

**071894764 [2008] RRTA 30 (7 February 2008)**

**DECISION RECORD**

**RRT CASE NUMBER:** 071894764

**DIAC REFERENCE(S):** CLF2007/127107

**COUNTRY OF REFERENCE:** Pakistan

**TRIBUNAL MEMBER:** Linda Symons

**DATE DECISION SIGNED:** 7 February 2008

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act, being persons to whom Australia has protection obligations under the Refugees Convention.

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

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

The applicants, who claim to be citizens of Pakistan arrived in Australia and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas. The delegate decided to refuse to grant the visas and notified the applicants of the decision and their review rights.

The delegate refused the visa application on the basis that the first named applicant is not a person to whom Australia has protection obligations under the Refugees Convention. The applicants applied to the Tribunal for review of the delegate's decisions. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.

### RELEVANT LAW

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

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

Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is the spouse or a dependant of a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa.

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

### Definition of 'refugee'

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

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

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

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

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

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

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

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

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

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

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

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

## **CLAIMS AND EVIDENCE**

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

### **Information given to the Department by the first named applicant**

The following personal information about the first named applicant and the written claims are contained in the Application for a Protection Visa application lodged at the Department.

The first named applicant claims she is a citizen of Pakistan. She was born in Pakistan. She completed her secondary education. She then undertook tertiary studies and following this she worked for a number of years in a particular profession.

The first named applicant was married in mid 1990's. She has several children. She lived in Pakistan from birth until she left for Australia. She speaks, reads and writes Urdu and reads and writes English. She claims that she is Islamic and an Ahmadiyya. The applicants arrived in Australia travelling on Pakistani passports.

In support of her Application for a Protection Visa the first named applicant lodged the following written statement:-

#### **“Introduction**

I [the first named applicant], born in Pakistan on [date]. I've got married in [date] with [name] and have [number] kids, named, [children's names]. I belong to an Ahmadiyya family where my father is devoted worker of Ahmadiyya community and my father in law is [information]. I came Australia with my [number] kids while my husband and one [child] is still in Pakistan.

I have got [degree] in [area of study] from [university] of Pakistan. My husband is a [occupation] who was involved in number of incidents where he was treated by verbal and physical abuse because of his faith and beliefs. He had also transferred from cities to cities during his about [number of years] job just because of his religious beliefs.

#### **Background**

Pakistan is a country where people have no rights for their beliefs if they don't follow of main religion group of country. Since I grown up I have seen fear and uncertain life, which cannot guarantee us of peace because of our religious faith.

In 1984 the government instituted the so-called "anti Ahmadi" ordinance XX contained in section 298(b) and (c) into the Pakistan panel code. This made it illegal for an Ahmadi to "Pose" as a Muslim in anyway whatsoever. The provisions encompass a range of everyday

Ahmadi observances. Mullahs of Pakistan have brought charges against Ahmadis for using the standard Muslim greeting form and naming their children "Muhammad".

In 1986 legislation was passed inserting section 295( c) into penal code, which stated that the penalties for blaspheming the Prophet Muhammad were death or life imprisonment and fines. Use of derogatory remarks etc, in respect of the Holy Prophet, shall be punished with death or imprisonment for life. This section was amended later in August 1991, to make the death penalty the only punishment for the blasphemy. Also in 1991 section 295( a) of the penal code was amended to increase the maximum punishment for outraging the religious feelings of any group from two to ten years.

From 1984 to date Ahmadis have charged pursuant to the anti-Ahmadi Ordinance on more than 2500 occasions. From January to May 1994 alone, 109 cases were registered against members of Ahmadiyya community. Over this period, 125 Ahmadis were sentenced to imprisonment. Over 400 Ahmadi publications were proscribed, 8 mosques were set alight and 24 Ahmadis were allegedly killed in incidents of violence over the 10-year period. Violence against Ahmadis is also well documented by the Australian government.

The state of Pakistan does not provide protection to Ahmadis. It is both unable and unwilling to provide protection because of its law and its attitude to religion minorities. Amnesty criticized the government of General Musharraf, president of Pakistan, for failing to effectively prevent abuses of minority rights and to ensure legal redress for abuses suffered by members of the minorities.

