

AT AUCKLAND

Appellants:	AP (Pakistan)
Before:	C M Treadwell (Member)
Counsel for the Appellant:	R Chambers
Counsel for the Respondent:	No Appearance
Date of Hearing:	1 March 2013
Date of Decision:	17 May 2013

DECISION

[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, nationals of Pakistan, of the Ahmadi faith.

INTRODUCTION

[2] The appellants are a husband and wife and their two dependent children.

[3] The appellants say that, as Ahmadis, they are at risk of serious harm in Pakistan at the hands of both the state and members of the Sunni Muslim population. 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. For the child appellants, the primary issue is whether, given their young age, any risk of future harm when they reach an age at which they will make their own decisions about religion is no more than remote and speculative.

[4] For the reasons which follow, the appeals succeed for the adult appellants but are dismissed for the child appellants.

THE APPELLANTS' CASE

[5] Given that the same claim is relied upon in respect of all limbs of the appeal, it is appropriate to record it first. The account which follows is that given by the adult appellants at the appeal hearing, on behalf of all four appellants (the adult appellants acting as responsible adults for the children). The claim is assessed later.

[6] The husband is one of five sons of an Ahmadi couple. He has spent most of his life living outside Pakistan. Although he was born in Karachi, his father secured employment in ABC, a Middle East country in 1978, when the husband was aged six. They lived there for eight years before returning to Karachi in 1986, where the family lived in a house they owned. The husband attended various private and public colleges and tertiary institutions until 1994, when he graduated with a Diploma in Chemical Engineering.

[7] During those years, four incidents occurred in which the husband suffered harm, or was at risk of harm, because he was Ahmadi.

First incident – kidnapped from home (1989)

[8] In April 1989, when he was aged approximately 17 years, the husband was kidnapped from his house by members of an extremist Islamic group, *Ahle Sunnat al Jammat*. He was held captive for two days, tied to a chair, during which his captors beat him with metal rods and sticks. They demanded that he renounce the Ahmadi faith and embrace true Islam. He was eventually released by being taken some 20-25 kms from his home and ejected from the car. He was warned that he had to change his religion.

[9] Passersby took the husband to hospital where he was treated for bruising and a broken left patella. On admission to the hospital, the husband was seen by the duty police officer there, who took a formal complaint from the husband and forwarded it to the relevant police station, where a First Information Report ("the first FIR") was drawn up. A copy of it was given to the husband's family by the police.

[10] The husband remained in hospital for six weeks. He heard nothing further from the police. After a further six weeks' convalescence, the husband returned to his studies.

Second incident – attacked in his car (1991)

[11] In February 1991, almost two years after the first incident, the husband was attacked by a group of men while returning from a shopping trip. At about 8.15pm, the husband left a local shopping centre and began driving home. Four motorcycles, each carrying three men, surrounded him, with two motorcycles in front and two behind. They forced the husband to stop, then dragged him from his car and beat him with fists, feet and sticks, saying that he had ignored their previous warning.

[12] The husband was left on the ground. Passersby took him to the hospital, where he was treated for a broken right ankle and shin.

[13] Again, the husband gave a statement to the police officer on duty at the hospital and an FIR (“the second FIR”) was issued by the relevant police station. No further communication was ever received from the police.

Third incident – attack on the family home (1993)

[14] In May 1993, more than two years after the second incident, the husband was alone at home one evening, at about 10.45pm, when the doorbell rang. He looked out the window and saw a group of men. From their appearance, he took them to be Islamic extremists and so he left the house quickly by the rear. He went to the house of an acquaintance, where he stayed for some two to three hours.

[15] On returning home, the husband found that his mother and brothers had returned from a wedding and that the Islamists had set fire to the family’s garage.

[16] As a result of this incident, the husband went to the police station to lodge a complaint. An FIR (“the third FIR”) was completed but, as before, no further communication was ever received from the police.

Departure from Pakistan

[17] In September 1994, the husband left Pakistan for DEF, a Middle East country, where he was employed by a housing company. He remained there for the next 16 years, until 2010, though he returned to Pakistan periodically, for short visits (ranging from a few days to a month or two). The visits notably included returning in mid-2002 to undertake a *nikah* ceremony as a prelude to an arranged marriage with the wife, an MBA graduate from an Ahmadi family from Islamabad.

[18] On occasion, the wife would return to Pakistan without the husband. In late 2003, for example, she returned to Pakistan to live with the husband's mother during the birth of their first child. She did the same in late 2005, in relation to the birth of their second child.

Fourth incident – attacked outside the family home (2006)

[19] In March 2006, the husband returned to Pakistan, where the wife and the children were residing in the family home in Karachi after the birth of the second child.

[20] At 11.45pm one night, some two weeks after he had returned, the husband was at home with his family, parents and one brother when he heard the doorbell ring. He went outside and opened the gate, at which he was set upon by a group of men armed with sticks. He shouted out for help. Before the men fled, they had beaten him so severely that he had a broken jaw and a broken left wrist.

[21] The husband's mother went to the police station and lodged a complaint. An FIR ("the fourth FIR") was completed.

[22] As for the husband, he was taken to the hospital, where he was asked to attend a private clinic, which he did. He remained there for three days.

[23] Ten days after his release from the clinic, the husband and his family left Pakistan and returned to DEF country.

Return to the Middle East

[24] The husband and his family resumed living in DEF country, though they continued to make regular visits back to Pakistan to visit their relatives. In 2008, the husband returned to attend his father's funeral. Neither he nor the wife experienced any difficulties on these visits.

