

AT AUCKLAND

<b>Appellants:</b>	<b>AV (Pakistan)</b>
<b>Before:</b>	B Dingle (Member)
<b>Counsel for the Appellants:</b>	R Chambers
<b>Counsel for the Respondent:</b>	No appearance
<b>Date of Hearing:</b>	13 & 14 September 2012 and 18 March 2013
<b>Date of Decision:</b>	17 July 2013

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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.

**INTRODUCTION**

[2] The appellants are a husband and wife who are both of the Ahmadi faith. They claim to be at risk because of the husband's adverse profile with the anti-Ahmadi group *Khatm-e-Nabuwat* who attempted to kill the father in 1993 and have, since that time, had him on their hit list. The primary issues for these appeals are whether the claims as to the husband's adverse profile are credible and whether the appellants otherwise have a risk of serious harm on account of their Ahmadi faith.

[3] 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

[4] The Tribunal heard from the appellants and from their adult daughter, AA, ("the daughter") who is a New Zealand resident. What follows is a summary of the evidence provided by all three in support of the appellants' case. The evidence is assessed later.

### The Husband's Evidence

[5] The husband was born in Z village in the Punjab state of Pakistan. The population of the village was several thousand people, approximately half of whom were people of the Ahmadi faith. There was one Ahmadi mosque in the village.

[6] For the purposes of this appeal, the husband's early life was unremarkable. He completed 13 years of school study and passed his final college examinations.

[7] From 1969 on the husband worked in various sugar mills.

[8] In 1974, the Pakistani Government made an amendment to the Pakistan Constitution declaring that Ahmadis were not Muslim. The amendment was made as a result of lobbying by Islamic groups and, once it was passed, those groups began to incite hatred of the Ahmadis by other Muslims. One of the groups, the *Khatm-e-Nabuwwat* (International Protection of Finality of Prophethood Council), issued a series of *fatwah* declaring that Ahmadis were *wajib-ul-qatl* (deserving of murder).

[9] The husband thereafter suffered verbal abuse at his workplace by staff who knew he was Ahmadi. Some months later, his employment at the mill was terminated without any reasons being given. The husband returned to live in Z village.

[10] The husband and wife were married in 1984 and lived together in Z village. The husband served the local Ahmadiyya community by taking up several roles, as did other members in his family.

[11] The appellant's three children were born while they lived in Z village.

[12] In 1993, the husband received threats that he would be killed if he continued to hold office in the Ahmadiyya community. Other office holders in Z village were also threatened. Some months later, in May 1993, the Ahmadi mosque in the village was attacked by a Muslim group carrying sticks and other

weapons. At that time the husband was guarding the mosque and he was the first to be attacked by the group. He suffered a wound to his forehead and a fractured leg and was hospitalised for three or four weeks.

[13] As a result of the attack, the family relocated permanently to Rabwah, where the wife's family had already settled. For the next four years the husband worked in sugar mills throughout the region. When the husband was working some distance from Rabwah he would live in staff accommodation. He did this for both convenience and so that he would not be located and killed by the *Khatm-e-Nabuwwat*.

[14] The husband had various difficulties in his employment, all of which related to his Ahmadi faith. In each workplace he would eventually be identified as an Ahmadi and would be threatened with harm. Between 1993 and 1997 he was required to terminate his employment three times for this reason. The final incident was in April 1997 when a staff member told the husband that he was on the *Khatm-e-Nabuwwat* hit list and that he (the husband) should make immediate arrangements to leave the mill before he was killed.

[15] From 1997 on, the husband lived with his wife and family in Rabwah in what was, in essence, a state of hiding. He made a small income by working as a property broker. He would travel outside the house to visit properties but would do so in the cars of the parties concerned. The husband attended the local community mosque throughout the week and the main *Jammatkhana-e-Aqsa* mosque for Friday prayers. He did not undertake any positions within the mosque or within the community so as to evade detection by the *Khatm-e-Nabuwwat*. The husband did not venture out from the house in Rabwah for any other purposes. He did however spend considerable amounts of time staying with siblings in Karachi and Lahore. Every time he felt under threat, and at other times, the husband would travel to Karachi or Lahore under the cover of darkness, and stay with one of his siblings for up to six months at a time. He would keep a low profile while on these visits so that he would not be located by the *Khatm-e-Nabuwwat*.