The state in Pakistan has connived in such private abuses of members of the minorities as when police have passively stood by during attacks on Ahmadis. In many more instances it has failed to exercise due diligence in protecting members of minorities from imminent attack and to investigate and prosecute attackers in cases where it could not or did not prevent the abuse. Whenever there is reasonable evidence for such failure, the state of Pakistan is responsible for the abuses by private persons against members of minorities. (Reference taken from [www.persecution.com](http://www.persecution.com))

We have suffered ill treatment in Pakistan which we submit amounts to persecutions. Me and my family was involved in numerous incidents where we were verbally physically threatened and harmed due to our faith in the Ahmadi Religion.

### Persecution and Incidents

During the time I reside in Pakistan I have faced a lot of problems because of our belonging to Ahmadiyya Muslim community. According to the law of Pakistan we are non muslim and government has right to go against us if they find us performing any Islamic activity. From my childhood I saw a lot of incidents and faced fear, people abuse us, call us with worst titles. In school teacher kept discrimination with us. Their behaviour remained bad with us and all this had affected our studies. In college we don't used to tell our fellows, from which authentic group we belong. This was very difficult to hide our religious identity in Pakistan. Because religious discussions are very common. It was not only me, my kids also suffered the same kind of problems at school and later on they had to change their school.

I am starting it from [year], long time before my marriage, when my husband was only [age] and his campaign had started against Ahmadis in all over the Pakistan. A mob gathered around their house my father in law wasn't at home at time, my mother in law was at home

alone with his [number] children. This crowd started abuse and throw stones on our house. My mother in law became injured when some one from the crowd threw a stone in her head. The blood was flowing from her head. Then she brought a gun from inside of house and stood alone in front of the mob. She asked for help from the neighbors but they refused. A police officer who was present at that moment asked her to hand over gun to him. But she refused by saying "this is only way to protect my kids, and myself. I am safe until this gun is in my hands". An hour later when her husband, (my father in law) came home and he took the gun from his wife. Next moment she fainted in his arms. Afterward he fired in air to scatter the crowd. This moment he took his family and went to his [relative] who was living in another city [city]. Next day the phonetics burnt their house.

In [year] while we were living near our mosque in [location]. Our mosque was surrounded by a lot of Ahmadi families. [Information about the area] The extremists of mullahs have arranged a big gathering and planed to attack Ahmadi's houses in that area. I was living in house with my parents and [siblings]. My parents left my [siblings] to my grand parents in same city and I lived with my parents in our house at [location]. I remained awake whole night and was afraid of what is going to happening in our life. The gang of mullahs had proceed all over the area and having swearing on us. Luckily that night we were just saved. I count it one of the horrible night of my life.

From the area mosque the IMAM delivers Friday sermon against us at least once a month. People live around us become emotional. They have discrimination with us and don't accepts our invitations, and anything which we used to send them on different occasions like marriages and festivals. They also don't invite us on occasions too.

The next incident I am going to mention below, was happened just few months ago. In [date], one of extremist IMAM of our area's mosque was swearing in Friday Sermon against us which created a lot of tension in area and in our self. Same evening some phonetic people (not of our area, unknown) were gathered outside of our house and started shout on us. We and our children really got very scared. My father in law, who was living with us, phoned to police station and told them the situation. The response from police was very frustrated. They clearly said, we cannot do anything because you people have created these problem yourself and this because of your religious beliefs. This incidents affected my children badly and they couldn't go out side the home. The children of our street called them "MARZAI", which is the one of the worst title of Ahmadis.

My children couldn't study in Government schools because the teacher discussed religious opinion and belief with them. They are so innocent to understand the meanings of religious beliefs. They only know that we are Muslims but teacher called them non-Muslims. When we complaint to the principal, she said, the teacher is just telling the fact and there was nothing improper. We were so worried after this incidents that how our children would get education in such schools where religion is interrupting in their education. Afterward we had to change their school to a [type of school] school. Which affected a very high on our monthly budget.

