

**AT AUCKLAND**

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|------------------------------------|----------------------|
| <b>Appellants:</b>                 | <b>AZ (Pakistan)</b> |
| <b>Before:</b>                     | L Moor (Member)      |
| <b>Counsel for the Appellants:</b> | D Mansouri-Rad       |
| <b>Counsel for the Respondent:</b> | No Appearance        |
| <b>Dates of Hearing:</b>           | 10 & 11 March 2014   |
| <b>Date of Decision:</b>           | 26 March 2014        |

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**DECISION**

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[1] These are appeals against decisions of a refugee and protection officer, declining to grant refugee status and/or protected person status to the appellants, citizens of Pakistan, of the Ahmadi faith.

**INTRODUCTION**

[2] The appellants are a husband ('the husband') and wife ('the wife'), together with their two-year-old son ('the son') and nine-month-old daughter ('the daughter').

[3] The appellants claim that, as Ahmadis, they will be unable to freely manifest their religion in Pakistan and are at risk of serious harm from the state and members of the Sunni Muslim population.

[4] The appeals for the adult appellants turn on whether the public assertion of their faith is at the core of their right to manifest their religion and whether they face a real chance of being identified as Ahmadi. For the child appellants, the primary issue is whether they face a risk of serious harm due to the identification of their faith through their parents.

[5] For the reasons which follow, the appeals succeed.

[6] Given that the same claim is relied upon in respect of all limbs of the appeal, it is appropriate to record it first.

## **THE APPELLANTS' CASE**

[7] The account which follows is that given by the appellants at the appeal hearing. It is assessed later.

[8] The Tribunal heard evidence from the two adult appellants. The husband acted as the responsible adult for the children. The evidence is assessed later.

### **The Husband's Evidence**

[9] In 1977, the husband was born in Y city, in the Punjab province of Pakistan. He was born into a Sunni Muslim family. For the purposes of this appeal, the husband's early life was unremarkable.

#### *Conversion to Ahmadi faith*

[10] In 1996, the husband's parents converted to the Ahmadi faith. The conversion was led by the husband's mother, who had gained knowledge about the religion from a close friend, AA. The husband's father agreed to convert, following a prophetic dream. At the time, the husband was a teenager with limited interest in religion. He accepted his mother's explanation that the conversion was the correct decision for their family. The husband's parents registered the family, including the husband and his siblings, as Ahmadis with their local Ahmadi association.

[11] The husband was advised by his parents not to tell friends and classmates about the family's conversion. His parents informed the wider family of the conversion, all of whom reacted negatively to the news. In particular, the husband's grandmother and his paternal uncle were strongly opposed.

[12] Following their conversion, the family would visit AA's house to listen to the Friday prayers broadcast from the Ahmadi movement's Khalifa (head of the international Ahmadi community) on the MTA Ahmadi satellite channel. They would also pray in their own home.

### *Saudi Arabia*

[13] In late 2000, the husband relocated to Saudi Arabia where his father had been living and working since approximately 1994. The husband later learnt that his parents believed it was best for him to be out of Pakistan. They were concerned for his safety, due to the wider family's reaction to their conversion.

[14] During his time in Saudi Arabia the husband's interest in his Ahmadi faith deepened. He gained knowledge about the religion in conversations with his parents. He was also introduced to the Ahmadi community in Riyadh by his father. They attended underground Friday prayers with other Ahmadis in private homes. They would be informed of the location for each week's prayers, referred to in code as "lunches" or "gatherings", by telephone or text message prior to the event. The husband also watched Ahmadi Friday prayers on the internet. At times, he attended Sunni prayers to avoid suspicion.

### *Pakistan*

[15] Meanwhile, in Pakistan, the husband's mother increased her involvement in the Ahmadi community. She held a number of positions including as an *islah-o-ishaat* communicator and as the person responsible for converts. She also actively proselytised and was responsible for converting numerous people to the faith. Over the years, she relocated approximately six times within Y city to avoid attention as an Ahmadi.

[16] The husband returned to Pakistan for approximately one month per year, when taking annual leave. He also travelled to countries in the Middle East and Europe, as a tourist or for business. He travelled on his genuine Pakistani passport, which recorded his religion as Islam.

[17] On 31 March 2010, the husband married his Ahmadi wife in a culturally arranged marriage in Pakistan. Ahmadi friends of the husband's family and his grandmother, who had softened her views since her initial opposition to the conversion, attended the wedding ceremony. The wife's uncle BB, who was at that time the Ameer/President of the Jama'at Ahmadiyya in Y city, performed the ceremony. An Ahmadi *nikahnama* (marriage certificate) document was completed and registered with the Ahmadi community in Pakistan.