[16] In approximately 2005, the appellants' two daughters were approached by a stranger and asked whether they were the husband's children. The appellants assume that the strangers were associated with the *Khatm-e-Nabuwwat* and were trying to locate the husband.

[17] At another time, the daughters were asked by staff of the college they attended about their father. They became frightened and took leave from the

college for one or two months during which time they went and stayed with a relative.

[18] In 2007, when the daughters lived in a hostel attached to their tertiary institution, some of the non-Ahmadi students protested about their attendance and the appellants were requested to collect the girls while the issue was dealt with. The girls stayed at home for approximately a month while the issue was dealt with and then they returned to stay in the hostel.

[19] Between 1997 and 2011, unknown people have come to the family home asking for the husband. Sometimes the wife would answer the door but she never gave the inquirers any information. At other times the children may have been asked about his whereabouts.

[20] An incident involving the son occurred in approximately January 2011. Strangers knocked on the door of the family home asking for the son but were told by the mother that she did not know where he was. In fact he had left the house to run an errand. The men waited approximately 100 metres up the road and, when the son walked back towards the family home, the men put a pistol to his head and attempted to drag him into their car. Local residents intervened and prevented him from being abducted. The family believe the attempted abduction is related to the father's profile.

[21] In late 2010, the appellants applied for passports through an agent and paid extra money so that they would be able to obtain the passports despite being Ahmadis.

[22] In early 2011, when the appellants had been to collect the passports, they arrived home to be informed by their neighbour that unknown persons had been to the family home looking for the husband. The appellants assume it was the *Khatm-e-Nabuwwat*.

[23] The father believes that, if he were to return to Pakistan now, he would be identified at the airport or soon after arrival and would suffer serious physical harm or be killed because he is on the *Khatm-e-Nabuwwat* hit list.

### **The Wife's Evidence**

[24] The wife's evidence was broadly similar to that of the husband in that she claimed that her husband had been attacked in Z village, was on the *Khatm-e-Nabuwwat* hit list and had lived in hiding in Rabwah since 1997. The wife stated

that the risk to her was on account of her husband's adverse profile. She also said that she felt uncomfortable going to the local market because Ahmadi women were distinguishable from the way they wore their veil and she was frightened of anti-Ahmadi sentiment.

[25] The wife recalled that between 1997 and 2011, strangers would come to the house and ask for the husband. She did not give any information about the husband because she believed the strangers wished him harm. Sometimes the wife would tell the husband about the enquiries and the husband would go and stay with one of his siblings to avoid any difficulties.

[26] The wife was at home at the time the son was attacked but she did not see the incident. She had not answered the door when the strangers knocked and asked for the son. The wife also confirmed that strangers had visited the house in January 2011 and asked for the husband.

[27] The wife believes that both she and the husband are at risk on return to Pakistan at the hands of the *Khatm-e-Nabuwwat*.

### **The Daughter's Evidence**

[28] The daughter is a Pakistani national, of the Ahmadi faith, who lives in New Zealand as a permanent resident.

[29] In 2005, the daughter and her sister were approached by two men who asked about their father (the husband). The daughters were concerned because they knew that *Khatm-e-Nabuwwat* were searching for their father. The daughter was not aware of anyone ever coming to the house to ask about the husband.

[30] The daughter referred to the attempted abduction of the son but was in New Zealand at the time and so had no first-hand knowledge of the incident.

[31] The daughter arranged for her parents to come to New Zealand because she knew that they were having difficulties in Pakistan on account of her father's profile and she hoped to find a way for them to remain in New Zealand.