In [date], after a Friday sermon, [number] young boys came out side of our house with the hockey and sticks. They start beating to my husband and his [relatives]. They got injured badly and blood started flowing from my their heads. My [relative] got injured so badly at that time. People living around our house watched the whole incident from their roofs and were eyewitness of the incident. When we asked them to be the witness in front of police, what they have seen, they refused to help us. I was in a big shock for a moment because I couldn't understand the reason why it happened.

My husband and his [relative], living together in same house, have faced a lot of fearful situations. Even they are in their practical lives, most of time they were opposed by phonetics of the society. [Number] years before in [year], when my husband and his [relative] had started their [business] on a rented building of the busy area of the city. This [business] was running successfully and having a good business. When owner of the building came to know that they are Ahmadis, he asked them to leave because he doesn't want that any "MARZAI" use his building. This caused us a big financial lose. After this incident, my husband [relative] moved to [country] and claimed asylum.

[Information about the first named applicant's work]. This situation was very hard on me and I tried hard to adjust myself in the situation. I put a complaint to high authority, but nothing could be better than before. This thing led me to resignation from the job.

There are lot other small incidents in our life, some of them put us in very stressful situation and some of them put us on a very embarrassing situation in front of the society. All of them hard to write here but can be mentioned some of them at interview if asked.

### Conclusion

Last [number] years were such painful to us specially the incidents related to my family put us in deep mental disturbance. My father in law said us "now I am not in the position, where I can again face or go throw the situation which I faced back in [year]".

The Government of Pakistan is unable to effectively protect me and my family from the persecution, as the detail of incidents are mentioned below. There are reports of the government failing to intervene in cases of violence and intimidation against minority religious groups.

I submit that me and my family (in Australia and in Pakistan) fulfills the convention definition of a refugee. I also state that there is a real risk that such persecution would occur if I return to Pakistan. I also fear, if me and my family stays in Pakistan could have a very heavy lose of anything. Even I am now safe here but still my family always makes me worried about them.

Before me, my [relative], [name and date of birth], who was granted asylum in Australia and is living happily afterwards. My [relative], whose husband and his family claimed asylum in [country], they all are living there peace fully and happily too. Along with it my other close relatives also claimed the same and living in Australia, the name of them are listed below.

1-[name and relationship]

2-[name and relationship]

3-[name and relationship]

All these difficulties we had faced in Pakistan, because of our religious beliefs forced us to think to move out of our beloved country.”

### **Information given to the Tribunal by the first named applicant**

#### ***Application for Review***

The first named applicant lodged an Application for Review. No further information, documents or submissions were lodged in support of the application at that time. She subsequently lodged a number of documents including a further written statement, a letter from the Ahmadiyya Muslim Association Australia Inc, Medical Reports in relation to her husband and one of her children, a letter to her relative from the Department of Immigration and Citizenship advising him of the grant of his protection visa and a Tribunal decision cover sheet in relation to another relative.

The first named applicant submitted the following written statement:

"1. My name is [the first named applicant]. I am an Ahmadi from [city], Pakistan My family has suffered persecution -- including harassment and discrimination and verbal abuse and physical attacks - on many occasions in Pakistan because of our faith. The problems began a long time ago however have become worse in recent times.

2. In school, I suffered discrimination and abuse because I am an Ahmadi. I was insulted by teachers as well as taunted by the other students. I was singled out for being an Ahmadi by the teachers in classes. It was very hard to make friends as no Muslims wanted to speak to Ahmadis. My [siblings] had a similar experience.

3. In [year], when my husband was [age] a mob of extremist Muslims surrounded his home and threw stones. His mother was home alone with the children and she came to the door to call to the neighbours for help. She was then hit in the head with a rock. The mob then set fire to the house, which caused a lot of damage.

4. A policeman observed all of this however did nothing to assist. The mob only dispersed when my father-in-law arrived home and fired a gun into the air, Following this the family left their home.

5. During [year], extremist mullahs delivered anti-Ahmadi speeches in the mosques accusing us of being anti-Islam and calling on Muslims to kill us. My father and mother wanted to send all the children to stay with our grandparents for our safety. My [siblings] left however I stayed with my parents. I remember lying awake at night unable to sleep because I was so fearful.