[18] During a return visit to Pakistan in August 2012, the husband received a First Information Report (FIR) requesting that he, his father and mother report to

the police station. An individual named CC had reported that they were of the Ahmadi faith. The husband did not know who CC was or why he had been reported. Shortly thereafter, the husband returned to Saudi Arabia on his own genuine passport, without experiencing any difficulties. His parents sold their house a few months later and relocated to avoid further trouble. A second letter was received at their former address and this was sent on to the husband's mother.

[19] In late 2013, the husband's parents departed Pakistan and claimed refugee status in the United Kingdom. The husband's mother, as the principal claimant, claimed a fear of being persecuted for reasons of their Ahmadi faith. They are currently awaiting a decision on their application. The husband's brother and sister are currently living in Dubai. They are estranged from all wider family members, due to their opposition to the family's conversion.

*Husband's cousin and events leading to departure from Saudi Arabia*

[20] In approximately December 2007, the husband's cousin relocated to Saudi Arabia. The husband's mother advised the husband to keep his distance, as this cousin was the son of the uncle who strongly opposed the family's conversion. Nevertheless, the husband struck up a friendship with his cousin. The cousin encouraged the husband to revert back to Sunni Islam. However, initially he was not forceful in such requests.

[21] In September 2010, the husband was fired from his employment without reason. His cousin suggested this may have been because he had angered Allah, having converted to the Ahmadi faith.

[22] In late January 2013, the husband's cousin collected the husband's son from the wife, for a zoo visit. Having not returned for many hours, the wife asked that the husband locate him. The husband eventually located the cousin at a new address. His cousin demanded that he renounce this Ahmadi faith and confirm it in both a letter and a newspaper advertisement. The husband agreed to do so to appease him. His son was returned to him and they returned home.

[23] The husband feared that his cousin would inform the authorities in Saudi Arabia and Pakistan of his religion, when he realised that the husband was not actually going to revert back to Sunni Islam. He consulted an Ahmadi community leader and his mother, who both advised him to seek asylum abroad. Whilst he made arrangements to do so, his mother made contact with the Ahmadi

community in Pakistan who contacted the Ahmadi community in New Zealand. She also contacted the Ahmadi community in New Zealand directly.

*Participation in the Ahmadi community in New Zealand*

[24] Upon their arrival in New Zealand, the family were met and assisted by the individuals from the New Zealand Ahmadi Association.

[25] In New Zealand, the husband has been actively involved in the Ahmadi community, attending prayers, participating in community activities and making financial donations. During the visit of the Ahmadi international Khalifa in 2013, the husband served as one of the security/protection personnel.

[26] If he is returned to Pakistan, the husband wishes to manifest his religion as he does now in New Zealand, actively participating in prayers and religious activities and responding honestly when asked about his religion. However, out of fear, he would hide his faith, otherwise he would not secure employment and his children would not be able to be educated. Once identified as Ahmadi, either by his extended family informing the authorities or from the earlier FIR, he fears detention, death and ill-treatment, particularly as a convert who is viewed as an apostate.

**The Wife's Evidence**

[27] In 1983, the wife was born in X town, into an Ahmadi family. All previous generations of her family have been Ahmadi. Certain family members have held prominent positions in the Ahmadi community, including her maternal grandfather who wrote and published an Ahmadi text which was read widely within the Ahmadi community. As well as her late uncle, who was the Ameer/President of the Ahmadi Jama'at in Y city and was killed in the May 2010 mosque bombings.

[28] Growing up as an Ahmadi child, the wife was aware that she had to hide her faith. Hers was the only Ahmadi family in the town where they lived. Only on one occasion, at age 13, did the wife disclose to her best friend that she was Ahmadi. Her best friend immediately ended the friendship and the wife learnt not to disclose her faith again.

[29] In Pakistan, the wife participated in underground prayers and daily religious discussions, led by her father. She also delivered some lectures regarding mental health to Ahmadi women at the time she was studying psychology.

[30] Whilst at university, the wife thought that it would be safe to wear traditional Ahmadi dress and an Ahmadi ring, believing “university educated people” to be more open-minded. However, she was harassed and verbally abused by individuals at the university. The wife stopped wearing the traditional clothing. Her father visited the principal and advised that the clothing and ring had been gifts, following which the harassment stopped. On one occasion, her brother engaged in a heated dispute regarding the Ahmadi religion with a colleague, following which he lost his employment.