### **Material and Submissions Received**

[32] The Tribunal has received the RSB file, a copy of which has been provided to the appellant. Counsel has provided further material, including:

- (a) memorandum of counsel (received 7 September 2012) and a bundle of country information;
- (b) under cover of a letter of 26 September 2012, information about the vandalism of Ahmadi headstones in Z village; and
- (c) two articles (with English translations) from the *Al Fazl International Weekly*, London, Vol 20 (7) (15 February 2013 & 1 March 2013) relating to incidents that occurred in 2012 in Z village as between relatives of the husband and members of the *Khatm-e-Nabuwwat*.

## ASSESSMENT

[33] 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 each appellant as:

- (a) a refugee under the 1951 Convention Relating to the Status of Refugees (“the Refugee Convention”) (section 129); and
- (b) a protected person under the 1984 Convention Against Torture (section 130); and
- (c) a protected person under the 1966 International Covenant on Civil and Political Rights (“the ICCPR”) (section 131).

[34] In determining whether each appellant is a refugee or a protected person, it is necessary first to identify the facts against which the assessment is to be made. That requires consideration of the credibility of the appellants’ account.

### Credibility

[35] The Tribunal finds that the appellants’ account as to the father’s claimed profile with the *Khatm-e-Nabuwwat* is undermined by mobile, inconsistent and implausible evidence. The Tribunal also rejects the claims that there was an attempted abduction of the son. The specific reasons follow.

#### *Inconsistent evidence about Khatm-e-Nabuwwat inquiries for father*

[36] To the RSB, the husband said that he was not aware that the *Khatm-e-*

*Nabuwwat* had any knowledge of his location and that was why he had not been specifically targeted for harm in Rabwah. He said that *Khatm-e-Nabuwwat* were looking for him in the sugar mills but they did not know of his whereabouts in Rabwah. He did not tell the RSB that strangers had asked his daughters about him or that people visited the house in Rabwah and asked for him at any time between 1997 and 2011.

[37] In contrast, the husband told the Tribunal that he believes the people who visited the house in January 2011 were affiliated with the *Khatm-e-Nabuwwat* and that was why he was worried for his safety. Asked to explain his previous omission of this incident, the father initially said that he had only summarised his evidence to the RSB. Reminded that he gave the RSB detailed evidence about all of the historical attacks against him, the husband claimed to be old and to forget things.

[38] The wife's evidence about the enquiries from *Khatm-e-Nabuwwat* was vague, mobile and inconsistent with the husband's evidence. The Tribunal asked the wife four times whether strangers had ever come to the family home to ask for the husband. Each time she was asked, she failed to answer the question, giving a clear impression that she was being intentionally obstructive. The fifth time she was asked she said that people had come and asked for him on several occasions but that she never gave them any information about him. Asked when the visits occurred, she answered "there are too many things in my life", impliedly asserting that too many incidents had happened for her to be able to recall.

[39] Asked by the Tribunal whether she had told her husband about the visits from *Khatm-e-Nabuwwat*, the wife initially said "Yes, and he told me 'Don't tell anyone anything'". However, when told of the husband's evidence that no-one had sought his whereabouts at the Rabwah home prior to January 2011, the wife changed her evidence and said that she did not tell him about the visits. Reminded of the evidence given some minutes earlier (that she did tell him), the wife maintained that she did not tell him. She was unable to provide a reason for her change in evidence.

[40] When the Tribunal asked her to explain why she did not tell the husband about the visits, she said that she tried to protect him from bad things and that he had known since 1993 that *Khatm-e-Nabuwwat* were pursuing him. When the wife was giving evidence on the following day, she changed her account again and said that she did tell him of the visits and that was why he used to go and stay with his siblings in other cities. She was unable to reconcile her various accounts.

[41] At one point in her evidence (when asked whether people had enquired about the father), the wife asserted that nobody (including extended family and villagers) knew where the husband lived because she did not tell people where they lived or where the husband was. This is inconsistent with the husband's evidence that he met clients at home to broker property deals and his evidence to the RSB that he was well-known within the Ahmadiyya community.

