Post-Hearing Evidence

The Applicant’s Additional Submissions and Evidence:

68. [In] July 2009 the Tribunal received a submission dated [in] July 2009 from the applicant’s representative stating, in part, the following:

This submission is aimed at providing further information regarding the review applicant’s ability to keep his Ahmadiyah faith invisible in a small village community. This question was raised by the Tribunal Member at the hearing.

We submit the following in a chronological order of events to shed light on this issue to convince the Tribunal that the question of “invisibility” was possible until last year when the review applicant and his family were targeted and how he fears for persecution escalated.

We submit that the parents of [the applicant] and all his extended family members are born in the Sunni Muslims faith. They were all practicing Sunni Muslims until his conversion when he was approximately 20 years old.

We submit that they continue to practice this Sunni faith even today with the exception of three brothers which includes the review applicant.

We submit that at the time of their conversion to Ahmadiyah faith the three brothers kept the secret from their own family for the first 6 months (as stated in his Statutory Declaration dated 24/6/2009). Once their father ([applicant's father]) found out he shunned them for approximately a whole month. All the three brothers were away from their family home yet no one suspected or questioned the reasons of their absence. Upon their return the three boys had taken an oath of secrecy together with their father that even their late mother was not privy to this information until she died. We submit that this was possible for these three men to be "invisible" Ahmadiyah whilst they were living in the same household as their mother.

We submit that the review applicant's father was the face of their family at the time. His father continued to be seen participating in the Sunni faith. [Applicant's father] was attending prayers in the Mosque. The knowledge that his three sons were at risk because of their religious faith, he had to protect them for as long as he could.

We submit that as arranged marriages are part of the cultural norm in Pakistan, [applicant's father] clearly protected his son further by cleverly arranging [the applicant's] marriage with [applicant's wife] (from a Sunni family). We submit that being in a spousal relationship it is very difficult to keep secrets between couples - yet [applicant's wife] did not even suspect her husband's religious practice until he himself divulged this information after he totally trusted her. By then two years had passed after their marriage and their first daughter was born.

We submit that when the two other brothers ([applicant's brothers]) were identified as Ahmadis they were supported by [the applicant] in aiding them to move away home (to be hidden) and then for them to leave Pakistan as soon as it became possible.

The review applicant's father continued his attendance at the Sunni Mosque. He was well respected community member. As [the applicant] was the [tradesperson] in the village he did a lot of work "in kind" for the community and this earned him his own respect besides being the son of [applicant's father].

We submit that the review applicant was seen as the head of the family after his marriage. As such [the applicant] arranged marriages for his two sisters in other Sunni families. This provided continuity that [the applicant] was indeed a Sunni Muslim unlike his two brothers.

We submit that running a small business and being the head of the family did not allow [the applicant] to even participate in the Sunni Muslim functions even if he wanted to so.

Occasionally (during his community service work) when [the applicant] was in the Sunni Mosque during prayer times he would just pray. Prayers offered are no different between the two faiths.

Whenever [the applicant] visited a suspected Admadi household he would have his tools with him. This provided extra cover for him.

We submit that when they first converted to the Ahmadi faith, they had advised the elders that they would not want any Ahmadi to visit them in their

house but whenever opportunity would avail itself they themselves would attend the congregation.

Finally we submit that when [the applicant] returned to Pakistan from Australia he was totally sure that he was not at risk because we submit that the above stated reasons were his cover. These were the reasons for his faith to remain “invisible” even in a small community in Pakistan which is contradictory to the Country of Origin report.

I believe this report is an overview on the general situation in Pakistan for the majority of Ahmadi faith but there are exceptions to all circumstances and [the applicant] is a prove of that. We submit that now that he has been identified Ahmadi he is subject to the obvious persecution and now he cannot remain “invisible” any further. Hence the reason for his fear of persecution has escalated. It is very real fear for him and his family.

I believe that his claims are genuine and should [the applicant] be forced to return to Pakistan his life will be at risk. He will be persecuted because of his Ahmadi faith.

(T1, f.53-54)

69. In addition, the Tribunal was provided with a translation of the untranslated receipt provided to the Department with the original Protection visa application. The receipt is said to be from the “[senior officeholder] of the Ahmadi Association of Pakistan, Rabwa” and is dated [in] February 2008. The translation indicates that it was issued by the [location deleted: s431(2)] branch to the applicant for a donation of 100 Rupees (T1, f.55).

The Departmental File relating to [Brother A’s] Protection visa application:

70. The Tribunal has had the opportunity to examine the claims made by the applicant’s brother, [Brother A’s name deleted: s431(2)], following his arrival in Australia in 2001, as set out in the relevant Department file (CLF2001/033360). According to this file, [Brother A’s name deleted: s431(2)] arrived in Australia by boat [in] May 2001 and was immediately detained as an unlawful non-citizen (D2, f.84).