[25] In February 2009, the husband's brother BB began working for the a Pakistan government department. The head of the department discovered, however, that the brother was an Ahmadi and spread dissent around the office, to the effect that the brother should be killed. On learning of the threat, the brother reported the matter to the police but they took no steps. The brother was forced to leave his employment and go into hiding. Eventually, he went to Australia with his family and successfully sought refugee status.

[26] In 2009, the wife returned to Pakistan and began studying for a postgraduate diploma in psychology. She obtained the diploma in mid-2010 and found work in Karachi as a clinical psychologist at a medical facility. At about the same time, the husband was transferred by his employer in DEF country to GHI country, also in the Middle East. He worked there without incident until 2011, though continuing to make regular visits to Pakistan to see his family.

[27] In 2011, the GHI authorities began cancelling the work permits of Pakistani Ahmadis working there. The husband was approached but the important nature of his work was such that they allowed him to remain, telling him to depart shortly. At the same time, his competitors in rival companies learned that he was Ahmadi and would threaten him that they would have him harmed when he returned to Pakistan.

[28] In July 2011, the wife left her employment in Karachi and she and the children joined the husband in DEF country. Two months later, the family sought temporary visas for New Zealand and arrived here in January 2012.

[29] The appellants say that they are at risk of serious harm if they return to Pakistan, because they are Ahmadi. They point to the following:

- (a) Ahmadis have long been rejected as Muslim by the Sunni Muslim majority in Pakistan because the founder of the sect, Mirza Ghulam Ahmed, saw himself as a messiah and prophet. The government has officially branded Ahmadis as “non-Muslim” and heretical.
- (b) Ahmadis are discriminated against in employment and in society on a daily basis. There have been many attacks against, and killings of, Ahmadis in Pakistan, notably including the 28 May 2010 attack on two mosques in Lahore, when extremist Islamists killed 95 people and injured more than 100 others.
- (c) The four attacks on the husband (in 1989, 1991, 1993 and 2006) indicate that extremist elements in society want to harm him because he is Ahmadi.
- (d) While the wife did not suffer incidents of the gravity of those suffered by the husband, she, too, suffered discrimination and abuse as a child. She was bullied by pupils from a nearby *madrassa*, who threw pebbles at her and taunted her and she was ostracised at school.

- (e) In DEF country, the husband had threats made against him by competitors who knew he was Ahmadi, including threats to harm him when he returned to Pakistan.
- (f) The family has no support in Pakistan. The husband's father is deceased. His mother has left Pakistan and now lives with one of her children in a Middle East country. He has no siblings in Pakistan. The wife's father is now deceased and her mother lives predominantly in the United States with one of her children. The wife has only two sisters still living in Islamabad.
- (g) Recently (January 2013), Ahmadi graves in Pakistan have been desecrated and destroyed.

Material and Submissions Received

[30] On behalf of the appellants, Mr Chambers has lodged written submissions dated 10 February 2013, together with:

- (a) A bundle of country information attached to his submissions;
- (b) The February 2013 issue of Ahmadiyya Muslim Jamaat International's *Pakistan Country Report* "Persecution of the Ahmadiyya Muslim Community";
- (c) Copies of the Canadian 'permanent resident' cards for the wife's sister CC and her family, who have been granted residence there for humanitarian reasons;
- (d) The complainant's copies of the first, second, third and fourth FIRs issued by the Pakistani police in 1989, 1991, 1993 and 2006 respectively.
- (e) Successful Australian Protection Class Visa decision dated XX XXXX 2010 in respect of the husband's brother BB.
- (f) Unsuccessful decision dated XX XXXXX 2009, by the Immigration and Refugee Board of Canada in respect of the wife's sister DD and her family.
- (g) Letters dated 9 November 2011 and 13 December 2011 from Citizenship and Immigration Canada, receiving and approving an

application by the wife's sister DD and her family for residence in Canada on humanitarian grounds.

[31] The Tribunal also has before it the paginated files from the appellants' hearing before the Refugee Status Branch, copies of which were provided to the appellants by the Tribunal.

ASSESSMENT

[32] 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 of the appellants 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).

[33] 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

[34] Central to the appellants' claim are the four incidents which the husband says that he suffered in 1989, 1991, 1993 and 2006. They are, it is said, evidence of the treatment he and the other appellants are likely to face if they return to Pakistan.

[35] The account of the four incidents, however, is not accepted as truthful.

The four FIRs

[36] The husband has produced the four carbon copies of the FIRs which, he says, were provided by the police, one after each incident. From the husband's evidence, and from the content of the documents themselves, it is evident that

they purport to have been created on four different occasions, spanning 17 years (1989, 1991, 1993 and 2006) and to have emanated from three different police stations. They purport to be signed by three different police officers. Two are said to have been created as a result of the husband being hospitalised and a report sent to the police station by the officer based at the hospital. The other two are said to have been the result of complaints lodged directly at a police station – one by the husband and one by his mother.

[37] Given the significantly different circumstances in which the FIRs are said to have been created, over such a long span of time, one would expect the documents to differ in numerous respects. Yet the signal feature of the documents is that they are remarkably similar, both as to appearance and as to contents. It is necessary to discuss each.

[38] As to their appearance, all four FIRs are carbon copies, made on identical pre-printed forms. The forms are so identical that the lines of the lined squares in which details are to be written include the same multitude of minute flaws. At the very least, it is certain that they were printed from the same block and, if not at the same time, so close in time that the block shows no discernible sign of wear. Given the 17 year span over which it is said they were issued, and the many thousands of FIRs which must be issued in every police station in Karachi (let alone Pakistan) each year, the identical pre-printed forms are suspicious.

[39] As to the paper, each FIR is of exactly the same cheap, rough quality, yet the older FIRs show no greater signs of aging than the one said to have been produced in 2006.