6. I studied [area of study] at [university]. I completed [degrees]. I had problems there too. I was not allowed to pray in the mosque and I was insulted by other students. I used to wear a burke. They would say to me things like: "Why are you wearing that? You are not a Muslim. You are pretending, acting."

7. In [year], I began [information about the first named applicant' work]. I was there for [number] years. Initially, a [ethnic] woman was the chair person and there were no problems for me because of my religion. However, later a new woman was appointed who employed a new [position] with extremist beliefs.

8. The new [person] gave me a very hard time because I am Ahmadi. [Information about the first named applicant' work] Other [colleagues] also made my work difficult and uncomfortable for me. Lunch breaks would be very stressful for me as I had to sit in the staff room with the other [colleagues] who would accuse me of not being Muslim.

9. I eventually left the job because it was too stressful. The DIAC decision stated that I had left the job to care for my children. While I did have young children, this was not the main reason I left the job. I Left because of the discrimination I was experiencing.

10. My husband has also experienced a lot of problems in his jobs. He worked as a [occupation]. He has suffered a lot of discrimination and abuse.

11. In [year], my husband and one of his [relative] were running a part time business. [Information about the business]. It was very successful. However when the landlord of the premises they were renting became aware they were Ahmadis, he asked them to leave. This caused a big financial loss. Following this, the [relative] went to [country] where he obtained asylum.

12. In [date], a crowd of extremists gathered outside our home and began yelling out abuse. We were very scared that they might try to physically attack us. My father-in-law telephoned the police and asked for assistance however the police refused. They said we had brought these problems upon ourselves.

13. This incident terrified my children and, in combination with the fact that they were abused and insulted by other children, led to them not wanting to leave the house.

14. My [number] children who are at school have also suffered a lot of problems. The teachers have treated them unfairly. In the Islamic studies classes, the teachers used to single them out and question them on why they don't consider Mohammad the last prophet. They told them they should ask their parents about this. They were only young children and could not properly understand what was happening. Other students teased them because of what the teachers said. The experience was very upsetting for them.

15. We complained to the head of the school however we were told the teachers were simply teaching religious studies as they should be. We ended up taking the children out of the government school and placing them in a [type of school] school, which was very expensive and which we could not really afford.

16. In [date], [number] young men gathered outside our house and attacked my husband and his [relatives] with sticks. They were all injured. A doctors report for my husband is attached to this statement. My [relative] was injured even more badly.

17. In [date], I was threatened by a mullah and [number] fanatic Muslims who were with him. I was walking on the streets near my home and the local mosque. They approached me and told me I should think about my religion and my beliefs and what I have been doing. They said if I considered myself a Muslim, I should act like one. I felt threatened by them and afraid.

18. In [date], I fled Pakistan and traveled to Australia with [number] of my children. I left my husband and [child] behind.

19. A number of family members were already present in Australia as refugees. They had all previously experienced problems in Pakistan because of their Ahmadi faith, which caused them to flee the country.

20. My [relative and name] was found to be a refugee in [date] by the Refugee Review Tribunal and subsequently granted a protection visa (RRT File No: [file number]). My

[relative], [name] was found to be a refugee by the Department and granted a protection visa (Department File No: [file number]).

21. The husband of another [relative and name] was also granted a protection visa by the Department. A letter from the Department to [name] on the grant of his protection visa is attached. [Relative and name], was also granted refugee status. My [relative] and her family received refugee status in [country].

22. Since I left Pakistan, there have been further problems for my [family members]. [Information about an incident] A doctor's report is attached to this statement. They also warned him not to go near the mosque. [Family member] has received threats from mullahs. They came to our home and threatened him with bad consequences if he did not renounce his faith.

23. I do not want to return to Pakistan because I fear further persecution because I am an Ahmadi. I also fear for my children. There is nowhere safe for us to go. There are these problems for Ahmadis all over Pakistan. This is why we did not relocate previously. It would have been the same situation for us everywhere.

The police will not protect us from the extremists. Further, the police themselves are often responsible for persecution. They use the anti-conversion laws to prosecute Ahmadis who are falsely accused of proselytizing.”