71. The Tribunal notes that [Brother A’s name deleted: s431(2)] was interviewed by the Department [in] May 2001 in relation to his claims to be a “refugee”. The notes of this interview indicate that [Brother A’s name deleted: s431(2)] told the Department that his father had a [business deleted: s431(2)] and that his family had not been happy with his conversion from the Sunni Muslim faith to the Ahmadi faith (D2, f.3-21). In addition, in a statutory declaration dated [in] June 2001 [Brother A’s name deleted: s431(2)] declared that he was previously a Sunni Muslim, but converted to the Ahmadi faith in approximately 2000. He stated that in January 2001 he was abused and attacked by other Sunni Muslims who had become aware of his conversion to the Ahmadi faith (D2, f.24-25).

72. [In] August 2001 a delegate accepted, based on the country information before him, and the applicant’s claims, that the applicant was an Ahmadi from Pakistan and that he faced a well founded fear of persecution on the basis of his religion (D2, f.81-84). As a result, [Brother A’s name deleted: s431(2)] was granted a temporary Protection visa to remain in Australia.

73. [In] February 2002 [Brother A’s name deleted: s431(2)] lodged an application for a Protection (Class XA) visa (D2, f.100). [In] August 2005 a delegate found that [Brother A’s

name deleted: s431(2)] was a person to whom Australia owed protection obligations under section 36 of the Act and decided to grant him a permanent subclass 866 Protection visa (D2, f.120-125).

Independent Country Information

74. In assessing the applicant's claims against the Convention grounds, the Tribunal has considered information from a range of external sources.

Religious Groups in Pakistan:

75. The Tribunal observes that Pakistan has a population of approximately 130 million people; 77% of which are Sunni Muslims, 20% are Shi'a Muslim, 1.5% are Christian and 1.5% are Ahmadis, Hindus, Zikris, followers of other faiths, or persons of no organized religion. (See http://www.religioustolerance.org/rt_pakis.htm - Assessed 6 July 2009).

The Amadiyya Sect

76. The Tribunal observes that the history and the philosophy of the Ahmadis has been summarised by Professor Louis J. Hammann, a Professor of religion at Gettysburg College, as follows:

Ahmadiyyat is, what we might call, a messianic sect of Islam....

[T]he Movement originated when a devout Muslim, living in the Punjab, declared in 1889 that he was Mahdi and Messiah. This was the point at which experiences of revelation that went back to 1876, when Mirza Ghulam Ahmad was 41 years old, came to a sharp focus. At that dramatic moment, a pious and devout personality reached a plateau of self-realization. From then to the time of his death in 1908, Hazrat Ahmad was the human and prophetic energy that led what his followers felt as the renaissance of Islam.

Ahmadiyyat is a missionary movement that has gathered 10 million adherents from Indonesia and Malaysia to Pakistan and central and west Africa and in the Americas. Presently the institutional structure is focused in central Pakistan, in the town of Rabwah. The current head of the Movement is the fourth since the death of the Promised Messiah. He is Mirza Tahir Ahmad, one of the grandsons of the founder. Early in 1985, Hazur, as he is affectionately called, moved to London, when the pressures against the Community in Pakistan began to mount.

(<http://www.alislam.org/introduction/intro-louis-hammann.html> - Accessed on 6 July 2009).

77. According to *Al Islam*, the Official Website of the Ahmadiyya Muslim Community:

The Ahmadiyya Muslim Community (AMC) is a dynamic, fast growing international revival movement within Islam. Founded in 1889, AMC spans over 193 countries with membership exceeding tens of millions. Its current headquarters are in the United Kingdom.

AMC is the only Islamic organization to believe that the long-awaited Messiah has come in the person of Mirza Ghulam Ahmad (as) (1835-1908) of Qadian. Ahmad (as) claimed to be the metaphorical second coming of Jesus (as) of Nazareth and the divine guide, whose advent was foretold by the Prophet of Islam, Muhammad (sa).

AMC believes that God sent Ahmad (as), like Jesus (as), to end religious wars, condemn bloodshed and reinstitute morality, justice and peace. Ahmad's (as) advent has brought about an unprecedented era of Islamic revival. He divested Islam of fanatical beliefs and practices by vigorously championing Islam's true and essential teachings. He also recognized the noble teachings of the great religious founders and saints, including Zoroaster (as), Abraham (as), Moses (as), Jesus (as), Krishna (as), Buddha (as), Confucius (as), Lao Tzu and Guru Nanak, and explained how such teachings converged into the one true Islam.