*Husband 'in hiding' since 1997*

[42] The claim that the father lived in hiding in Rabwah from 1997 until 2011 is undermined by other aspects of the evidence. At the same time that he claims to have been in hiding, he says he also worked locally as a property broker. Although he claims that this work was very part-time, it involved him travelling to properties and receiving clients in his home. He also said that when there were no specific threats against the Ahmadi population in Rabwah, he attended his community mosque approximately three or four times each week and the main Rabwah mosque for Friday prayers (until 2010). He also claims to have travelled between his home and Karachi and Lahore on frequent occasions.

[43] The Tribunal finds that the claim that the father was in hiding and barely left the house for fear of being identified cannot be sensibly reconciled with his work as a property broker, his mosque attendance and his travel to other cities.

[44] Further strengthening the view that the evidence is not credible is the underlying implausibility that the *Khatm-e-Nabuwwat* had identified his address in Rabwah and his daughters and yet, over a period of many years, were unable to locate the husband while he was at home or on his way to and from the mosque. If the husband had genuinely been targeted for serious harm by the *Khatm-e-Nabuwwat* since 1993, it is not believable that he lived unmolested for over 14 years in Rabwah.

*Attack against the son in August 2010*

[45] The appellants' assertion that the son was attacked near the family home in August 2010 was presented to the Tribunal as an important indicator of the extent of risk for the family. Both of the appellants and the daughter stated that the incident was frightening and caused all family members to fear for their safety.

[46] Surprisingly, no mention of the incident was made by the husband in his confirmation of claim form, written statement or in his interview with the RSB. Nor



did the wife mention the incident at any time prior to the appeal hearing.

[47] Asked by the Tribunal to explain the belated disclosure of the evidence, both of the appellants said that they had simply failed to remember the incident. Pressed for a further explanation, the husband stated that he had previously been focused on his own rushed departure from Pakistan and had left the son's incident "to one side". The wife told the Tribunal that she did not tell the RSB because there were so many incidents in her life and she did not want to talk too much at the RSB interview. When the daughter was asked why she did not remind her father of the incident when she assisted him prepare his statement, she also claimed to have forgotten about the incident.

[48] The Tribunal does not accept the explanations as to why the attempted abduction of the son not previously mentioned. The attack on the son is the only incident since 1993 in which one of the family members has been the subject of a serious, direct threat and the appellants claim that they were all frightened by it. It supposedly occurred only months before the appellants' arrival in New Zealand. Given these characteristics, it is not believable that the husband, wife and the daughter all failed to recall it in the preparation of the claim forms, the written statements, during the RSB interviews and when given an opportunity to respond to the interview report.

#### *Husband's trips to Karachi and Lahore*

[49] Another belated disclosure concerns the husband's claimed trips to stay with his siblings in Karachi and Lahore. At the appeal hearing he said that from 1997 until 2011, he spent many months of each year in Karachi or Lahore (or both) staying with one or other of his siblings. He did this whenever he felt threatened by the mullahs preaching anti-Ahmadi messages or when he became bored with hiding at home. When he was asked to explain why he did not disclose these trips to the RSB, the husband said that he was an old man and he may have forgotten.

[50] The wife told the Tribunal that the husband left Rabwah whenever she told him people had come to the house looking for him. Asked why she had not mentioned his trips to the RSB, she said that she did not previously mention everything in detail because many things had happened in their lives.

[51] The Tribunal does not accept the appellants' explanations for the belated timing of the claim that the husband lived for months at a time in Karachi and

Lahore. The coincidence that both of the appellants would fail to recall his lengthy trips during their respective RSB interviews (and in response to the interview reports) and then simultaneously remember the trips during the appeal hearing is too convenient to be believed. As noted above at [39] the wife's mobility as to whether she told the husband that people were looking for him also undermines her evidence that this was the specific reason that he left home to stay with siblings.