### ***Invitation to Hearing***

An officer of the Tribunal wrote to the first named applicant advising that the Tribunal had considered all the material before it relating to the application but it was unable to make a favourable decision on that information alone. The first named applicant was invited to give oral evidence and present arguments at a hearing of the Tribunal. The Tribunal received a response to the hearing invitation.

### ***At the Hearing***

The first named applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from a close relative. The Tribunal hearing was conducted with the assistance of an interpreter in the Urdu and English languages. The applicants were represented in relation to the review by their registered migration agent

The evidence of the first named applicant is summarised as follows:

She was born in Pakistan. She is a citizen of Pakistan. Her parents live in Pakistan Her family are living in a number of countries around the world. She was educated in Pakistan and has completed university education.

She has a number of years of experience working in a particular profession. That is the only place where she has worked. She moved out of her parent's home when she got married. She moved to another town. She lived there until traveling to Australia. She lived with her husband's family.

She got married in mid 1990's. Her husband was working at the time of their marriage. He was working in another city. He subsequently got transferred to a different city. She could not recall the dates when he was transferred. She has several children.

She traveled to Australia on a Pakistani passport which was issued in her name. She did not hold a passport prior to that. She obtained a passport because she wanted to come to Australia. She had not traveled overseas prior to this. She traveled to Australia on a temporary visa. A close relative lives in Australia and he wanted assistance at that time. Although the purpose of her visit was for the reason she gave they had at the back of their minds the bad experiences they faced in Pakistan.

She left Pakistan from Islamabad airport. She traveled to Australia with her children. After her arrival in Australia she informed her close relative of her circumstances in Pakistan. He already knew a bit about it. They decided that she should apply for a protection visa. She also realized that this relative was living here happily and was not having any problems of the kind they were suffering in Pakistan. She applied for a protection visa. She has lived with this relative since her arrival in Australia. She has other family members who live in Australia. She stayed with them for a few days.

She is not working. She has been in contact with her family by telephone since her arrival in Australia. She was informed of an incident that involved her child. She was told that it involved some fanatics and that her child was hurt. Later on her husband was threatened by a fanatic mullah and was told that they know of people who go overseas and apply for protection visas because countries overseas provide them protection.

She filled the Application for a Protection Visa herself. Everything she said in the application is true and correct. She identified her signature on the application. She also lodged a written statement with her application. She wrote that statement. Her close relative in Australia helped her a little to correct the grammar. She identified the statement and stated that everything she said in the statement is true and correct.

Her religion is Islam and she is an Ahmadi. She was born an Ahmadi. Her father, her husband and her children are Ahmadi. She is a practicing Ahmadi. She practices her religion by praying, reciting the Koran and through her lifestyle. She sometimes goes to the mosque but for security reasons children and women are not allowed to go to the mosque. They have to get permission from higher authorities. There have been a few incidents in a few places in Pakistan where there have been shootings. She goes to the mosque for the annual Eid prayers. This is the only time she goes to the mosque.

Her father is a devoted member of the Ahmadiyya community. He was working for the community and her father in law is a known personality. She was involved in the women's meetings which are not held in the mosque. They are held in houses. The purpose of these meetings is to stress the importance of prayers and the holy Koran and they also talk about good things from the holy book. If the meetings are held away from home she does not attend. There have been no meetings held at her home. After she got married she has attended very few meetings.

When asked how someone would know that she is Ahmadi she stated that she could not answer this question. Since she has grown up they are known. When she got married her in laws were already known as Ahmadi to others. From the day she grew up she knew that people know them as Ahmadi.

In the late 1980's they were living in an area where there was a mosque and many Ahmadiis lived near the mosque. The mullahs, who were Sunni Muslims, were inciting other people against them. There was a big gathering of people in the mosque and they were afraid that they might be attacked by those people like the incident that occurred in 1974. They were warned by higher authorities to keep alert. Her parents sent her siblings somewhere else. She stayed with her parents that night. They were very alert and watched through the windows. Luckily nothing happened. They were afraid there might be an attack on their homes. The mullahs delivered speeches in the mosque against them. The crowd left the mosque after the speeches.