AMC is the leading Islamic organization to categorically reject terrorism in any form. Over a century ago, Ahmad (as) emphatically declared that an aggressive "jihad by the sword" has no place in Islam. In its place, he taught his followers to wage a bloodless, intellectual "jihad of the pen" to defend Islam. To this end, Ahmad (as) penned over 80 books and tens of thousands of letters, delivered hundreds of lectures, and engaged in scores of public debates. His rigorous and rational defenses of Islam unsettled conventional Muslim thinking. As part of its effort to revive Islam, AMC continues to spread Ahmad's (as) teachings of moderation and restraint in the face of bitter opposition from parts of the Muslim world.

Similarly, AMC is the only Islamic organization to endorse a separation of mosque and state. Over a century ago, Ahmad (as) taught his followers to protect the sanctity of both religion and government by becoming righteous souls as well as loyal citizens. He cautioned against irrational interpretations of Quranic pronouncements and misapplications of Islamic law. He continually voiced his concerns over protecting the rights of God's creatures. *Today, AMC continues to be an advocate for universal human rights and protections for religious and other minorities. It champions the empowerment and education of women. Its members are among the most law-abiding, educated, and engaged Muslims in the world.*

(See <http://www.alislam.org/introduction/index.html> - Accessed 6 July 2009)

[*Tribunal emphasis*]

78. The United Kingdom Home Office's *Country of Origin Information Report: Pakistan* (16 April 2009) reports the following in relation to the demography and distribution of the Ahmadi in Pakistan:

19.43 The USSD IRF Report 2006 noted that the Ahmadi population was centred around Rabwah [2a] (Section I), which has a population, based on official government figures, of about 70,000. (Parliamentary Human Rights Group (PHRG) Report, January 2007) [51] (p2, Section 1, Introduction)

Religious Freedom and the General Treatment of the Ahmadi in Pakistan:

79. According to a range of sources, under Pakistani law the Ahmadi are banned from claiming to be members of an Islamic religion and have been subjected to various forms of exclusion and discrimination, amounting to persecution in several parts of the country, since the 1970's. For example, Professor Hamman explains the situation as follows:

The legal basis for the government's tactics was first of all *a constitutional amendment promulgated in the year 1974, declaring Ahmadis "non-Muslims."* ... , in April, 1984, the government established an ordinance declaring that: the Ahmadis will, under pain of punishment, be *barred, directly or indirectly, from referring to themselves as Muslims or calling their place of worship a mosque or using the Azan*

the Muslim call to prayer as their call for the same purpose. *Nor can the Ahmadis propagate by word of mouth or writing or visible representation their religion with a view to converting others.* They are also barred from using the nomenclature or appellations associated with the Holy Prophet or his family for a member of the Ahmadi community or anyone else.

(<http://www.alislam.org/introduction/intro-louis-hammann.html> - Accessed on 6 July 2009)

[*Tribunal emphasis*]

80. The most recent United States Department of State *International Religious Freedom Report 2008* (19 September 2008) includes the following information regarding the current treatment of the Ahmadi in Pakistan:

The Government took some steps to improve its treatment of religious minorities during the period covered by this report, but serious problems remained. Law enforcement personnel abused religious minorities in custody. *Security forces and other government agencies did not adequately prevent or address societal abuse against minorities.* Discriminatory legislation and the Government's failure to take action against societal forces hostile to those who practice a different religious belief fostered religious intolerance, acts of violence, and intimidation against religious minorities. *Specific laws that discriminate against religious minorities include anti-Ahmadi and blasphemy laws that provide the death penalty for defiling Islam or its prophets. The Ahmadiyya community continued to face governmental and societal discrimination and legal bars to the practice of its religious beliefs.* Members of other Islamic sects also claimed governmental discrimination.

...

The Government designates religious affiliation on passports and requests religious information in national identity card applications.

...

The Constitution provides for the "freedom to manage religious institutions." In principle, the Government does not restrict organized religious groups from establishing places of worship and training members of the clergy. In practice, however, religious minorities suffered from restrictions on this right. *The Government, at the district level, consistently refused to grant permission to construct non-Muslim places of worship, especially to the Ahmadiyya and Baha'i communities, citing the need to maintain public order. There is no official restriction on the construction of Ahmadiyya places of worship; however, Ahmadis are forbidden from calling them mosques.* District governments often refuse to grant Ahmadis permission to hold events publicly, therefore they hold their meetings in members' homes. The Government can shut down these gatherings if neighbors report hearing the recitation of Qur'anic verses.

Restrictions on Religious Freedom

The Government generally enforced existing legal restrictions on religious freedom.

Since 1983 Ahmadis have been prohibited from holding public conferences or gatherings, and been denied permission to hold their annual conference. Ahmadis were banned from preaching and were prohibited from traveling to Saudi Arabia for the Hajj or other religious pilgrimages. Ahmadiyya publications were banned from

public sale, but they published religious literature in large quantities for a limited circulation.