#### *The daughter's evidence*

[52] The daughter appeared before the Tribunal and gave evidence. The Tribunal's findings about the appellants' evidence as to the father's risk from the *Khatm-e-Nabuwat* are not displaced by the daughter's evidence.

[53] The daughter confirmed that she helped her father (the husband) prepare his written statement and the Confirmation of Claim form. Asked why the incident of the attack on her brother was not included, the daughter said that she too had forgotten about it.

[54] As to other aspects of the husband's life in Rabwah, the daughter's evidence was vague and mobile. Asked how often he went to the mosque, she said "sometimes" and then stated that she could not remember. Pressed for further detail about whether he generally attended once a day, once a week or less often, the daughter said he attended mosque approximately once every two months. When the Tribunal disclosed his evidence that he had attended three or four times a week, she said her evidence was different because she was studying and he never mentioned anything to the children because they were frightened.

[55] It is implausible that the daughter would fail to mention the attack on her brother and that she would be so unaware of her father's attendance at the mosque.

#### **Factual Findings**

[56] For all of the reasons given above, the Tribunal rejects the appellants' evidence that the father is known to, or has been personally targeted for any harm by, the *Khatm-e-Nabuwat*. The Tribunal finds that the father has no adverse profile whatsoever with any anti-Ahmadi group or with the Pakistani authorities.

[57] The Tribunal accepts that the appellants are citizens of Pakistan and are of

the Ahmadi faith. Both appellants possess passports which are valid to October 2016. They have a family house to which they can return in Rabwah. The husband attended the mosque in his community in Rabwah and did not have a position of leadership there. The appellants have a son and a daughter who remain living in Pakistan. They have a daughter living permanently in New Zealand. Neither of the appellants were in employment when they left Pakistan, nor will either of them seek it on return. It is on this factual basis that the Tribunal now turns to assess their claims to refugee and protected person status.

### **The Refugee Convention**

[58] 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.”

[59] 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.”

[60] 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**

[61] 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].

[62] 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].

[63] Before turning to assess the predicament of the appellants on return to Pakistan, it is necessary to consider country information as to the treatment of Ahmadis in Pakistan.

[64] Two recent decisions of the Tribunal have set out in some detail the conditions for Ahmadis in Pakistan and that material is drawn on (but not recited *in extenso*) in this decision; see *AM (Pakistan)* [2013] NZIPT 800274 and *AP (Pakistan)* [2013] NZIPT 800401-404. For the sake of brevity, where the background information is uncontroversial, sources have not been given.

#### *Ahmadis in Pakistan*

[65] The Ahmadi faith, named after its founder, Mirza Ghulam Ahmad, was officially established in 1889 in Punjab, India as a reform movement within Islam. Ahmadis consider themselves to be Muslim and follow the teachings of the Qur’an but hold some beliefs that are different from mainstream Sunni interpretations of Islam. Sunni Muslims consider the Ahmadi interpretations to be blasphemous and Mirza Ghulam Ahmad to be a false prophet.

[66] During the partition of British India, the Ahmadi community relocated its headquarters to Pakistan, thinking that they would cohere more easily with the predominantly Muslim population. However, in 1974, Ahmadis were declared to be a non-Muslim minority. Since then, they have been subject to discrimination and harassment within an atmosphere of religious intolerance, community violence and impunity for perpetrators. The headquarters of the Ahmadi community is in Rabwah (now called Chenab Nagar after a government-imposed name change in 1999) in the Punjab Province, where Ahmadis represent over 97 per cent of the population.

[67] Summarising the relevant legal and policy framework for Ahmadis in Pakistan, the United States Department of State *2012 Report on International Religious Freedom - Pakistan* (20 May 2013) states:

“The constitution and other laws and policies restrict religious freedom. The

constitution establishes Islam as the state religion. Although it also declares that adequate provisions shall be made for minorities to profess and practice their religious beliefs freely, other provisions of the constitution and laws impose limits on this right. Government policies do not afford the same protections to members of minority religious groups as they do to the majority religious group.

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."