Sometime ago after the Friday sermon a group of people gathered outside their home and started abusing them and the Ahmadi community. Her father in law rang the police but the police did not help them. They were told they brought it on themselves. The crowd stayed there for a while abusing them and then left. Several months later a few people came to the front of their house and started hitting her relative with sticks. When her husband heard the noise he went outside. He was also hit by sticks. They saw the whole incident from the roof and then she took her children inside. Her children were very afraid. There were other people looking from their rooftops but no body came to help. That was the incident in which her husband and relative were injured. No one was willing to come forward as a witness and because the police had not helped them previously they did not call the police.

After her arrival in Australia one of her family members was involved in an incident. Her husband was also threatened. From the day she grew up she has always faced hardship and opposition. Their social life was also destroyed due to these incidents. Her life has been destroyed by them being targeted by other people and being opposed by other people. The circumstances were the same before and after her marriage. Her husband was transferred to different places and was also getting a lot of opposition in his office. It was very difficult for her. Her husband started a part time business. They had to stop the business because they were Ahmadi and it was a big financial loss for them.

A family member was riding his bicycle. There is a mosque near their house. He was pushed by someone who said "since you are not a Muslim you are not allowed near the mosque". He fell and hurt himself. Her children were attending a school in their area. The teachers knew that they were Ahmadi. In the Islamic studies class they told her son the difference between Muslims and Ahmadi. He felt embarrassed in the class as he was pinpointed. The other students teased him. They decided to change his school and got him admitted into another school. Although this was a financial burden on them they did not want their children to go through the same circumstances that they had suffered.

When she started working there was a chairperson who was a Farsi lady in the workplace. She was then transferred from there. Later on another fanatic lady became the chairperson and from that day her troubles started. This chairperson started saying things and because of her attitude towards her the attitude of the rest of her colleague changed as well. She lost concentration and felt embarrassed. She realized that they are not liked by people and it made her depressed. She spoke to the chairperson about this but nothing happened.

Since her arrival in Australia she has been going to the mosque. She has attended the Eid festivals and also attends Friday sermons. When asked what she thought would happen if she were to return to Pakistan she stated that the fanatics know that she has come to Australia with her children. They know that when Ahmadiis go overseas and seek asylum they are usually successful. If she were to go back they will know that she has not been successful.

She is afraid that they will harm her children. Some incidents have happened where Ahmadis have been killed or seriously injured. She also feels these dangers. She is afraid for her children. They have seen a lot of opposition and attacks. She is afraid about how they will grow up in such a culture and how they will finish their studies.

Her father in law is a known personality and everyone knows about him. Because of his work she believes this is another reason they are being opposed. She has a fear that in view of previous incidents something sinister might happen to her or her family. It is in the law of Pakistan that they cannot write down that they are Muslim. If they do they can be punished and put behind bars. People come to know about them because what ever documents they are carrying has a section for religion and it says Ahmadi. She does not have anything else to say.

After the first named applicant had given her evidence her close relative, who had been present during the course of her evidence as a support person, indicated that he wished to give some evidence. The first named applicant's representative indicated that he wished to give evidence in relation to how Ahmadis are identified in Pakistan.

The evidence of the first named applicant's close relative, is summarized as follows:

There are two main ways that Ahmadis are identified in society. In a community, within a one kilometer radius there are four to five mosques. Ahmadis do not join these mosques to practice their religion. The community comes to them and asks them why they do not go to the mosque to pray. They then find out that they go to the Ahmadi mosque. The second way of identifying Ahmadis is by the way the woman wear their scarves.

Ahmadi women wear the burkha. Other Muslim women wear the burkha as well. But from the way they wear the burkha you can tell whether they are Ahmadi. Ahmadi do not practice their religion with other Muslims and other Muslims do not allow Ahmadi to practice with them. Every group has their own mosque. Ahmadi go to their own mosque. There have been incidents in the past when Ahmadi have gone to the mosque. Sunni and Shi'ia Muslims have their own mosques. He is not a hundred percent sure. He has heard people say this mosque is for Sunni and this mosque is for Shi'ia.