[40] As to the handwriting, it appears to be identical on all four FIRs and the blue of the carbon 'ink' is of identical shade and clarity on all four documents. Again, they are remarkably similar in appearance.

[41] As to the content of the FIRs, each has, at its foot, a record of the complaint made by the complainant. Each is accompanied by a certificate from the receiving police officer, certifying that it was "written word by word, and was listened by reading out", indicating that the officer took down the complaint as it was given orally.

[42] In spite of the 17 year span, and the fact that three of the complaints were made by the husband (two through the duty officer at the hospital) and one by his mother, the four complaints bear remarkable similarity. They begin:

First FIR (1989)

"I have been residing at the above mentioned address with my family and belong to the "Ahmadi" Fiqua whereas my... family also belong to "Ahmadi" Fiqua...."

Second FIR (1991)

"I have been residing at the above mentioned address with my family and belong to the "Ahmadi" Fiqua whereas my... family also belong to "Ahmadi" Fiqua...."

Third FIR (1993)

"I have been residing at the above mentioned address with my family and belong to the "Ahmadi" Fiqua...."

Fourth FIR (2006)

"I have been residing at the above mentioned address with my children and belong to the "Ahmadi" religion and my children are also "Ahmadi"...."

[43] They end:

First FIR (1989)

"I want legal action in this regard."

Second FIR (1991)

"I want legal action in this regard."

Third FIR (1993)

"I want legal action in this regard."

Fourth FIR (2006)

"I want legal action in this regard."

[44] That four complaints, by two people, over 17 years, made to three different police officers, should be so similar in style and language is implausible. Even allowing for the fact of translation by the same translator, the similarity in content in such disparate circumstances defies belief.

[45] It is also surprising that all four FIRs state that the complaint has been received by the police "through mail". It is possible that the first two (said to have been made via the duty officer at the hospital) might have been received at the police station by mail, but the last two are said to have been complaints made in person – one by the husband and one by the mother.

[46] In summary, the four FIRs are so similar in appearance and in content that the Tribunal is satisfied that they were not made on the dates and in the circumstances that the appellants have claimed.

[47] It is also necessary to address the four incidents which are said to have given rise to the FIRs.

First incident – kidnapped from home (1989)

[48] It will be recalled that the husband says that he was kidnapped from his house by *Ahle Sunnat al Jammāt* and held captive for two days during which he was beaten, leading to his being hospitalised with bruising and a broken patella.

[49] As to the precise circumstances of his abduction, the husband said that he heard the doorbell in the evening. He opened the door and crossed the small courtyard to the gate (the front wall was approximately 1.5 metres high). When he opened the gate, six or seven men with the appearance of extremist Muslims accosted him.

[50] There are numerous surprising aspects to the claim. First, a singular feature of the men's appearance was the way they wore their hair. Yet, in spite of being able to see the men's heads over a wall which was only 1.5 metres high, the husband nevertheless opened the gate.

[51] As to the kidnapping itself, it bears the hallmarks of the theatrical. The husband's sudden disappearance must have puzzled and alarmed his family, yet they did not report it to the police because, he says, they did not trust the police to help Ahmadis. That is implausible. The family had no prior experience of the police failing to help. The inexplicable disappearance of a family member might have been for any one of a number of reasons, including an accident, and one would reasonably have expected his family to report the matter.

Second incident – attacked in his car (1991)

[52] To the Refugee Status Branch, the husband initially claimed to have been stopped by approximately eight to 12 people, riding motorcycles. When the interviewing officer pointed out to him that the FIR for this incident recorded him as saying that there had been "[four] motorcyclists, two from front and two from back", the husband initially gave no explanation. When later invited by the Refugee Status Branch to comment on the discrepancy in his written response to the interview report, he stated that there had been four men. Before the Tribunal, however, he claimed, for the first time, that there had been four motorcycles but that each had had three people on it. None of the accounts is reconcilable.

[53] Also implausible is the claim that the men attacked him because he had not heeded the warning given to him in 1991, to abandon his religion in favour of “true Islam”. In reality, some two years had elapsed. The husband was not in hiding and had continued to live at the same house. It is difficult to comprehend why his non-compliance with a threat made two years earlier would have suddenly resurfaced after so long.

Third incident – attack on the family home (1993)

[54] The husband told the Refugee Status Branch that he had been alone at home when the men came to attack the home in 1993. Confronted with the assertion in the third FIR that he had been at home with his parents and siblings, he told the interviewing officer that the third FIR was correct and explained his earlier evidence as the product of being made to relive the incident in his mind. To the Tribunal, he then returned to claiming that his family had been out at a neighbourhood wedding and that he was, indeed, alone at home. His explanation now is that he withheld from the Pakistani police the information that his family was out, because this avoided “exposing the other community members”. Given that he had simply needed to say that his family was out, and that telling the police that they were at home might lead to the police wanting to interview them as to what they saw, that explanation is fanciful.

[55] As to his actions on seeing the men outside the gate by looking through a window, the husband says that he left the house by the rear and went to the house of an acquaintance. There, he waited for two to three hours before returning home. Asked what explanation he had given to the acquaintance’s family for turning up at 11pm, the husband stated, implausibly, that he had given none and had merely told them that he would explain later. He says that he then simply sat there for two to three hours reading books.

[56] Nor could the husband explain his failure to warn his family of the attackers. He knew that his family were at a wedding and would return home afterwards. In spite of the danger of them returning to a confrontation with the attackers, the husband says that he did nothing to warn them. As to why not, he simply claimed that fear made him seek shelter. That is implausible. It is unlikely in the extreme that the husband would have sat for two to three hours, reading books, while allowing his family (particularly his mother) to be put in danger.