[68] As noted in both *AM (Pakistan)* [2013] NZIPT 800274 and *AP (Pakistan)* [2013] NZIPT 800401-404, the situation for Ahmadis has intensified in recent years in the context of what is often referred to as the growing 'islamisation' of Pakistan. Of particular note are the May 2010 attacks in which two Ahmadi mosques in Lahore were simultaneously bombed, resulting in 86 deaths and 150 people injured. No comprehensive investigation of the attacks has ever been completed. Also recorded are smaller-scale attacks against Ahmadi places of worship, harassment of Ahmadis in employment and education environments and the continued use of blasphemy charges against individuals (particularly those with profiles in the community or in their professional life); see also Immigration and Refugee Board of Canada *Pakistan: The situation of Ahmadis, including legal status and rights with regards to political participation, education, and employment; societal and governmental attitudes toward Ahmadis (2009-December 2012)*, PAK104254.E (11 January 2013). The government and security authorities provide inadequate investigation of, and protection from, such attacks and harassment and, in some cases, are directly complicit in the events.

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

[69] Given that each of the appellants must establish that they are personally at risk of a sustained or systemic violation of core human rights, it is first necessary to identify the particular rights in question.

#### *The right to religion*

[70] 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.”

[71] Article 18 therefore provides that 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 by reference to the state which asserts the necessity.

[72] Country information establishes that there is entrenched state-sanctioned discrimination against members of the Ahmadi faith in Pakistan which leads to many forms of legal and social marginalisation on the basis of religion. The crux of the issue to be determined in these appeals is the extent to which these particular appellants are restricted in the manifestation of their religion. Other forms of harm faced by Ahmadis, such as criminal law sanctions and serious physical harm from anti-Ahmadi attacks, are considered separately below.

[73] The appellants are a retired couple who have, since 1997, lived on savings, a small income earned by the husband and financial contributions from family members. On that basis they have been able to provide for themselves and their children, including the children's private secondary and tertiary education. The appellants have accommodation in Rabwah to which they can return and family in Rabwah and elsewhere on whom they can rely for support, financial and otherwise, should they require it.

[74] The appellants are not, therefore, required to negotiate with landlords, undertake employment or otherwise interact with government agencies on a regular basis. They will not ordinarily be required to deny their faith or face discriminatory policies in order to go about their day-to-day lives and obtain the goods and services they require. Country information also establishes that there are medical and other social facilities in Rabwah established by, and accessible to,

the Ahmadi population; see S Imtiaz “Thinking Proactively: Ahmadis have found their own solutions in Rabwah” *The Express Tribune* (11 July 2011).

[75] As to specifically religious activities, while the husband stopped attending the main *Jammatkhana-e-Aqsa* mosque in Rabwah after the bombing of the Lahore mosques (because the Ahmadi community itself chose to restrict worship there), he continued to attend a local mosque to perform *namaz* (prayers) three or four times weekly. On occasions when there were particular anti-Ahmadi rallies or protests in Rabwah, the husband would curtail his attendance because of security concerns but these occurrences were temporary and short-lived. The situation will be the same on return. The husband will normally be able to attend mosque but will not be able to do so on days of tension or if anti-Ahmadi groups such as *Khatm-e-Nabuwwat* are present. The husband has not established that there is any other aspect of his right to manifest his religious beliefs which are fundamental to him but which he cannot exercise. The Tribunal finds that the occasional restrictions on his ability to safely attend his local mosque do not amount to serious harm.

[76] The wife did not regularly attend mosque and did not establish before the Tribunal that her non-attendance was a restriction on her manifestation of her Ahmadi faith that went to the core of her belief.

#### *Risk of criminal sanctions or random attacks*

[77] The country information records that Ahmadis are at risk of criminal law sanctions for breaking the Pakistan Penal Code (by public manifestations of their faith such as proselytising to non-Ahmadis). However, as noted above, the Tribunal is satisfied that it is not of particular importance to either of the appellants to proselytise or engage in discourse about their faith with non-Ahmadis. Given this, the risk of either of the appellants being subjected to criminal sanctions is no more than speculative and remote. It does not reach the threshold of a real chance.