Official documents have a section where you have to declare that you are a Muslim. You also have to sign under that statement that you are a follower of Mullah Mohammad. If you do not sign this declaration they know that you are Ahmadi. When you sign applications for your national identity card, admission to schools and colleges, everywhere there is a checklist with a section on what religion you belong to. There is a box for Ahmadis and you have to tick it.

## **INDEPENDENT COUNTRY INFORMATION**

The U.S Department of State, *International Religious Freedom Report 2007* on Pakistan states that:

The Constitution establishes Islam as the state religion. It also declares that adequate provisions shall be made for minorities to profess and practice their religions freely; however, in reality the Government imposes limits on freedom of religion, particularly on Ahmadis.

A 1974 constitutional amendment declares Ahmadis to be non-Muslim. Section 298(c), commonly referred to as the "anti-Ahmadi laws," prohibits

Ahmadis from calling themselves Muslims, referring to their faith as Islam, preaching or propagating their faith, inviting others to accept the Ahmadi faith, or insulting the religious feelings of Muslims. The punishment for violation of the section is imprisonment for up to 3 years and a fine. Other religious communities were generally free to observe their religious obligations; however, religious minorities are legally restricted from public display of certain religious images and, due to discriminatory legislation and social pressure, are often afraid to profess their religion freely.

The Government used anti-Ahmadi laws to target and harass Ahmadis. The vague wording of the provision that forbids Ahmadis from directly or indirectly posing as Muslims enabled officials to bring charges against Ahmadis for using the standard Muslim greeting form and for naming their children Muhammad. The Ahmadi community claimed that during the period covered by this report, 28 Ahmadis faced criminal charges under religious laws or because of their faith: 4 under the blasphemy laws, 17 under Ahmadi-specific laws, and 7 under other laws but motivated by their Ahmadi faith.

At the end of April 2006, four Ahmadis were in prison on blasphemy charges; one was in prison and two more were out on bail facing murder charges that the Ahmadiyya community claimed were falsely brought due to their religious beliefs. Seven more criminal cases, ranging from murder to destruction of property, were filed against prominent members of the Ahmadi community during the reporting period. The cases remained unprosecuted and the accused were allowed to post bail.

Since 1983 Ahmadis have been prohibited from holding public conferences or gatherings, they have been denied permission to hold their annual conference. Ahmadis were banned from preaching and were prohibited from travelling to Saudi Arabia for the Hajj or other religious pilgrimages. Ahmadi 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 Ahmadi mosques reportedly were closed; others reportedly were desecrated or had their construction stopped.

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 centre 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.

(US Department of State 2007, *International Religious Freedom Report 2007 – Pakistan*).

## **FINDINGS AND REASONS**

The Tribunal finds that the first named applicant is a citizen of Pakistan based on the evidence given by the first named applicant at the hearing and her possession of a Pakistani passport and will assess her claims on this basis.

When assessing claims made by applicants the Tribunal needs to make findings of fact in relation to those claims. This usually involves an assessment of the credibility of the applicants. When doing so it is important to bear in mind the difficulties often faced by asylum seekers. The benefit of the doubt should be given to asylum seekers who are generally credible but unable to substantiate all of their claims.

The Tribunal must bear in mind that if it makes an adverse finding in relation to a material claim made by the applicant but is unable to make that finding with confidence it must proceed to assess the claim on the basis that it might possibly be true. (See *MIMA v Rajalingam* (1999) 93 FCR 220).

However, the Tribunal is not required to accept uncritically any or all of the allegations made by an applicant. Further, 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 made out. (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.)

In dealing with this application the Tribunal found the first named applicant to be a credible witness. She gave her evidence in an open and straight forward manner and was not prone to exaggeration or overstatement. Her principal claim is that she is of the Ahmadi faith and that she fears persecution due to her religion. Having regard to the letter from the Ahmadiyya Muslim Association Australia Inc and the evidence of the first named applicant the Tribunal accepts that the applicants are of the Ahmadi faith.