### *Marriage*

[31] The wife’s family arranged for her marriage to the husband through their local Ahmadi community, in conjunction with the husband’s local Ahmadi community and his mother. The wife’s family were aware that the husband’s family were converts.

[32] In April 2010, when the couple married, the wife’s uncle, who was the Ameer/President of the Ahmadi Jama’at in Y city, attended the couple’s wedding as a family member and also served as their celebrant.

[33] In Saudi Arabia, the wife participated in underground prayer gatherings with other Ahmadi women, as well as in Ahmadi women’s activities.

[34] Due to the “traditional nature of their marriage”, the wife was not aware of the difficulties her husband was experiencing with his cousin and with the FIR. She accepted her husband’s explanations that his stress was due to his workload. In 2013, she was advised by her husband that they needed to leave Saudi Arabia and could not return to Pakistan for reasons of their safety. Again abiding by cultural norms, she did not question further. Once in New Zealand, the wife learnt about some of the difficulties and risks the family are facing. Because of such risks, she did not return to her father’s funeral in Pakistan.

### *New Zealand*

[35] Since her arrival in New Zealand, the wife has been actively involved in the Ahmadi community here. She regularly attends prayers and community activities, including with the women’s auxiliary group. She feels great freedom being able to express her faith and identify as an Ahmadi without fear of the consequences. She felt particularly blessed at being able to meet the international Khalifa during his visit to New Zealand in 2013.

[36] If she is forced to return to Pakistan, the wife will not be able to practise her religion as she wishes to. Further, she fears for her and her family's safety as Ahmadis.

### **Evidence of DD**

[37] DD is currently involved at a high level within the Ahmadiyya Muslim Jama'at New Zealand. He has held this position for some years. The community has 400 members in New Zealand and he has personal contact with all members.

[38] DD first met the appellants on the day they arrived in New Zealand. He had been advised that an Ahmadi family was seeking refuge in New Zealand by a member of the association EE.

[39] DD has no doubts that the family are Ahmadi. In addition to being informed that the family were Ahmadi prior to their arrival, the association undertook its own procedure to verify the authenticity of the family's Ahmadi faith and is satisfied as to its genuineness. He is also aware that the husband's family had converted to the Ahmadi faith and that the husband's parents have had to leave Pakistan.

[40] DD advised that, since their arrival in New Zealand, the appellants have been actively involved in Ahmadi community activities. They have regularly attended prayers, community functions and participated in special events such as during the visit of the Khalifa in October 2013. During the Khalifa's visit, the husband served as one of his minders or security personnel.

[41] DD also explained that the opposition to the Ahmadi faith by other branches of Islam occurs throughout the world including in New Zealand as demonstrated by a recent protest.

### **Evidence of EE**

[42] EE, a minister of religion for the Ahmadiyya Muslim Jama'at New Zealand also gave evidence before the Tribunal.

[43] EE first knew of the appellants a number of weeks before they arrived in New Zealand. He was contacted by a friend who worked at the Ahmadi headquarters in Rabwah, Pakistan. The husband's mother had contacted his friend, as both were "office holders" in the Ahmadi community in Pakistan. She had requested assistance for her son and his family, who would soon be travelling to New Zealand. The husband's mother also telephoned EE directly, advising of

the appellants' intentions to travel to seek refuge in New Zealand. Upon their arrival, EE assisted the family with accommodation and provided the support of the New Zealand Ahmadi community.

[44] EE advised the Tribunal that, since their arrival, the family have been actively involved in religious activities, attending prayers and participating in other gatherings. The wife has attended women's meetings and the husband performed special duties during the visit of the Khalifa.

[45] EE confirmed that the appellants are followers of the Ahmadi faith. In his opinion, the appellants face risks to their physical safety if they return to Pakistan. The risk is exacerbated by the husband's status as a convert. They can be identified through a variety of channels. For example, to obtain identity documents, passports, to complete exams or obtain employment, every individual in Pakistan must sign a declaration confirming that they are not Ahmadi. Without signing this they are unable to access schools, employment or identity documents. Yet, if they simply assert that they are Muslim, it is a crime to call oneself Muslim, if an Ahmadi.

[46] EE also confirmed that the couple's Ahmadi *nikahnama* (marriage certificate) is "one hundred per cent original" and that it contains the signature and stamp of the Ameer/President of the Ahmadi community in Y city.

### **Material and Submissions Received**

[47] The Tribunal has received the Refugee Status Branch file, a copy of which has been provided to the appellants. On behalf of the appellants, Mr Mansouri-Rad has lodged written submissions dated 5 March 2014, together with the following:

- (a) A letter dated 28 February 2014 from DD;
- (b) A letter dated 3 March 2014 from EE, Minister of Religion of Ahmadiyya Muslim Jama'at New Zealand.
- (c) A certified true copy of a letter dated 5 December 2013 from the United Kingdom Home Office to the husband's mother relating to her refugee claim there.



