

0908083 [2010] RRTA 32 (6 January 2010)

DECISION RECORD

RRT CASE NUMBER: 0908083

DIAC REFERENCE(S): CLF2009/53851

COUNTRY OF REFERENCE: Algeria

TRIBUNAL MEMBER: Philippa Wearne

DATE: 6 January 2010

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Algeria arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention
4. The applicant applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of "refugee"

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

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

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Departments case file CLF2009/53851 and the Tribunal case file 0908083 relating to the applicant.
20. The applicant indicates that he was born in El Harkach, Algeria.
21. His Algerian passport was issued in the mid 2000s and indicates that he is a student. It also indicates that he arrived in Australia several years ago on a Student visa. A further visa was issued valid for several months.
22. The only previous travel indicated was to Country X for one day in the year prior to his departure.

The protection visa application (PVA)

23. The applicant lodged the protection visa application (PVA).
24. He indicates that he speaks Arabic (Algerian) and English and that he has had 15 years of formal education. He was at a university in Algeria before withdrawing. He makes the following claims:
 - His family is very religious, almost extremist. Islam was taught in his family by force “almost like a type of brainwash”.
 - His father and his brothers (one of whom is an Iman) spend “almost all their time reading the Koran and Hadith”.
 - For as long as the applicant can remember, his family, uncles and their sons met every Friday at the Mosque to study the life of their Prophet Mohammed.
 - While he was at “prep school” Algeria was in a state of political and religious unrest. During this time the applicant realised that there were “many different thoughts” in Islam. He began to question a number of things that they did in Islam, because they were not in the Koran. His questioning was met with anger from his father and his uncles. He was told not to ask questions.
 - At university he met different people who had different thoughts about Islam. He became friends with Person A and Person C. Together they spent time questioning Islamic ideals and the way different groups interpret Islam.
 - Person A and Person C believed very little of the Hadith or other Islamic texts. Over the course of a year, the applicant listened to their belief that only the

Koran was necessary. Person A and Person C did not fast at Ramadan; they fasted whenever they wanted to. Person A and Person C prayed at any time, anywhere. They were careful not to make their views obvious to others. It took some time before they were open with the applicant about their beliefs.

- Slowly the applicant began to realise that other than the Koran, no other book was necessary. The “Sunna” need only be taken from the Koran because after all, God wrote the Koran. The applicant started to feel uncomfortable with Sunni Islam and he became reluctant to practice with his family and the rest of the community.
- This caused a strain between him and his family. Once when he commented that it was not necessary to pray as they did, his uncle slapped him across the face and called him a Kafir.
- For about six to 12 months before he left Algeria, he was feeling very strained. He felt that he was following the wrong Islam. He felt that the type of Islam practised in Algeria is forced. He could not ask questions.
- After he arrived in Australia, he spent “the first few months getting settled”. Initially, he did not practice Islam. He started to explore and read about Shia Islam.
- After a while, he began to wonder if really he believed in Islam or God. At this time he was certain that the Hadith and other books apart from the Koran were not necessary to be able to practice Islam.
- He met Person B who openly claimed that he was Korani. He met with Person B four or five times before Person B moved to another state. Person B explained a number of reasons why he believed that only the Koran was the basis of the Islamic belief. The applicant has become a Korani since meeting Person B. Many Islamic beliefs are misunderstood. Most of the misunderstanding comes from the influence of the Saudi Arabia and the Azhar University.
- He believes the Koran is what Allah provided and this book contains all. The Prophet Muhammad was ordered to live according to the Koran only
- All sects and beliefs that have resulted from the incorporation of Hadith and Sunna with the Koran are not pure and true Islam. This was done as a tool that is political, not religious to spread Islam
- As a Koranist, he is unable to live safely in Algeria.

Representation

25. The applicant appointed a migration agent to represent him in regard to the PVA.

Interview with Department

26. The applicant was interviewed by a Department officer in regard to his claims. A copy of a recording of the interview is held on the Department file at folio 49. The interview was conducted in two parts over the course of about an hour and a half. Parts of the recording are very difficult to understand.