Fourth incident – attacked outside the family home (2006)

[57] The fourth FIR makes no mention of the late night attack on the husband, or of his broken jaw and wrist. Within the body of the complaint by his mother, it says merely that “we have already suffered several attacks but no accused was arrested”. It is extraordinary that she would have been so incensed at the attack on him (as he says she was) that she would go to the police station at 2.10am to lodge a complaint and yet, having got there, would say nothing about the very attack which had just occurred.

[58] The husband’s explanation is that his mother was unaware of the severity of his injuries, which did not become apparent until he was examined at hospital. But that does not explain the failure to mention the attack at all.

Lack of evidence of hospital treatment

[59] The husband’s account has him hospitalised three times – in 1989, 1991 and 2006. Twice, he was treated at the same large public hospital in Karachi – treatment which included being admitted. On the third such occasion (2006), the same hospital referred him to a private clinic where he was treated.

[60] Initially, the husband provided no evidence of his medical care. Asked by the Refugee Status Branch to do so, he said that he would. Subsequently, however, he has produced copies of two letters, both dated 2 May 2012, which his mother has supposedly taken to the hospital and clinic. The letters ask for the appellant’s medical records. Each is stamped as received by the recipient. The husband says that his mother hand-delivered the letters and, on returning some time later to each place, was verbally told that there are no records.

[61] First, it is implausible that a public hospital would have no records, particularly in relation to the referral to the clinic. It is also implausible that the clinic would have no records. The husband’s explanation is that the two organisations are being obstructive and uncooperative because the family is Ahmadi. That explanation is rejected. Each institution is said to have provided the appellant with significant medical care. It is implausible that both, simultaneously, would then obstruct the obtaining of records about it. Nor is there any explanation of how the two institutions know that the appellant is Ahmadi.

[62] It is also suspicious that there is no evidence from either body of the lack of records. Each copy letter from the husband’s mother simply bears a “received”

stamp (itself easy to fake) which says nothing about the hospital's response. It is suspiciously convenient that both institutions are said to have provided only an oral response.

New Zealand doctor's medical report on injuries

[63] Dr Daniels has provided a report dated 12 July 2012 on the husband's current presentation. It is supported by a radiologist's report by Dr Robert Sim.

[64] In brief, the reports confirm that the husband has scarring and healed bone fractures consistent with his account of injuries to his left patella, right shin and ankle and left wrist. There are said to be no visible bone changes to his jaw but Dr Sim confirms it is an injury which can heal without leaving marks.

[65] It is accepted that the husband has suffered fractures to his left patella, right shin and ankle and left wrist. He may also have suffered a fractured jaw. What is not accepted is that they happened in the manner he has described. Nor do the careful reports by Drs Daniels and Sim say anything more than to record that the injuries would be consistent with the husband's account. They would, of course, also be consistent with other forms of trauma, such as a car accident. Obviously, neither doctor has personal knowledge of the injuries and cannot vouch for the manner in which they were suffered.

Threats in the Middle East

[66] According to the husband, while in GHI in 2011, his competitors in rival companies learned that he was Ahmadi and threatened him that they would have him harmed when he returned to Pakistan.

[67] It is suspicious that such threats should suddenly emerge at the very moment that the GHI authorities had decided to cut short work visas. It presumes that, at the very point in time when the appellant was having to consider the possibility of returning to Pakistan, the coincidence of rivals somehow discovering that he is an Ahmadi, the same people having antipathy towards Ahmadis and having both the initiative and the motivation to threaten the appellant. It is improbable to the point of being implausible.

[68] Further, if the motivation was, in part, commercial competition, it is nonsensical to make threats which would motivate the appellant to remain in GHI as long as possible.

Conclusion on credibility

[69] For the foregoing reasons, none of the four incidents which are said to have occurred to the husband in 1989, 1991, 1993 and 2006 are accepted as truthful. Nor is it accepted that the appellants have tried, by way of the supposed complaints which are said to have underpinned the FIRs, to seek state protection. The FIRs are not genuine.

[70] Nor is it accepted that the husband received threats in GHI as he has claimed.

[71] It is accepted that the appellant are Ahmadis. The husband has lived most of his life outside Pakistan – in Kuwait as a child and then as a qualified chemical engineer in other Middle East countries. During the times he has lived in Pakistan (notably 1986 to 1994), he lived with his family in Karachi. The wife is a qualified psychologist from Islamabad who married the husband in 2002/2003. Thereafter, she lived with him in the Middle East, except for times when she would return to Karachi to live with her mother-in-law for periods, to have children and to study. The husband visited her there for short periods only. The two children have lived at all material times with their mother (and father when he was in the same country).

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

The Refugee Convention

[73] 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.”

[74] 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.”

[75] 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

[76] 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].

[77] 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].

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

Historical background

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

[80] 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.

[81] 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.

[82] In 1947, on partition, the community moved its religious headquarters from Qadian to Rabwah (also known as Chenab Nagar), on the Chenab River in the Punjab, in 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.

[83] In 1974, Prime Minister 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".

[84] 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:

"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."

[85] Conditions for Ahmadis in Pakistan were recently considered by the Tribunal in *AM (Pakistan)* [2013] NZIPT 800274. It is not intended to repeat *in extenso* what was said there, but, in summary, it was noted at [44] that the United States Department of State, *Report on International Religious Freedom: Pakistan* (30 July 2012) records:

“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 Ahmadis from calling themselves Muslims, referring to their religious beliefs as Islam, preaching or propagating their religious beliefs, inviting others to accept Ahmadi 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. Religious parties oppose any amendments to the constitution affecting its Islamic clauses, especially the ones relating to Ahmadis. 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 for contravening the country’s blasphemy laws are death for ‘defiling Prophet Muhammad’; life imprisonment for ‘defiling, damaging, or desecrating the Qur’an’; and 10 years’ imprisonment for ‘insulting another’s religious feelings’. Under the Anti-Terrorism Act (ATA), any action, including speech, intended to incite religious hatred is punishable by up to seven years’ imprisonment.”