[78] It is acknowledged that Ahmadis have been increasingly targeted for physical harm in recent years, both through individual targeted attacks and, less frequently, in larger scale attacks. The most egregious example is the 2010 Lahore bombings in which 86 people died and many more were injured. However, notwithstanding the intolerable brutality of such attacks, the incidence of them must be assessed objectively.

[79] Counsel cites the United States Department of State, in its *Report on International religious Freedom: Pakistan* (30 July 2012), which states:

“The killing of Ahmadis for their religious beliefs continued during the year. Nongovernmental organizations (NGOs) have alleged that the anti-Ahmadi sections of the penal code and other government policies fostered intolerance against this community and, together with the lack of police action, created a culture of impunity. According to a spokesman for the Ahmadiyya community, since the promulgation of anti-Ahmadi laws in 1984, 207 Ahmadis have been killed on religious grounds. During the year, according to Ahmadiyya leaders, five Ahmadis were murdered in targeted killings because of their faith. Authorities did not arrest anyone for the murders by year’s end.”

[80] The 207 Ahmadis killed in the 27 years between 1984 and 2011 (a figure also given in other sources) includes the 86 persons killed in the bombing of the Lahore mosques in 2010. See also the reports provided by the Ahmadiyya community at [www.thepersecution.com](http://www.thepersecution.com).

[81] Counsel also submitted the Amnesty International report, *Annual Report 2012 – Pakistan* (24 May 2012), which summarised the year’s human rights abuses in Pakistan (largely by the Taliban, security forces and armed groups) and recorded acts of violence against journalists, Christians, Hindus, Shi’a, moderate Sunnis, women and girls, and judges. Threats of violence against Ahmadis were noted, but no specific incidents of harm against any Ahmadis were recorded.

[82] The Human Rights Watch report *World Report 2012 – Pakistan* (22 January 2012), recorded prosecutions for blasphemy and social discrimination against Ahmadi but did not record any violent incidents. It noted that ‘religious minorities’ faced unprecedented insecurity and persecution.

[83] The *Submission of the Ahmadiyya Muslim Lawyers Association USA* to the United Nations Human Rights Council (20 April 2012) lists the following targeted killings:

“23. In September 2008, two prominent members of the Community were gunned down after a cleric on a major Pakistani TV channel declared Ahmadi Muslims as “wajib-ul-qatl”, meaning that Muslims are religiously obligated to kill Ahmadi Muslims.

24. In 2009, extremists killed at least 11 Ahmadi Muslims.

25. On May 28, 2010, 86 Ahmadi Muslims were killed and more than 120 were injured in nearly simultaneous attacks against two Ahmadi Muslim Mosques, perpetrated by the Tehrek-i-Taliban Pakistan (TTP). This was the single worst act of violence against the Community to date.”

[84] The same source goes on to record the discrimination against Ahmadi in educational institutions and employment, and the targeted threats towards



individuals in professional positions.

[85] The Tribunal has also had regard to the more recent Human Rights Watch report *World Report 2013 – Pakistan* (31 January 2013). As to Ahmadis, it added only that:

“[Ahmadis] faced increasing social discrimination as militant groups used provisions of the law to prevent Ahmadis from “posing as Muslims,” forced the demolition of Ahmadi mosques in Lahore, barred Ahmadis from using their mosques in Rawalpindi, and vandalized Ahmadi graves across Punjab province. In most instances, Punjab provincial officials supported militants’ demands instead of protecting Ahmadis and their mosques and graveyards.”