While the Constitution guarantees the right to establish places of worship and train clergy, in practice Ahmadis suffered from restrictions on this right. According to press reports, authorities continued to conduct surveillance on Ahmadis and their institutions. Several Ahmadiyya mosques reportedly were closed; others reportedly were desecrated or had their construction stopped.

Public pressure routinely prevented courts from protecting minority rights. These same pressures forced justices to take strong action against any perceived offense to Sunni orthodoxy. Discrimination against religious minorities was rarely placed before the judiciary. According to several NGOs, cases against Christians and Ahmadis continued to grow during the reporting period; however, the judiciary, even at the lower levels, acted in a more judicious manner in dealing with these cases as compared with previous reporting periods. NGOs reported that cases against both the local Christian and Hindu communities continued but to a lesser degree, and that social discrimination remains at high levels. *There was generally a long period between filing the case and the first court appearance. Lower courts were frequently intimidated, delayed decisions, and refused bail for fear of reprisal from extremist elements.* Bail in blasphemy cases was usually denied by original trial courts, arguing that since defendants faced the death penalty, they were likely to flee. Many defendants appealed the denial of bail, but bail was often not granted in advance of the trial.

Police reportedly tortured and mistreated those in custody, and at times, engaged in extrajudicial killings. It was usually impossible to ascertain whether adherence to particular religious beliefs was a factor in cases in which religious minorities were victims; however, both Christian and Ahmadiyya communities claimed their members were more likely to be abused. Non-Muslim prisoners generally were accorded poorer facilities than Muslim inmates, including a lack of access to spiritual resources. Conversion to other minority religious groups generally took place in secret to avoid a societal backlash.

Ahmadiyya leaders claimed the Government used regular sections of the Penal Code against their members for religious reasons. Authorities often accused converts to the Ahmadiyya community of blasphemy, violations of the anti-Ahmadi laws, or other crimes. *The Government used anti-Ahmadi laws to target and harass Ahmadis. The vague wording of the provision that forbids Ahmadis from directly or indirectly identifying themselves as Muslims enabled officials to bring charges against Ahmadis for using the standard Muslim greeting and for naming their children Muhammad.* According to the Islamabad-based Jamaat-e-Ahmadiya, the Ahmadiyya community claimed that during the period covered by this report, 45 Ahmadis faced criminal charges under religious laws or because of their religious beliefs: 7 under the blasphemy laws, 23 under Ahmadi-specific laws, and 15 under other laws but motivated by their adherence to Ahmadiyya religious beliefs.

At the end of the reporting period, four Ahmadis were arrested on blasphemy charges; one was in prison, and three others were out on bail. The Ahmadiyya community claimed these were falsely brought due to their religious beliefs. Fifteen more criminal cases, ranging from killings to destruction of property, were filed against prominent members of the Ahmadiyya community during the reporting period. The cases remained unprosecuted, and the accused were allowed to post bail.

Relations between the country's religious communities remained tense. Violence against religious minorities and between Muslim sects continued. Most believed that a small minority was responsible for attacks; however, discriminatory laws and the teaching of religious intolerance created a permissive environment for attacks. Police often refused to prevent violence and harassment or refused to charge persons who commit such offenses.

Mobs occasionally attacked individuals accused of blasphemy, their family, or their religious community prior to their arrest. When blasphemy and other religious cases were brought to court, extremists often packed the courtroom and made public threats against an acquittal. Religious extremists continued to threaten to kill those acquitted of blasphemy charges. High-profile accused persons often went into hiding or emigrated after acquittal.

(See <http://2001-2009.state.gov/g/drl/rls/irf/2008/108505.htm> - Accessed 6 July 2009)

81. Similarly, in relation to the issue of violence and discrimination, the United Kingdom Home Office's *Country of Origin Information Report: Pakistan* (16 April 2009) reported as follows:

19.51 The *Human Rights Watch Report 2009* stated that *during 2008 Ahmadis continued to be targeted*. The source added *"Blasphemy cases were registered against Ahmadis in 2008 and two members were murdered in the province of Sindh after Dr. Aamir Liaquat Hussain, a popular religious talk-show host on Geo TV, declared Ahmadis appropriate targets for murder under Islamic law."* [13a] (Discrimination) On the subject of Dr Hussain's declaration, the USSD Report 2008 added *"The Pakistan Medical Association called for official investigations into the case, but as of year's end, the government continued to stall investigation into the deaths. Local media and human rights organizations condemned the Geo program for inciting sectarian violence."* [2k] (Section 1a)

19.52 *On 30 June 2008, the Human Rights Commission of Pakistan (HRCP) reported that a First Information Report (FIR) was lodged on 8 June 2008 against thousands of Ahmadi residents of Rabwah. The FIR followed official celebrations of the Ahmadi community that were held across Pakistan, especially in Rabwah. The FIR stated that "... every person of every locality of the community was seen involved in these celebrations with fire works, lighting their places, and greeting each other (which is amounted to preaching of their faith, a crime according to a controversial law of the country)."* [27d]

...