[86] It was also found that the mistreatment of Ahmadis has intensified in recent years, noting the May 2010 attacks against two Ahmadi mosques in Lahore in which 85 people were killed and 150 were injured, for which no investigation has ever been completed. Further attacks against Ahmadi places of worship and the community continued in 2012, often condoned and supervised by police officers.

[87] It was also noted that there are numerous reports of Ahmadi mosque entrances being blocked by Muslim leaders who encourage their followers to hostility and violence against Ahmadis with impunity. Attacks against individuals also appear to have increased. The social space in which the Ahmadi community can retain and practise their beliefs without interference is being seriously eroded. Blasphemy laws are sometimes used as a pretext for the issue of FIRs against Ahmadis and can lead to prolonged detention, interrogation, physical mistreatment and unfair trials (though they are usually overturned on appeal). The targeting of individuals in workplaces, villages and educational facilities is also reported. Dominant among the Sunni Muslims harassing Ahmadis in the Punjab is the Islamist group *Khatm-e-Nabuwwat*, who conduct provocative marches through Rabwah, physically attack Ahmadis and generally intimidate the community.

[88] The increasing harassment of the Ahmadi community was also highlighted in the Human Rights Watch *World Report 2012: Pakistan* which states:

“Members of the Ahmadi religious community also continue to be a major target for blasphemy prosecutions and are subjected to specific anti-Ahmadi laws across Pakistan. They also face increasing social discrimination, as illustrated by the October expulsion of 10 students from a school in Hafizabad, Punjab province, for being Ahmadi.”

[89] 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 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.”

[90] The population density of Ahmadis in the Punjab (particularly in Rabwah) has tended to focus the antipathy of the Sunni Muslim community on that area, as well as (understandably) the gaze of human rights monitors. But that is not to say that Ahmadis in other parts of the country are not also vulnerable. Given that the appellants are most recently from Karachi and that is where they would be likely to return to, it is necessary to consider whether Ahmadis there are also at risk.

[91] In this regard, Saba Imtiaz’s article “Ahmadis in Karachi: Pulpit Pounding, Barricades, Prayers but no Peace” *Express Tribune* (19 June 2011), describes a similarly troubled outlook:

“KARACHI:

On a Friday afternoon, there is pin-drop silence around the Ahmadi place of worship in Karachi’s Drigh Road area. Worshipers quietly enter through a side door, watched over by a number of men on patrol and security cameras affixed to the building.

Just down the lane, the *imam* of Bilal Masjid peppers his sermon with anti-Ahmadi remarks. The strains of his sermon can be heard throughout the neighbourhood, including the men standing guard outside their place of worship.

Friday prayers are under way in both buildings, but only one congregation is allowed to practice its faith openly.

....

Sunni Tehreek (ST) flags flutter in the area, whose walls are covered with graffiti, declaring the area to be Sunni Nagar. ‘These clerics, Sunni Tehreek... they’re all one and the same,’ remarks a shopkeeper who has worked near the Ahmadi place of worship for 25 years. He has witnessed the area’s clerics raging against the Ahmadiyya community for placing barricades near their place of worship. There have been incidents of firing in the area as well. Thoughtfully, he says, ‘The problem is that Muslims have increasingly become intolerant.’

....

Attendance at prayers at Ahmadi places of worship in Karachi has slowly picked up after the 2010 Lahore attacks. 'We have stopped women and children from coming to the centres because we fear that they will be targeted first, similar to the Lahore attacks,' says Masood Khan, a senior representative of the Ahmadiyya community. 'Praying is also difficult and it gets quite suffocating – we have to close all the windows and doors so that no sound can be heard outside.'

Outside is where a mob — literally and physically — exists. Just like the cleric at Bilal Masjid, mosque speakerphones are regularly used to incite hatred.

While Punjab has been the breeding ground for anti-Ahmadi sentiment, the minority in Sindh faces targeted assassinations, discrimination and blasphemy cases filed on flimsy charges. Reviled due to a decades-old campaign, Ahmadis have nowhere to turn to, not even the state. A lieutenant, who was awarded the Sword of Honour, was forced to leave the navy because his faith meant he would never be promoted. A woman was widowed twice because her husbands were practicing doctors. Flyers are openly distributed, asking people to boycott Ahmadi-run businesses and execute their owners.

'We have brought these incidents... to the police's notice so many times,' says Khan. 'But they do nothing beyond occasionally sending a policeman or two.'

....

Even then, Khan says, the police in Karachi are better than those in the Punjab. Khan praises former Sindh home minister Zulfiqar Mirza for proactively listening to their problems. 'The police will at least send someone. The security apparatus was concerned after the attacks in Lahore and we discussed measures. But we asked for Rangers to be deployed on Fridays and that has not happened.'

After a lifetime spent in fear, Ahmadis in Karachi who can afford to relocate are packing up their bags. At least 300 to 400 people have reportedly left. The Ahmadiyya community in Karachi is at least 20,000 strong.

....

In Karachi, Ahmadis living in Mehmoodabad have been gunned down in the past decade, with up to six cases in the last three years alone. One of them included a doctor who chose to work in the poor area. He was killed as he stopped at a speed breaker on his way home. Twenty-five families from Manzoor Colony have emigrated.

'We don't tell our children that they will face discrimination. We don't want to poison their minds at a young age,' Khan says. 'But at school they are inevitably discriminated against. Our girls come back home and say they don't want to go to college.'