- (d) A certified true copy of a letter dated 5 December 2013 from the United Kingdom Home Office to the husband's father relating to his refugee claim there.
- (e) A certified true copy of a letter dated 28 December 2013 from the Ahmadiyya Muslim Association United Kingdom in support of the husband's parents' refugee claim in the United Kingdom.
- (f) A copy of the husband's mother's written statement (undated) in support of her refugee claim in the United Kingdom, together with its English translation.
- (g) Six photographs as follows:
  - (i) A photograph taken in late 2013 at the Ahmadi mosque in Auckland, showing the husband standing in an official position during a speech by the Ahmadi Khalifa.
  - (ii) A photograph taken in late 2013 in front of the library at the Ahmadi mosque in Auckland showing the appellants with the Ahmadi Khalifa.
  - (iii) Three photographs taken in late 2013 at the Ahmadi mosque in Auckland showing the husband reading a religious text during the Khuddam session.
  - (iv) A photograph taken in mid-2013 at the Ahmadi mosque in Auckland showing the appellants during the Khalifa Day gathering at the mosque.
- (h) A printout of emails between the husband and the Australian Consulate-General in Dubai as to whether or not the husband had applied for any type of visa prior to April 2013. An email dated 16 February 2014 appears to confirm that, contrary to the Refugee Status Branch officer's finding, there had not been any visa application to the Australian authorities by the husband prior to April 2013.
- (i) The husband and the wife's Ahmadi *nikahnama* (marriage certificate).

[48] During the hearing, counsel also produced the following:

- (a) Certified original copies of United Kingdom Home Office documentation for the husband's parents and the supporting letter from the Ahmadiyya Muslim Association United Kingdom.
- (b) The original copy of the husband's mother's statement for her United Kingdom asylum claim.
- (c) A publication by the Ahmadiyya Muslim Jama'at New Zealand Incorporated showing the husband during the Khalifa's 2013 visit.
- (d) The envelope in which the United Kingdom documentation was sent.
- (e) A copy (with translation) of the couple's Ahmadi *nikahnama* (marriage certificate). This includes the signature and title of the Ameer/President of the Jama'at Ahmadiyya in Y city on 31 March 2010.
- (f) A certified translation of marriage deed from Arabic to English (a translation of the Pakistani registered marriage deed for visa purposes in Saudi Arabia).
- (g) Further country information regarding attacks on Ahmadi mosques in Y city in May 2010.
- (h) Photographs of those who died in the mosque attacks including a photograph of the Ameer of the Jama'at Ahmadiyya Islami of Y city in May 2010.
- (i) A DVD of the couple's wedding in April 2010, showing the wife's late uncle, who was the Ameer/President of the Jama'at Ahmadiyya Islami of Y city, in attendance at the wedding.

## **ASSESSMENT**

[49] Under section 198 of the Immigration Act 2009, on an appeal under section 194(1)(c) the Tribunal must determine (in this order) whether to recognise the appellants as:

- (a) refugees under the 1951 Convention Relating to the Status of Refugees ("the Refugee Convention") (section 129); and

- (b) protected persons under the 1984 Convention Against Torture (section 130); and
- (c) protected persons under the 1966 International Covenant on Civil and Political Rights (“the ICCPR”) (section 131).

[50] In determining whether the appellants are refugees or protected persons, it is necessary first to identify the facts against which the assessment is to be made. That requires consideration of the credibility of the appellant’s account.

### **Credibility**

[51] With the exception of the FIR, the Tribunal finds the appellants’ accounts of their past experiences in Pakistan and Saudi Arabia as credible. Both appellants gave detailed evidence to the Tribunal which was consistent both with the evidence previously provided, the documents provided on appeal (including the Ahmadi *nikahnama* (marriage certificate), witness evidence from the members of the Ahmadi community in New Zealand, the husband’s mother’s statement in support of her asylum claim in the United Kingdom, information from the Australian Consulate-General in Dubai) and the general situation summarised in country information.

[52] Nevertheless, the Tribunal does not accept the husband’s evidence regarding the FIR. It finds it implausible that in 2012, approximately 12 years after the husband had relocated to Saudi Arabia, an individual unknown to him lodged a complaint about him to the Pakistani police, leading to the drawing up of an FIR regarding him and his family’s Ahmadi faith and that the FIR was then addressed to the husband and his parents at his parents’ house. Since his departure from Pakistan in 2000, the husband’s parents had relocated on approximately five occasions. The husband failed to provide an explanation as to how it was known (or why it would be thought) that he was living at that address. In addition, the Tribunal observes that the husband was able to leave the country shortly after, without difficulty, on a genuine passport.