19.55 The website www.thepersecution.org, 'Persecution of the Ahmadiyya Muslim Community', representing the concerns of the Ahmadiyya community in Pakistan, accessed 13 April 2009, reported in its Year 2008 Summary, Persecution of Ahmadis in Pakistan during 2008, that six Ahmadis were murdered in that year. [60a] (Ahmadi's murdered – for their faith) The same source also stated that *between 1984 and December 2008 there had been 94 Ahmadis killed and 108 attempts of murder of an Ahmadi*. [60a] (Annex II, Summary of other violations) However the USSD Report 2006 provided different statistics on the numbers of Ahmadis killed, and observed that *"The Ahmadi community claims that 171 of their members have been killed since 1988 and that the government made little effort to bring those responsible for these and other acts of sectarian violence to justice or to provide protection for the targets or their families."* [2b] (Section 1)

19.56 In its Year 2008 Summary, the website, www.thepersecution.org, accessed 13 April 2009, listed the number of criminal cases brought against Ahmadis from April 1984 to 31 December 2008. The list included *434 cases of Ahmadis booked for 'posing as Muslims', 679 booked for preaching and 258 charged under the "Blasphemy Law", i.e. PPC 295-C.* The summary cited, in total, *3,636 cases of Ahmadis being booked or charged on religious grounds.* In addition, the report also noted that the entire population of Rabwah (more than 60,000 people) was booked under 298-C of the Penal Code on 8 June 2008 [60a] (Annex II, Updated Summary of the Police Cases, April 1984 to 31 Dec 2008))

19.57 In a report to the UN Committee Against Racial Discrimination, 'Pakistan: The Land of Religious Apartheid and Jackboot Justice', published August 2007, the Asian Centre for Human Rights (ACHR) stated "On 26 January 2007, police reportedly registered cases against five Ahmadi children... under Section 17 of the Maintenance of Public Order Ordinance in Chora Kalan police station in Khushab district for subscribing to Jamaat-e-Ahmadiya's monthly children's magazine Tasheezul Azhan." [67a] (p5: Persecution under blasphemy laws)

...

19.60 In interviewing Ahmadi Community Representatives in Rabwah, members of the Parliamentary Human Rights Group (PHRG) Report, January 2007, identified that *first information reports [charge/allegation reported to the police] brought against Ahmadis were registered by three main sources, "those lodged by members of Khatme Nabuwwat, those precipitated by police or government intervention, and those used to settle personal rivalries or enmity."* [51] (p12, Section 3, Potential Risk Factors Faced by Ahmadis in Rabwah)

19.61 *Members of the PHRG were informed by the Ahmadi Community Representatives that they could not look to the police or the Courts for protection in Rabwah and were unable to give an example, to the PHRG mission, of the police having provided protection to an Ahmadi in Rabwah.* The report further noted that:

"The mission were informed that the state provides no protection to senior Ahmadi figures or mosques at Rabwah, except for a symbolic presence at the central mosque at Friday prayers. The Representatives described how during the Khatme Nabuwwat conference in Rabwah the police line the streets and look on as Khatme Nabuwwat members march through the town, chanting 'filthy, dirty slogans' and vandalising Ahmadi property... The Ahmadi Community Representatives concluded that if someone fled to Rabwah fearing attack in their home area there would be no police protection available to them. Indeed, the police are seen by the community as actively protecting the Mullahs and their followers." [51] (p21, Section 4.2, State protection)

19.62 The PHRG members consulted other sources and similar views were expressed:

"Faiz ur Rehman, President, Amnesty International Pakistan stated that nowhere, including Rabwah, is safe for Ahmadis as the police would refuse to give protection to an Ahmadi. When asked if the police might react differently in Rabwah to elsewhere in Pakistan, Mr Rehman explained that whilst it is not impossible, it has not happened. He explained that... even relatively senior and educated local police officers find that their hands are tied by their

superiors when dealing with Ahmadi cases.” [51] (p21, Section 4.2, State protection)

19.63 The USSD IRF 2007 Report observed that:

“Ahmadi individuals and institutions long have been victims of religious violence, much of which organized religious extremists instigated. *Ahmadi leaders charged that in previous years militant Sunni mullahs and their followers staged sometimes violent anti-Ahmadi marches through the streets of Rabwah, a predominantly Ahmadi town and spiritual center in central Punjab. Backed by crowds of between 100 and 200 persons, the mullahs reportedly denounced Ahmadis and their founder, a situation that sometimes led to violence. The Ahmadis claimed that police generally were present during these marches but did not intervene to prevent violence.* In contrast with the previous report, there were no such reports during this reporting period.” [2f] (Section II)