Ahmadi families prefer sending their children to schools run by Parsis and Christians – also minorities. According to Shahzad, admissions are a no-go once school realise what the family's faith is.

....

Karachi's business community, according to Khan and Shahzad, is generally accepting of Ahmadis, especially those whose operations have been established for decades. However, Shahzad says in a resigned tone, 'You can tell the difference in the way they meet us. They work with us because they have to.'

....

Discrimination, Khan says, is also found among old friends. 'I know that they don't want to dine with me.'

[92] The Tribunal has also had regard to the recent United States Commission on International Religious Freedom's *Annual Report 2013: Pakistan* (April 2013). The same levels of violence and intimidation against Ahmadis, in a climate of state complicity and impunity, continue to be reported.

[93] 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 appellants being persecuted if returned to Pakistan?

[94] 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.

[95] 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."

[96] In short, 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.

[97] Issues such as the use of criminal law sanctions, malicious FIRs and the risk of serious physical harm at the hands of thugs such as *Khatm-e-Nabuwwat* will be discussed later. First, it is appropriate to address the extent to which the appellants are, in fact, restricted in the manifestation of their religion.

[98] There is no doubt that there is state-sanctioned discrimination against Ahmadis in Pakistan, including in Karachi. The country information records

sustained, well-planned and serious efforts to marginalise and intimidate Ahmadis, solely because of their religious beliefs. 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.

[99] On the country information, if the appellants return to Karachi it is accepted that, on some occasions, they will need to hide, and even deny, their religion, in order to avoid repercussions. For example:

- (a) In seeking employment, the adults may be forced to hide their religion. It is not an answer that they can simply assert that they are Muslim (though they believe it themselves) because Pakistan law makes it a criminal offence for them, as Ahmadis, to do so.
- (b) In the course of any ongoing employment, the adults will likely need to keep their religion hidden and, if asked, may either have to deny their religion or risk being dismissed. They may need to be discreet in how they perform any prayers at work, to the extent that they may need to find an excuse to pray in isolation from other Muslims.
- (c) At a state school, the children will likely need to hide their religion and, if asked, may either have to deny their religion or risk being expelled.
- (d) The wife and children will likely not be able to attend a mosque to worship, because the 2010 attacks in Lahore have raised Ahmadi community fears in some circles that they will again be targeted and many Ahmadi mosques currently refuse entry to women and children.
- (e) The husband will be able to attend a mosque, but likely not on days of tension or when groups such as *Khatm-e-Nabuwwat* are present.
- (f) None of the appellants will be able to discuss their religion openly with non-Ahmadis. Nor will they be able to refer openly to their place of worship as a mosque, to their leader as an *imam*, to the call to prayer as *azan* or to call themselves Muslims or refer to their faith as Islam.

[100] It is a well-settled principle that 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.”

[101] 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).

[102] The primary issue which arises from this is whether the breach of the right to religion which would compel the appellants to be discreet, as identified at [99] above, goes to the core of their right to religion, or whether the breach would simply be at the margins of the right for them. It is an enquiry which must take into account their particular characteristics.

[103] For the adult appellants, the Tribunal is satisfied that their self-identity as Ahmadis is at the core of their faith, as is their desire to be able to publicly identify themselves as Ahmadis. They are not proselytisers, nor particularly vocal about their beliefs but, equally, their faith is central to their sense of self-identity and it is important to them to be able to assert their religion, if and when the occasion arises. In reaching this view the Tribunal takes into account that both the adult appellants are well-educated professionals who have deliberately spent much of their working lives outside Pakistan. While the income available in the Middle East may have been a factor, the Tribunal is satisfied that the predominant reason for their self-imposed exile from Pakistan for so many years has been, fundamentally, the discrimination there against Ahmadis. That this is the predominant reason is reinforced by the fact that the husband’s mother has now left Pakistan herself and is residing with another of her children in a Middle East country. There are no members of the husband’s family now left in Pakistan at all.

[104] It is not overlooked that the wife returned to Pakistan for periods for the birth of her children and, more latterly, to study. However, she did so at a time at which she was able to live with the husband's mother in Karachi. She had family support and, for most of the time, was unemployed. The risk of her falling foul of the restrictions on Ahmadis was not significant because she had minimal interaction with those in authority.

[105] The same cannot be said of a return to Pakistan by the adults now. It is likely that they would return to Karachi, because they (the husband in particular) does not know anywhere else in Pakistan. While the wife grew up in Islamabad, that was many years ago and the husband has never lived there. Given the lack of family support and social networks for the husband, he will face the challenge of finding employment in a market in which he has no contacts or social network. Seeking employment will expose him to the risk of being asked about his religion by prospective employers. The same predicament will be faced by the wife in terms of her own employment. Both will be compelled to deny their religion or run the risk of being refused employment. It is not possible to say what percentage of prospective employers would refuse them (the country information is silent) but the Tribunal is satisfied that it is sufficient that they would not take the risk.

[106] Even if they find employment, unless they are fortunate to find an employer tolerant of Ahmadis, with the courage to stand up to intimidation, the adult appellants will continue to be compelled to deny their religion, in order to avoid the risk of clients or co-workers complaining to the employer and seeking their dismissal. Such denial will be problematic, given that Ahmadi prayers are different in some ways to those of other Muslims and they will either be restricted in their ability to pray or will need to find continual excuses to pray in isolation. Even that may well arouse suspicion in the long term.