Country information from a wide range of reliable sources, including that cited above, indicates long term wide spread intolerance towards and harassment of Ahmadis in Pakistan. This includes restrictions on religious practice, threats, physical violence and attacks on members of the Ahmadiyya community. Of particular note are the specific government policies of discrimination entrenched in the 1974 Constitution which declares Ahmadis to be non Muslim and the 1984 amendments to the Penal Code, section 298(c), commonly referred to as the "anti-Ahmadi laws," which prohibits Ahmadis from calling themselves Muslims, referring to their faith as Islam, preaching or propagating their faith, inviting others to accept the Ahmadi faith, or insulting the religious feelings of Muslims. The punishment for violation of the section is imprisonment for up to 3 years and a fine.

The Tribunal accepts the evidence of the first named applicant and her close relative that the applicants have been identified as belonging to the Ahmadi faith in their community. The Tribunal also accepts that the first named applicant's father in law is a well known

personality. The Tribunal also accepts that the first named applicant's husband had to close down a successful business because he was discovered to be Ahmadi and suffered financial loss as a result.

The Tribunal accepts that a crowd of extremists gathered outside their house and yelled out abuse to them. The Tribunal also accepts that the police were called and refused to provide any assistance. The Tribunal accepts that the first named applicant's husband and his relatives were attacked. The first named applicant has provided the Tribunal with a Medical Certificate in relation to the injuries suffered by her husband and the treatment he received. The Tribunal also accepts that the first named applicant was threatened by a mullah.

The Tribunal accepts that since the applicants came to Australia one of the first named applicant's family members was pushed off his bicycle by extremists, fell and injured himself. The first named applicant has provided the Tribunal with a Medical Certificate in relation to the injuries suffered by this family member and the treatment he received. The Tribunal accepts that the first named applicant's husband has received threats from mullahs. The Tribunal also accepts that if the applicants were to return to Pakistan the community is likely to target them on the basis that they have been unsuccessful in obtaining asylum overseas.

The Tribunal finds, on the material before it, that there is a real chance that the applicants would face persecution for reason of their religion if they were to return to Pakistan now or in the reasonably foreseeable future. In reaching this finding the Tribunal accepts the evidence of the first named applicant and her close relative and places considerable reliance on the available country information.

The Tribunal has considered whether the authorities in Pakistan would be able to provide the applicants with effective protection. The US Department of State - *International Religious Freedom Report 2007 – Pakistan* indicates that there have been instances in which the authorities have failed to intervene to prevent violence against Ahmadis and have used anti-Ahmadi laws to target and harass Ahmadis.

The State's discriminatory anti Ahmadi laws raise serious concerns about the willingness of the State to protect Ahmadis from harm. The Tribunal accepts the evidence of the first named applicant that her family have previously sought and been refused the protection of the police. Having regard to this evidence the Tribunal is satisfied that the State would not provide the applicants effective protection from harm.

For this reason the Tribunal is also satisfied that the harm feared by the first named applicant is not localised and that it could not be avoided by the family relocating to another part of Pakistan. The Tribunal finds that the first named applicant's fears are therefore well founded. The Tribunal is satisfied that if the applicants return to Pakistan now or in the reasonably foreseeable future there is a real chance that they will face persecution involving serious harm. The Tribunal finds that the applicants' religion is the essential and significant reason for the persecution and that it involves systematic and discriminatory conduct.

There is no evidence before the Tribunal to suggest that the applicants have a legally enforceable right to enter and reside in any country other than their

country of nationality being Pakistan. The Tribunal finds that the applicants are outside their country of nationality. The Tribunal finds that the applicants have a well founded fear of being persecuted for reasons of their religion if they return to Pakistan now or in the reasonably foreseeable future. The Tribunal finds that the applicants are unwilling, owing to their fear of persecution, to avail themselves of the protection of the government of Pakistan.

## **CONCLUSIONS**

The Tribunal is satisfied that the applicants are persons to whom Australia has protection obligations under the Refugees Convention. Therefore the applicants satisfy the criterion set out in s.36(2)(a) for a protection visa.

## **DECISION**

The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act, being persons to whom Australia has protection obligations under the Refugees Convention.

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