### **Factual Findings**

[53] The husband is an Ahmadi convert who has lived the majority of the last 13 years in Saudi Arabia. He is married to his wife, who was born into the Ahmadi faith. Together they have two children, both also of the Ahmadi faith. Following his conversion, members of the husband’s wider family reacted negatively to the

conversion and in subsequent years have threatened to disclose their religion to the authorities in Saudi Arabia and Pakistan. The husband is a young professional and does not have close family remaining in Pakistan. The wife's mother and brothers remain living in Pakistan. The appellants no longer have the right to reside in Saudi Arabia.

[54] During their time in Pakistan and Saudi Arabia, both the husband and wife consistently denied their religion and kept it hidden from the community at large, out of fear of the consequences. They practised their faith, in underground settings, to the extent they were able to. The wife attempted to wear traditional clothing but ceased this practice following harassment.

[55] The husband's parents have fled the country and claimed asylum in the United Kingdom. The wife's uncles have been granted refugee protection in Europe. One of the wife's uncles who served as the Ameer to the Ahmadi community in Y city in 2010 was killed in the May 2010 mosque bombings. Since their arrival in New Zealand, the family has been accepted into, and participated actively, in the Ahmadi community in New Zealand.

[56] It is on these facts that the appeals fall to be assessed.

### **The Refugee Convention**

[57] Section 129(1) of the Act provides that:

"A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention."

[58] Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

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

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

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

- (b) If the answer is yes, is there a Convention reason for that persecution?

### **Assessment of the Claim to Refugee Status**

[60] For the purposes of refugee determination, “being persecuted” has been defined as the sustained or systemic violation of core human rights, demonstrative of a failure of state protection – see *Refugee Appeal No 74665/03* (7 July 2004) at [36]-[90]. Put another way, persecution can be seen as the infliction of serious harm, coupled with the absence of state protection – see *Refugee Appeal No 71427* (16 August 2000), at [67].

[61] In determining what is meant by “well-founded” in Article 1A(2) of the Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), where it was held that a fear of being persecuted is established as well-founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective – see *Refugee Appeal No 76044* (11 September 2008), at [57].

[62] It is necessary first to address the country information as to the treatment of Ahmadis in Pakistan.

#### *Historical background*

[63] In the interests of brevity, where the following background is uncontroversial, sources have not been given.

[64] The Ahmadi movement is named after its founder, Mirza Ghulam Ahmad, who was born in 1835 in Qadian, in the Punjab in India. It is a Muslim movement which follows the teachings of the Qur’an. Ahmad saw himself as chosen by Allah to reform and renew Islam. Followers see him as a messiah and a prophet.

[65] In the early 20th century, the movement split into two. One branch took the name “Qadiani”, after Ahmad’s birthplace (the term is now used pejoratively by other Muslims), and emphasised Ahmad’s claim to be a prophet. The second group (the Lahore Party), who see him as a reformer only are, today, dwindling. The ‘anti-Ahmadi’ sentiment is predominantly focussed on the Qadiani Ahmadis.

[66] In 1947, following the partition of India and Pakistan, the community moved its religious headquarters from Qadian to Rabwah (also known as Chenab Nagar), on the Chenab River in Punjab, Pakistan. Today, it has a population of 70,000, of

which 97 per cent are Ahmadis. Local authorities, however, including the police and security forces, are predominantly non-Ahmadi.

[67] In 1974, Prime Minister Zulfikar Bhutto amended the Constitution to declare Ahmadis to be non-Muslims. A 1984 law then barred Ahmadis from calling their places of worship mosques or from proselytising in “any way, directly or indirectly”.

[68] The Ahmadi faith is moderate, stressing non-violence and tolerance of other faiths. Ahmadis say that Ahmad was not a “law-giving” prophet and his task was only to propagate the laws enunciated by Mohammed. But few mainstream Muslims accept this, claiming the faith is heretical for implying that Mohammed was not the final prophet. An insightful discussion of the real reasons for the emergence of Muslim opposition to the Ahmadi faith is to be found in “A Marked Life” by Pakistani journalist Saba Imtiaz, who has written extensively on the predicament of Ahmadis in Pakistan, at [www.sabaimtiaz.com](http://www.sabaimtiaz.com):

“Purging Ahmadis from the mainstream Islamic faith has been a triumph for the right-wing in Pakistan. The campaign began just a few years after the creation of Pakistan. In 1953, anti-Ahmadi riots broke out in Punjab, stemming from demands by right-wing groups to declare Ahmadis non-Muslims and remove the influential foreign minister, Sir Chaudhry Zafrullah, Khan and other Ahmadi officials from the government. The riots were preceded by attacks on Ahmadi mosques and officers, a campaign of hate speech against Ahmadiyya community leaders and the foreign minister, and calls for Ahmadis to be killed.