[107] Without family support to return to, the couple will need to deal on their own with landlords, government departments, professional associations, security services and with all of the other interactions which arise in the course of daily life. Many carry the risk of their religion being asked for. That is all the more so at present because of heightened tensions in Karachi following a spate of bombings by insurgents in the run-up to the May 2013 elections. See, for example, "Bomb in Pakistan Kills Five Near Political Office", "Deadly Twin Blasts Rock Karachi" and "Pakistanis Go to Polls as 10 Killed in Bombings", *New Zealand Herald* (26 April 2013, 28 April 2013 and 11 May 2013, respectively). In all of those instances, they will be compelled to deny their religion, or risk an adverse response.

[108] It may be that other Ahmadis, with different characteristics, such as existing family and social and employment ties, would not be as exposed to the predicament of having to deny their faith in the same way, and to the same degree, that this couple will. Here, however, the Tribunal finds that, if returned to Pakistan, the adult appellants will find themselves repeatedly forced to avoid harm by denying their religion. Such conditions are likely to persist into the indefinite future. They are sustained and systemic. It amounts to a breach at the core of their right to manifest their religion. It would not be justified by any of the exceptions articulated in Article 18(3).

[109] Both adult appellants have a well-founded fear of being persecuted if returned to Pakistan.

The children

[110] As to the children, while they are likely to experience difficulties at a state school, there are private schools which accept Ahmadis. They are not denied access to all education. Nor does the evidence suggest that the education offered by private schools is in any way inferior. Granted, the parents would need to pay for the schooling, but they are a professional couple and the evidence does not establish that they could not afford to meet such costs.

[111] At their present age, the question of whether the wider discrimination against Ahmadis in Pakistan will later give rise to a breach at the core of their right to manifest their religion is speculative. The Tribunal cannot know whether they will adhere to the Ahmadi faith when old enough to determine their own path in life, nor whether, if they do, it will be a matter of any importance to them. Nor can future country conditions in Pakistan be predicted with any confidence. A further factor is that, if they were to return to Pakistan now, by the time they are of such an age, they will likely have developed the very support structures and knowledge of Pakistan society the lack of which is contributing to their parents' current predicament.

[112] Whether there is a real chance of either of the children being persecuted later in life is no more than speculative and does not, on the evidence today, rise to a real chance.

[113] The foregoing findings are determinative of the appeals for all the appellants. For the sake of completeness, however, it is intended to comment briefly on the outstanding issues raised by the appellants as part of their appeals.

Criminal sanctions

[114] The United Kingdom's Upper Tribunal, in *MN and others (supra)*, placed particular weight on the fact that Ahmadis are subject to criminal law sanctions for breaching the Pakistan Penal Code (by public manifestations of their faith, such as conversing about it with non-Ahmadis). But, it acknowledged at para 119(ii) that:

“It is, and has long been, possible in general for Ahmadis to practise their faith on a restricted basis either in private or in community with other Ahmadis, without infringing domestic Pakistan law.”

[115] Viewed through this prism of criminal sanctions, the Upper Tribunal concluded, at para 120 that:

“The background to the risk faced by Ahmadis is legislation that restricts the way in which they are able openly to practise their faith. The legislation not only prohibits preaching and other forms of proselytising but also in practice restricts other elements of manifesting one's religious beliefs, such as holding open discourse about religion with non-Ahmadis, although not amounting to proselytising. The prohibitions include openly referring to one's place of worship as a mosque and to one's religious leader as an *Imam*. In addition, Ahmadis are not permitted to refer to the call to prayer as *azan* nor to call themselves Muslims or refer to their faith as Islam. Sanctions include a fine and imprisonment and if blasphemy is found, there is a risk of the death penalty which to date has not been carried out although there is a risk of lengthy incarceration if the penalty is imposed. There is clear evidence that this legislation is used by non-state actors to threaten and harass Ahmadis....

If an Ahmadi is able to demonstrate that it is of particular importance to his religious identity to practise and manifest his faith openly in Pakistan in defiance of the restrictions in the Pakistan Penal Code (PPC) under sections 298B and 298C, by engaging in behaviour described in [the above paragraph], he or she is likely to be in need of protection, in the light of the serious nature of the sanctions that potentially apply....”

[116] The Tribunal is satisfied that, while it is important to the adult appellants to be able to publicly identify themselves as Ahmadis, it is not of particular importance to them to, for example, “hold open discourse about religion with non-Ahmadis” in defiance of the restrictions in the Pakistan Penal Code. Rather, they are more aptly described as wanting to practise their faith in community with other Ahmadis. Certainly, there is no evidence that, in New Zealand, they have done anything more than attend an Ahmadi mosque.

[117] Given this, the appellants face only a speculative, or remote, chance of suffering criminal sanctions. It does not rise to the level of a real chance.

Spurious complaints to the police

[118] It is clear from the country information that some extremists, including *mullahs*, raise false blasphemy complaints with the police in order to have FIRs issued, which can lead to unfair trials and convictions.

[119] While a recent decision of the Tribunal, *AM (Pakistan)* [2013 NZIPT 800274] did note, at [47], that:

“The use of blasphemy laws as a pretext for the issue of First Information Reports (the first step in the laying of criminal charges) against Ahmadis is becoming commonplace...”

the actual incidence of such a practice needs to be borne in mind. According to the Freedom House report *Freedom in the World: Pakistan 2012*, provided by counsel, there are:

“...several dozen cases reported each year...”

and

“... dozens of Ahmadis faced criminal charges under blasphemy or other discriminatory laws during 2011.”

[120] The number of Ahmadis in Pakistan is difficult to establish. Some say there are as many as a million or more but the United Kingdom’s Upper Tribunal, in *MN and others (supra)*, considered, at para 106, that the number was more likely to be several hundred thousand. Even at this conservative estimate, 50 complaints a year suggests that fewer than .2 of one per cent of Ahmadis are the victims of malicious FIRs. Perhaps it puts it in more stark relief if one considers that 99.98% of Ahmadis are *not* the victims of malicious FIRs.