19.64 On the subjects of internal relocation and Rabwah the UNHCR letter of 13 April 2005 commented:

“*While an internal relocation alternative may be viable in some circumstances, particularly for low-level members of the community, relocation may only be a temporary solution given the ease with which Ahmadi affiliation can be detected. This is because Ahmadis cannot, for example, attend the same mosques as majority Muslims and cannot register as Muslims for political/official purposes. Ahmadis therefore remain somewhat visible within Muslim communities, especially within small communities* Due to the efforts of groups such as Khatme Nabuwat [Nabuwat], a general intolerance for Ahmadis exists throughout Pakistan such that large numbers of agitators can be raised and catalysed in a short time, in any area of the country.” [20a] (p3)

19.65 The same source added that “Although Rabwah does provide a degree of community support to individual Ahmadis, *there are reports suggesting that Rabwah is highly targeted by fundamentalist Islamic groups for anti-Ahmadi protests and other actions.* So relying on the internal flight alternative as a solution for an Ahmadi facing persecution may result in a pattern of constant movement, as an individual may be forced to relocate each time his religious affiliation is discovered.” [20a] (p3)

[Tribunal emphasis]

FINDINGS AND REASONS

What is the Applicant’s Country of Nationality and is he outside it?

82. The applicant claims to be a national of Pakistan and arrived in Australia on a Pakistani passport. The Tribunal accepts that the applicant is a Pakistan national and, for the purposes of the Convention, has therefore assessed his claims against Pakistan as his country of nationality.

Does the Applicant have a well-founded fear of persecution for a Convention related reason?

83. The Tribunal observes that the mere fact that a person claims fear of persecution for a particular reason does not establish either, the genuineness of the asserted fear or that it is “well-founded”, or that it is for the reason claimed. It remains for the applicant to satisfy the Tribunal that he satisfies all of the required statutory elements. Although the concept of onus of proof is not appropriate to administrative inquiries and decision-making, the relevant facts of the individual case will have to be supplied by the applicant herself, in as much detail as is necessary to enable the examiner to establish the relevant facts.

84. A decision-maker is not required to make the applicant’s case for him or her. Nor is the Tribunal required to accept uncritically any and all the allegations made by an applicant. (*MIEA v Guo & Anor* (1997) 191 CLR 559 at 596, *Nagalingam v MILGEA* (1992) 38 FCR 191, *Prasad v MIEA* (1985) 6 FCR 155 at 169 70.)

85. In determining whether an applicant is entitled to protection in Australia the Tribunal must first make findings of fact on the claims he or she has made. This may involve an assessment of the applicant’s credibility and, in doing so, the Tribunal is aware of the need and importance of being sensitive to the difficulties asylum seekers often face. Accordingly, the Tribunal notes that the benefit of the doubt should be given to asylum seekers who for distributing religious pamphlets are generally credible, but unable to substantiate all of their claims.

86. On the other hand, as stated previously, the Tribunal is not required to accept uncritically any or all allegations made by an applicant. In addition, the Tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been established. Nor is the Tribunal obliged to accept claims that are inconsistent with the independent evidence regarding the situation in the applicant’s country of nationality (See *Randhawa v MILGEA* (1994) 52 FCR 437 at 451, per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547). However, if the Tribunal makes an adverse finding in relation to a material claim made by an applicant, but is unable to make that finding with confidence, it must proceed to assess the claim on the basis that the claim might possibly be true (See *MIMA v Rajalingam* (1999) 93 FCR 220).

87. In relation to whether the applicant is entitled to protection in Australia as a refugee the Tribunal notes that the Convention requires that a refugee must have a well-founded fear of persecution for a Convention reason, namely, for reasons of *race, religion, nationality, membership of a particular social group or political opinion*.

88. The Tribunal accepts that the applicant is of Mogul ethnicity and that he was born in [location deleted: s431(2)], Gujranwala district, Pakistan on [date deleted: s431(2)]. Similarly, the Tribunal accepts that, apart from his short visit to Australia in 2006, the applicant has primarily lived in [location deleted: s431(2)] until his departure from Pakistan in December 2008. The Tribunal also accepts that the applicant received a primary school education and that he was employed as [trade deleted: s431(2)] in his father’s business, working in his local and surrounding villages. In addition, the Tribunal accepts the applicant’s evidence that he entered into an arranged marriage with his spouse, who comes from a Sunni Muslim family, and that they have three children. The Tribunal also accepts the applicant’s evidence that his brother, [Brother B’s name deleted: s431(2)], is living in Dubai and that his widowed father and three sisters continue to reside in Pakistan.

89. The applicant has not made any claims that he fears persecution on the basis of his race, nationality or express political opinion. However, the applicant claimed that, as a member of the Ahmadi faith, a minority religious group in Pakistan, he faces a real chance of persecution from civilian and extremist groups because there is a pervasive anti-Ahmadi sentiment within Pakistani society, which is also reflected in its laws. In addition, the applicant contended that effective State protection is not available to him in Pakistan and that he therefore has a well-founded fear of persecution on the basis of his religion.