A judicial commission that investigated the protests, and the *Majlis-e-Ahrar* group that led them, found that the riots were well organized, supported by sections of the press, religious leaders and politicians. The position that Ahmadis held in society and politics rankled the *Ahrar*, as did their own lack of political influence since the *Ahrar* had opposed the creation of Pakistan in the 1940s. Using religion and the politics of blasphemy became a convenient way for the *Ahrar* to create a support base in Pakistan and declare that Ahmadis had no space in an Islamic state. This has set a pattern that is now cemented in Pakistan, particularly where allegations of blasphemy are concerned.”

[69] Conditions for Ahmadis in Pakistan were recently considered by the Tribunal in *AP (Pakistan)* [2013] NZIPT 800401-404 and *AV (Pakistan)* [2013] NZIPT 800275-276. It is not intended to repeat *in extenso* what was said there. Country information published subsequent to those decisions by the United States Department of State in its *Report on International Religious Freedom: Pakistan* (20 May 2013) summarises the situation as follows:

“A 1974 constitutional amendment declared that Ahmadis are non-Muslims. Sections 298(b) and 298(c) of the penal code, commonly referred to as the “anti-Ahmadi laws,” prohibit Ahmadi Muslims from calling themselves Muslims, referring to their religious beliefs as Islam, preaching or propagating their religious beliefs, inviting others to accept Ahmadiyya teachings, or insulting the religious feelings of Muslims. The punishment for violation of these provisions is imprisonment for up to three years and a fine. Most politicians oppose any amendments to the

constitution affecting its Islamic clauses, especially the ones relating to Ahmadi Muslims.

Freedom of speech is subject to “reasonable restrictions in the interest of the glory of Islam,” as stipulated in sections 295(a), (b), and (c) of the penal code. The consequences of contravening the country’s blasphemy laws are death for “defiling Prophet Muhammad,” life imprisonment for “defiling, damaging, or desecrating the Quran,” and 10 years’ imprisonment for “insulting another’s religious feelings.” Separately, under the Anti-Terrorism Act (ATA), any action, including speech, intended to incite religious hatred is punishable by up to seven years’ imprisonment. In cases in which a minority group claims its religious feelings were insulted, the blasphemy laws are rarely enforced, and cases are rarely brought to the legal system. The law requires that a senior police official investigate any blasphemy charge before a complaint is filed.

...

The government designates religious affiliation on passports and requests religious information in national identity card applications. A citizen must have a national identity card to vote. Those wishing to be listed as Muslims must swear their belief that the Prophet Muhammad is the final prophet, and denounce the Ahmadiyya Muslim movement’s founder as a false prophet and his followers as non-Muslim. The provision prevents Ahmadi Muslims from obtaining legal documents and puts pressure on members of the community to deny their beliefs in order to enjoy citizenship rights, including the right to vote. Many Ahmadis are thus effectively excluded from taking part in elections.

...

Violent extremists also targeted Muslims who advocated tolerance and pluralism. There were scores of attacks on Sufi, Hindu, Ahmadiyya Muslim, Shia, and Christian gatherings and religious sites, resulting in numerous deaths and extensive damage. Some religious groups protested against public debate about potential amendments to the blasphemy laws or against alleged acts of blasphemy.”

[70] The United States Department of State also reports abuses of religious freedom, including religious prisoners and detainees. It observes that the government has generally enforced existing legal and policy restrictions, particularly on Ahmadi Muslims. Twenty Ahmadis were killed because of their faith during 2012, “a significant increase over the previous year”. Authorities had made no arrests of the perpetrators in any of those cases by the year’s end. In addition, 26 Ahmadis were arrested for their faith and spent time in prison before being released on bail.

[71] In its 2014 World Report, Human Rights Watch records that:

“Members of the Ahmadiyya religious community continue to be a major target of blasphemy prosecutions and are subjected to longstanding anti-Ahmadi laws across Pakistan. In 2013, they faced increasing social discrimination as militant groups accused them of illegally “posing as Muslims,” barred them from using their mosques in Lahore, vandalized their graves across Punjab province, and freely engaged in hate speech, inciting violence against them as authorities looked the other way or facilitated extremists.”