[86] The incidence of violence against Ahmadis is not under-reported. As the Upper Tribunal noted, in *MN and ors(Ahmadis - country conditions - risk) Pakistan Pakistan v. the Secretary of State for the Home Department*, CG [2012] UKUT 00389(IAC), at para 103:

“Harassment instigated by the *Khatme-e-Nabuwat* and other non state actors... is evidenced in the catalogue of events collated by [www.thepersecution.org](http://www.thepersecution.org) and [www.persecutionofahmadis.org](http://www.persecutionofahmadis.org) and the Ahmadiyya Association Persecution 2011 report extracts... which we have set out above. This evidence reveals not only very serious matters such as murders but also incidents where Ahmadis have encountered discriminatory hostility in their everyday life.... [T]hey are clearly based on press reports and there is nothing to suggest that those reports exaggerate the incidents they record. We consider that the community is a highly organised one and that it keeps an accurate log of the incidents reported to it.”

[87] Counsel submitted further country reports and articles (7 September 2012), the content of which substantively aligns with the sources cited above. According to a more recent article, 13 Ahmadis were killed between January and November 2012; see Z Ebrahim “Forbidden Faith” *Dawn* (Karachi) at [www.dawn.com](http://www.dawn.com). The list of Ahmadis who have been ‘martyred’, which is recorded by the Ahmadiyya community on its website, [thepersecution.com](http://thepersecution.com), indicates that between 1948 and December 2011, there were two individuals killed in Rabwah. One of the victims was a family member of the founder of the Ahmadi faith in 1999 and the other death occurred in 2009.

[88] The country information establishes that groups such as *Khatm-e-Nabuwat* carry out targeted killings of Ahmadi as well as campaigns of threats and harassment against individuals and communities. However, assessed objectively, the information does not establish that these appellants are at risk of serious harm in the form of physical violence to the real chance threshold. The Department of State’s citing of 207 deaths between 1984 and 2011(including the 86 victims of the May 2010 Lahore bombings) and the *Dawn* report of 13 deaths in 2012 suggests that, even considered alongside the conservative estimate of an

Ahmadi population of several hundred thousand, the risk of any Ahmadi being seriously harmed solely for being Ahmadi, is well below the real chance threshold. This is particularly so in the case of the appellants who have no characteristics which will elevate their risk (for example, having a professional profile, being outspoken on Ahmadi issues or being an office holder in an Ahmadi organisation) and are not involved in employment, education or other public activity.

[89] There is no real chance that the appellants will be at risk of criminal sanctions or random serious violence in Pakistan. Any risk to them is no more than remote and speculative.

#### *Damage to headstones in Z village*

[90] In making these findings the Tribunal has not overlooked the evidence that headstones in a cemetery in Z village, including that of the husband's father, have been vandalised and the Qur'anic phrases painted over by anti-Ahmadi groups. While such an event is upsetting, it does not establish that these appellants, who do not live in Z village, are at risk of serious harm. The vandalism of a family member's gravestone does not amount to a sustained or systemic violation of fundamental human rights.

#### **Conclusion on Claims to Refugee Status**

[91] For the reasons already given, the appellants are not at risk of serious harm to the real chance level in Pakistan. It follows that the question of a Convention reason does not arise. They are not entitled to be recognised as refugees.

#### **The Convention Against Torture**

[92] 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."

#### **Assessment of the Claim under Convention Against Torture**

[93] 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.”

[94] In respect of the appellants’ claims under section 130, they each rely on the same evidence to establish their claims as they have put forward in relation to their refugee claims. For the reasons explained above in relation to each of their refugee claims, there are no substantial grounds for believing that either of the appellants is in danger of being tortured if returned to Pakistan.

### **The ICCPR**

[95] 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.”

### **Assessment of the Claim under the ICCPR**

[96] Similarly, in respect of the claims under section 131, the appellants rely on the same evidence as that given in relation to their refugee claims. For the reasons explained above in relation to their refugee claims, there are no substantial grounds for believing that the appellants are in danger of being arbitrarily deprived of their lives or suffering cruel treatment as defined under the Act if returned to Pakistan.

[97] Neither of the appellants is entitled to recognition as a protected person pursuant to section 131 of the Act.

### **CONCLUSION**

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

(a) is not 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.

[99] The appeals are dismissed.

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