90. The Tribunal notes that the Handbook on Procedures and Criteria for Determining Refugee Status states:

[The] Universal Declaration of Human Rights and the Human Rights Covenant proclaim the right to freedom of thought, conscience and religion, which right includes the freedom of a person to change his religion and his freedom to manifest it in public or private, in teaching, practice, worship and observance.

(Handbook on Procedures and Criteria for Determining Refugee Status, United Nations High Commissioner for Refugees, Geneva, 1992, in paragraph 71).

91. The Tribunal accepts that the harm that the applicant claims he fears involves serious harm and systematic and discriminatory conduct, and that the essential and significant reasons for the harm claimed to be feared is religion, which is a Convention-related reason. Accordingly, the Tribunal finds that the essential and significant reason that the applicant would experience persecution in Pakistan, if his claims were made out, is the Convention reason of his religion, thereby satisfying the requirements of subsection 91R(1).

The Applicant's Conduct in Australia – Subsection 91R(3):

92. The Tribunal has taken into account the fact that since arriving in Australia the applicant claims to have attended Friday Ahmadi prayer meetings with his brother, [Brother A's name deleted: s431(2)]. However, given the findings set out below, including the credibility of the applicant's claims, the Tribunal is satisfied that the applicant's attendance at these prayer meetings, did not amount to conduct in Australia simply for the purpose of strengthening his claim to be a refugee. Accordingly, in relation to subsection 91R(3) of the Act, the Tribunal is satisfied that this conduct was engaged in otherwise than for the purpose of strengthening the applicant's refugee claim. Therefore, the Tribunal finds that there is no conduct to be disregarded for the purposes of subsection 91R(3).

An Assessment of the Applicant's Protection Claims relating to Religion:

93. The applicant has claimed that he was a Sunni Muslim, but that in approximately 1990 he converted to the Ahmadi Muslim faith. In assessing the applicant's knowledge of the Ahmadi faith, the Tribunal has had regard to the potential impact that cultural differences and a language barrier may have had upon the applicant's ability to convey the nature of his faith at the Tribunal hearing. In this case, the Tribunal notes that at the Tribunal hearing the applicant was able to explain the central tenets of the Ahmadi faith, to name its religious founder and the current leader, as well as provide information on where the latter is based and the fact that the vast majority of Ahmadis in Pakistan are based in Rabwah.

94. In relation to the applicant's claims regarding when and why he converted to the Ahmadi faith, and how he practised his faith in secret in [location deleted: s431(2)], the Tribunal notes that there was significant degree of consistency in this regard between the

applicant's oral evidence and that of his brother, [Brother A's name deleted: s431(2)], at the Tribunal hearing, as well as the 2001 Protection visa application lodged by [Brother A's name deleted: s431(2)]. In this case, the Tribunal accepts as plausible the applicant's claims that the respect in which his father, a Sunni Muslim, was held by his local community, his position as the eldest son in his family, his arranged marriage to a Sunni woman and his role as the local [trade deleted: s431(2)] within his community, together with the precautions he took not to be perceived as an Ahmadi, allowed him to practice his beliefs as an Ahmadi for an extended period without arousing suspicion from his neighbours. As a result, the Tribunal also accepts the applicant's explanation for his failure to lodge a Protection visa application when he visited Australia in 2006, as he had not been identified as an Ahmadi Muslim at that time and did not perceive a need to seek protection. Based on the evidence before it, the Tribunal accepts that the applicant's religious beliefs are genuine.

95. The Tribunal has taken into account the police report the applicant submitted as evidence that he had reported the attacks to which he and his family were subjected to in May 2008 to the local police authorities. Although the delegate considered that this evidence was consistent with the country information indicating that Pakistan has experienced increased violence, the Tribunal also notes that it is consistent with the country information before it regarding the treatment of identified members of the Ahmadi faith in Pakistan. In particular, the Tribunal notes that the United States Department of State *International Religious Freedom Report 2008* (19 September 2008) and the United Kingdom Home Office's *Country of Origin Information Report* (16 April 2009) for Pakistan confirm that there are specific laws that discriminate against religious minorities, such as the Ahmadi, and that this group faces both governmental and societal discrimination, as well as legal bars to the practice of its religious beliefs. In addition, the Tribunal observes that this country information lends support to the view that the applicant remains at risk of serious harm as an identified member of the Ahmadi faith. As such, the Tribunal places less weight on his inability to specifically identify the individuals who were involved in the attacks that took place in May 2008. Accordingly, the Tribunal accepts the applicant's claims that he and his were subjected to attacks upon their person and property in May 2008 because he had been identified as a member of the Ahmadi faith.