[72] As to the extent to which attacks against Ahmadis are reported, the Tribunal in *AM (Pakistan)* [2013] NZIPT 800274 considered a recent United Kingdom decision of the Asylum and Immigration Tribunal, *MN and others (Ahmadis – country conditions – risk) Pakistan* CG [2012] UKUT 00389 (IAC), delivered on 13 November 2012, which had made the following comment:

“In the context of the number of incidents recorded in the past 24 years, it may be thought that the risk to Ahmadis is not as great as has been urged in these appeals. We accept however the explanation in the submissions from the appellants’ representatives that this is in part due to the way in which Ahmadis in general deal with their difficulties in Pakistan by self denial, civil obedience and by keeping a low profile. Although some of the incidents reported on [www.thepersecution.org](http://www.thepersecution.org) and its sister site might suggest otherwise, on the whole, it appears to have been a successful approach. With this moderation of the ways in which Ahmadis express and practise their faith including its propagation, we accept that there have been fewer prosecutions and complaints made than might otherwise have been the case. We accept the evidence of Dr W about the increasing Islamisation in Pakistan which undoubtedly would heighten the risks for Ahmadis who chose to flout the law and we accept that the need to keep a low profile is likely to have increased.”

#### *Situation for converts*

[73] In addition to the risks faced as an Ahmadi, Ahmadi converts arguably face additional risks as apostates who have out rightly “rejected Islam”. According to Immigration and Refugee Board of Canada *Pakistan: The situation of non-Ahmadi Muslims who convert to the Ahmadi faith; rates of conversion* (2005-23 November 2009):

“... the National General Secretary of Ahmadiyya Muslim Jama'at Canada stated that a non-Ahmadi Muslim who converts to the Ahmadi faith ‘will face extreme persecution which could be... physical torture, expulsion from family, social boycott, murder or a combination of all’.”

[74] An Australian Refugee Review Tribunal report from 2008 notes that Muslims who join the Ahmadi faith are considered apostates and are “eligible for the death penalty”: RRT Research Response *PAK33069* (8 April 2008).

[75] It is against this background that the appellants’ claims are to be measured.

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

[76] Given the need for the appellants to establish a sustained or systemic violation of core human rights, the starting point for an assessment of ‘being persecuted’ must be the identification of the rights at issue.



### *Freedom of religion*

[77] The right to freedom of religion is contained in Article 18 of the 1966 International Covenant on Civil and Political Rights, which relevantly provides:

**“Article 18**

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”

[78] There is a non-derogable right to hold religious beliefs and there is a right to manifest those beliefs in worship, observance, practice and teaching, subject only to such restriction as is necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Whether such measures are necessary is to be determined by reference to standards justified at international law, not the view of the state asserting the necessity.

[79] In line with the Tribunal's jurisprudence, it is no answer to a breach at the core of a fundamental human right to require a person to exercise that right discreetly, or to abandon the right, where the sole reason for doing so is to avoid being persecuted. See, in this regard, *Refugee Appeal No 74665* (7 July 2004), at [113]-[115], notably at [114]:

“By requiring the refugee applicant to abandon a core right the refugee decision-maker is requiring of the refugee claimant the same submissive and compliant behaviour, the same denial of a fundamental human right, which the agent of persecution in the country of origin seeks to achieve by persecutory conduct. The potential complicity of the refugee decision-maker in the refugee claimant's predicament of “being persecuted” in the country of origin must be confronted. The issue cannot be evaded by dressing the problem in the language of well-foundedness, that is, by asserting that the claim is not a well-founded one because the risk can or will be avoided.”

[80] The approach in *Refugee Appeal No 74665* (7 July 2004) has been endorsed by the United Kingdom Supreme Court in both *HJ (Iran)* [2010] UKSC 31 and, more recently, in *MN and others (Ahmadis – country conditions – risk) Pakistan* CG [2012] UKUT 00389 (IAC).

[81] Country information clearly confirms that there is widespread state-sanctioned discrimination against Ahmadis in Pakistan, including in Y city. A range of measures, aimed at marginalising and intimidating Ahmadis on the basis of their religion, operate throughout Pakistan. As previously identified by the Tribunal in *AP (Pakistan)* [2013] NZIPT 800401-404:

“That such acts are state-sanctioned is evident from the constitutional denial of the right of Ahmadis to call themselves Muslim, legislation which criminalises almost any public manifestation of Ahmadi beliefs, the frequent failure of police and courts to investigate, prosecute and punish offending against Ahmadis, the complicity of the police and courts in the bringing of specious charges against Ahmadis and the systemic failure of all branches of government to curb, or even speak out against, the violent rhetoric which emanates from mosques and those at the helm of the Sunni Muslim faith in Pakistan.”