[121] Clearly, without more to suggest that an individual Ahmadi is at a heightened risk of being the victim of a malicious complaint to the police, the chance to that individual is no more than remote or speculative. It falls well short of a real chance.

Other documented risks for Ahmadis – assault, murder, attacks on mosques

[122] Again, there is no doubt that groups such as *Khatm-e-Nabuwwat* carry out random acts of violence against Ahmadis. The 2010 Lahore bombings were the worst incidents of such violence but there are many other accounts. Counsel cites the United States’ *Commission on International Religious Freedom Report: Pakistan* (20 March 2012), which records:

“In recent years, scores of Ahmadis have been murdered in attacks which appear to be religiously motivated...”

[123] The figure may be put more accurately by 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.”

[124] The 207 Ahmadis killed since 1984 appear to include the 86 persons killed in the bombing of the Lahore mosques in 2010.

[125] Amnesty International, in its *Annual Report 2012 – Pakistan* (24 May 2012), documented the year’s human rights abuses in Pakistan, including abuses by the Taleban, security forces and armed groups, and discussed (and recorded instances of) violence against journalists, Christians, Hindus, Shi’a, moderate Sunnis, women and girls and judges. Threats of violence against Ahmadis were noted but the report is silent as to incidents of actual harm against any Ahmadis.

[126] Counsel also tendered the Human Rights Watch report *World Report 2012 – Pakistan* (22 January 2012), which also documents human rights abuses. It stated only that:

“Members of the Ahmadi religious community also continue to be a major target for blasphemy prosecutions and are subjected to specific anti-Ahmadi laws across Pakistan. They also face increasing social discrimination, as illustrated by the October expulsion of 10 students from a school in Hafizabad, Punjab province, for being Ahmadi.”

[127] 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.”

[128] The incidence of violence against Ahmadis is not under-reported. As the Upper Tribunal noted, in *MN and others* (supra), 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* and *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.”

[129] The Commission on International Religious Freedom’s summary of “scores of Ahmadis” being murdered in recent years, and the Department of State’s citing of 207 deaths since 1984 suggests that, viewed dispassionately (and taking into account acts of harm falling short of death), the actual incidence of serious physical harm in any given year is probably less than 100, at most. Viewed against the conservative estimate of several hundred thousand Ahmadis, the chance of any Ahmadi being the victim of serious physical harm in any given year is much less than one per cent. At such a level, the risk is one best described as remote. It falls short of amounting to a real chance by a significant margin.

[130] The bombing of the Lahore mosques is not overlooked. Such acts of mass violence, atrocious though they are, have occurred rarely. The victims of the Lahore bombings are included in the 207 deaths and chance of being a victim of such an incident is no more than remote.

Conclusion on well-foundedness

[131] Each of the adult appellants has a well-founded fear of being persecuted. As to the children, the risk to each of them of serious harm is remote and speculative. Neither child has a well-founded fear of being persecuted.

Is there a Convention reason for the persecution?

[132] The relevant Convention reason for the predicament faced by the adult appellants is religion.

Conclusion on Claim to Refugee Status

[133] For the foregoing reasons, the adult appellants are each entitled to be recognised as a refugee. Neither of the child appellants is so entitled.

The Convention Against Torture

[134] 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.”

[135] 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.”

Conclusion on Claim under Convention Against Torture

[136] The Tribunal has found the adult 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). Neither can be returned to Pakistan. Accordingly, there are no substantial grounds for believing that either of them is in danger of being subjected to torture if deported from New Zealand.

[137] As to the children, the same evidence was advanced for this limb of the appeals as was advanced in respect of the refugee appeals. For the same reasons that led to the finding that neither child faced a real chance of being persecuted, the Tribunal is satisfied that there are no substantial grounds for believing that either child would be in danger of being subjected to torture if deported from New Zealand.

The ICCPR

[138] 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

[139] Again, the Tribunal has found the adult 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). Neither can be returned to Pakistan. Accordingly, there are no substantial grounds for believing that either of them is in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

[140] As to the children, the same evidence was advanced for this limb of the appeals as was advanced in respect of the refugee appeals. For the same reasons that led to the finding that neither child faced a real chance of being persecuted, the Tribunal is satisfied that there are no substantial grounds for believing that either child would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand. As to cruel treatment, it is may be helpful to re-state the principle that the act of returning a person to their home country cannot itself provide the “treatment” element of “cruel, inhuman, or degrading treatment” – see in this regard the decision in *BG (Fiji)* NZIPT 800091, particularly at [148]-[159].

[141] The Tribunal has given particular consideration to the question of arbitrary deprivation of life, given that the children would be returned to Pakistan without their parents, while still of highly dependent age. If the children were at risk of being returned to a country in which there were no adults into whose custody they could be returned, and where there was no state structure of support for their welfare, it might well be that substantial grounds would exist for believing that they would be in danger of being subjected to arbitrary deprivation of life.

[142] Here, however, the child appellants have maternal aunts and other familial relatives in Islamabad and, having seen and heard the adult appellants, the Tribunal is satisfied that they are responsible and caring parents who would ensure that the children were met, taken into the custody of, and cared for by, relatives. They would not be in danger of arbitrary deprivation of life.

CONCLUSION

[143] For the foregoing reasons, the Tribunal finds that each of the adult 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.

[144] For the foregoing reasons, the Tribunal finds that each of the child 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.

[145] The appeals of the adult appellants (800401 and 800402) are allowed. The appeals of the child appellants (800403 and 800404) are dismissed.

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