96. In relation to the manner in which the applicant might continue to practice his beliefs as an Ahmadi Muslim in the reasonably foreseeable future in Pakistan, the Tribunal has also had regard to the decision in *Appellant S395 of 2002 v Minister for Immigration and Multicultural Affairs* (2003) 216 CLR 473, in which McHugh and Kirby JJ made the following observation at [40]:

...persecution does not cease to be persecution for the purpose of the Convention because those persecuted can eliminate the harm by taking avoiding action within the country of nationality. The Convention would give no protection from persecution for reasons of religion or political opinion if it was a condition of protection that the person affected must take steps - reasonable or otherwise - to avoid offending the wishes of the persecutors. Nor would it give protection to membership of many a "particular social group" if it were a condition of protection that its members hide their membership or modify some attribute or characteristic of the group to avoid persecution. Similarly, it would often fail to give protection to people who are persecuted for reasons of race or nationality if it was a condition of protection that they should take steps to conceal their race or nationality.

97. As a result, the Tribunal accepts that to require the applicant modify his behaviour by concealing or suppressing his religious or political activities would amount to a persecutory

curtailment of his freedom of religious expression. This is particularly so, given that the country information before the Tribunal indicates that there is a high degree of sectarian violence in Pakistan and an intolerance of minority religious groups, such as the Ahmadi who are considered to be blasphemers against Islam.

98. Accordingly, the Tribunal therefore finds that there is more than a remote chance that the applicant will encounter serious harm capable of amounting to persecution for the purposes of section 91R of the Act in the reasonably foreseeable future, should he return to Pakistan, on the basis of his religion.

Availability of State Protection

99. In addition to fearing persecution from the State itself, the applicant has argued that State protection is not available to him in Pakistan, as the government is unwilling and/or unable to protect him from the harm he fears. Specifically, the applicant claimed that notwithstanding the fact that he reported the attacks that took place upon him and his family to the police authorities in May 2008, the police were indifferent to, and dismissive of, his concerns.

100. In considering this issue the Tribunal has had regard to the country information before it. In particular, the Tribunal notes that both the United States Department of State *International Religious Freedom Report 2008* (19 September 2008) and the United Kingdom Home Office's *Country of Origin Information Report* (16 April 2009) for Pakistan confirm that the police authorities and judiciary are slow to deal with such complaints when they are made by Ahmadi Muslims, often for fear of retaliation from extremist groups if they did so, and that such matters are rarely brought before the Courts.

101. Consequently, the Tribunal accepts that the country evidence before it establishes that, at the time of its decision, the state of Pakistan fails to provide the level of protection which its citizens are entitled to expect according to international standards: see *Minister for Immigration and Multicultural Affairs v Respondents S152/2003* (2004) 222 CLR 1 at [27]-[29]. Accordingly, the Tribunal finds that the applicant's unwillingness to seek protection from those authorities is justified for the purposes of Article 1A(2).

Summation:

102. After taking into account all the evidence before it, including the evidence on the departmental files, the oral evidence from the applicant and his witness and the independent country information available to the Tribunal from a range of authoritative sources, the Tribunal finds that the applicant faces a real chance of persecution if he returns to Pakistan in the reasonably foreseeable future, for the Convention reason of his religion.

Can the Applicant relocate within Pakistan?

103. The Tribunal has considered whether it would be reasonable for the applicant to relocate to another part of Pakistan where he may be free from the harm that he fears.

104. The Tribunal observes that the country information cited above indicates that country information before it indicates that the problems faced by members of the Ahmadi faith occur throughout Pakistan. The Tribunal gives some weight to the fact that the United States

Department of State *International Religious Freedom Report 2007* and the 2009 United Kingdom *Country of Origin Information Report* for Pakistan provide that, even in Rabwah, where the majority of Ahmadi reside, there is little in the way of effective State protection for this religious minority.

105. In the circumstances, the Tribunal is satisfied that relocation is not reasonably available to this applicant and that he would be at risk wherever he goes in Pakistan. Accordingly, the Tribunal is satisfied that, in the case of the present applicant, the risk of Convention persecution exists in the country as a whole, and that safe relocation within Pakistan is therefore not reasonably open to the applicant.

Does the Applicant have any right to enter and reside in any safe third country?

106. There is no evidence before the Tribunal to suggest that the applicant has any right to enter and reside in any third country. In addition, there is no other evidence before the Tribunal to indicate that the applicant would be subject to any of the exclusion or cessation clauses set out in the Refugees Convention.

107. Accordingly, the Tribunal finds that the Australia's protection obligations are not excluded under subsection 36(3) of the Act.

CONCLUSION

108. Accordingly, the Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Therefore the applicant satisfies the criterion set out in subsection 36(2) for a Protection visa.

DECISION

109. The Tribunal remits the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*.

Sealing Officer's I.D. prrt44