[82] The husband and wife have provided credible evidence that the way in which they wish to manifest their religion, as they are currently able to in New Zealand, would not be possible if they were to return to Pakistan.

[83] The Tribunal is satisfied that the husband and wife’s self-identity as Ahmadis and their desire to be able to publicly identify themselves as Ahmadis, are at the core of their faith. Unlike the husband’s mother, they do not wish to proselytise. However, their faith is central to their sense of self-identity and it is important to them to be able to identify themselves as Ahmadi, if and when the occasion arises.

[84] On the basis of the available country information, if the appellants return to Y city it is accepted that, on some occasions, they will need to hide and even deny, their religion, in order to avoid repercussions. This will occur when seeking employment, in the course of ongoing employment, at state schools and to gain entry to mosques. The Tribunal has considered whether they have support networks in Pakistan which would operate to reduce the risk of harm below the level of a real chance. See, for example, the discussion in *AV (Pakistan)* [2013] NZIPT 800275-276, particularly at [73]-[76]. Unlike the appellants in that decision, however, the appellants in the present appeal have little family support to which they can return. The husband’s family has departed Pakistan, likely permanently, and the husband would be compelled to find whatever work he could on the open market. There is no prospect of him returning to a livelihood within the protection of an existing family business or in which he could be assured of finding a position with an employer sympathetic to Ahmadis. He is also known to his extended family to be a convert to the faith, which increases the risk of harm to him and to the other appellants. While the wife still has some family members there, they are not in a position to provide the appellants with financial or other support. Because

of this, they are unable to offer the protection that was available to the appellants in *AV (Pakistan)* [2013] NZIPT 800275-276.

#### *The children*

[85] The Tribunal finds that there is a real chance that the children, will also be identified by the general population as Ahmadi. While they are likely too young to be at risk of prosecution or detention and its consequent risks, by association with their parents, they face a real chance of being ill-treated or subjected to cruel, inhuman or degrading treatment at the hands of, or at the instigation of, extremist groups who operate with impunity or members of the Sunni majority, because of their Ahmadi faith.

[86] It is not overlooked that the risk to the children in *AP (Pakistan)* [2013] NZIPT 800401-404 was found to be remote and speculative – see [110]-[113]. The children in the present case, however, are the children of a convert to the Ahmadi faith, whose extended family know of the conversion and take an adverse view of it. While harm to young children because of their parents' beliefs is not always to be assumed, the facts here satisfy the Tribunal, by a narrow margin, that there is a real chance of serious harm to the children as well.

#### *Conclusion on well-foundedness*

[87] Each of the appellants has a well-founded fear of being persecuted.

#### *Is there a Convention reason for the persecution?*

[88] The Convention reason for the predicament faced by the appellants is religion. There may be other Convention reasons present as well, but it is not necessary to traverse the issue – the presence of one Convention reason as a contributing factor suffices.

#### **Conclusion on Claim to Refugee Status**

[89] For the foregoing reasons, the appellants are each entitled to be recognised as a refugee.

## The Convention Against Torture

[90] Section 130(1) of the Act provides that:

“A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand.”

[91] Section 130(5) of the Act provides that torture has the same meaning as in the Convention Against Torture, Article 1(1) of which states that torture is:

“... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

[92] The Tribunal has found the appellants to be refugees within the meaning of section 129 of the 2009 Act. Each is, therefore, protected from *refoulement* to Pakistan by operation of section 164 of the Act (the exceptions to which do not apply here). None of them can be returned to Pakistan. Accordingly, there are no substantial grounds for believing that any of them are in danger of being subjected to torture if deported from New Zealand.

## The ICCPR

[93] Section 131 of the Act provides that:

“(1) A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

...

(6) In this section, cruel treatment means cruel, inhuman, or degrading treatment or punishment.”

## Conclusion on Claim under ICCPR

[94] Again, the Tribunal has found the appellants to be refugees within the meaning of section 129 of the 2009 Act. Each is therefore protected from *refoulement* to Pakistan by operation of section 164 of the Act (the exceptions to which do not apply here). None of them can be returned to Pakistan. Accordingly,

there are no substantial grounds for believing that any of them are in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

## CONCLUSION

[95] For the foregoing reasons, the Tribunal finds that each of the appellants:

- (a) is a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture;
- (c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[96] The appeals are allowed.

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