Representative's submissions

27. By email, the representative made submissions that she claimed to be based on independent information. These submissions were discussed during the hearing (see below, paragraphs 69-79). She also provided website links to the following articles, which have been printed out and are held on the Department file (folios 50-56):
- *Algeria: Researched and compiled by the refugee documentation Centre of Ireland on 1 July 2009. Information on the treatment of failed asylum seekers* [Department file, folios 54-55] The report, amongst other things, states that the UNHCR highlighted its renewed concerns regarding returnees in a position paper published in December 2004 [Department file, folio 60] particularly in relation to returnees perceived as terrorists. Western government intelligence reports about terrorist infiltration in North African migrant communities in Europe may have heightened the suspicions of the Algerian authorities towards returnees, notably those linked with Islamic movements (UK Home Office (30 September 2008) Country of Origin Information Report Algeria). The report also states: "Research by Human Rights Watch and Amnesty International and detailed assessments of the United States Department of State, all demonstrate the very real risk of sending persons labelled as terrorism suspects back to these countries [Algeria, Morocco, Jordan and Tunisia]" (Amnesty International (26 February 2007) *United Kingdom: Deportations to Algeria at all costs AI Index: EUR 45/001/2007*).
 - *Algerian Sunni converting to Shi'ite sect of Islam* CORI. Query ID: HCR00001E; 2 March 2009.
28. The Department file also holds the article, *Returns to Algeria: inaccurate Home Office information corrected: 25 January 2005*. Algeria-Watch, information on the human rights situation in Algeria. (Algeria-Watch) (folio 59).
29. The representative sent an uncertified translation of an undated newspaper article written by Moustafa Soliman, in Egypt, taken from www.alarbia.net. The original article was not supplied. The translation is entitled *Koranis are Apostates, Sheikh Mohammed Ashur, Cairo*. According to the translation, Sheikh Mohamed Ashur stated a fatwa during a discussion held by an Egyptian newspaper between him and "a Korani thinker", claiming that Koranis are apostates (Department file, folio 57)
30. By email, the representative made submissions including the following: (Department file, folio 56)
- During the [Department] interview, I note that the applicant referred to attending a mosque in [suburb]. It was stated that this mosque was a [S]unni [M]osque. Please be aware that [the applicant] clearly stated that he only goes to pray in this most [sic] and does not attend any surmons [sic] etc. [The applicant] was not even aware of the

name of the [I]mam in this [M]osque with[sic] further indicates that he used the [M]osque simply as a physical place of worship, and not for the purpose [of] learning or complying with [S]unni rghts. In Australia, there is no specific [M]osque for Muslims of the Korani sect to attend.

31. The delegate decided not to grant a protection visa to the applicant

Review by the Tribunal

32. The applicant applied for a review of the decision on 7 October 2009 He continued to be represented by the same person.

The hearing

33. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic (Algerian) language.

34. The applicant's representative also attended the hearing.

35. The Tribunal informed the applicant that it had listened to the audio recording of the interview with the Departmental officer, and that parts of the recording had been difficult to understand.

36. The Tribunal explained the operation of s.91R(3) of the Act in regard to conduct in Australia. The applicant indicated that he understood the explanation.

37. The applicant said that he did not wish to add to, change or delete any of the information that he had given in regard to the PVA.

38. The applicant confirmed that his stated religion as *Muslim* He confirmed his age.

39. The Tribunal asked the applicant why he fears returning to Algeria He said because he is a Koranist. He does not have there right to be there. He has no protection. He would be seen as being against the Sunni. He would be arrested, and he would be in big trouble.

40. The applicant said that he left Algeria because it got to the stage that he could not live there because he is a Koranist.

41. The Tribunal asked the applicant when he became a Koranist. He replied that he had done so after coming to Australia. He had “thoughts and suspicions” about it when he was in Algeria. Once he came to Australia he became “fully” Koranist.

42. The Tribunal noted that he had given apparently inconsistent evidence. He had first told the Tribunal that he left Algeria because he was Koranist. However, he had also claimed to have only become a Koranist after arriving in Australia. The Tribunal invited the applicant to comment on this.

43. The applicant said that in Algeria he had had lots of thoughts. He was confused. People who did not believe in “Sunni” had trouble. In Algeria 99% of the population is Sunni. If you believe differently, you are seen as anti-Sunni. The applicant referred to his two

friends at university, to whom he had referred in his written statement, who shared the same thoughts as the applicant.

44. The applicant said that if someone had a different view they would be accused of being an “infidel” or of being sacrilegious. It would be alleged that they were “swearing” at Sunni. The police may intervene.
45. The Tribunal noted that the applicant claimed that his uncle had “slapped” him on one occasion when he had queried prayer practice. The applicant agreed. He said that Sunnis pray five times a day. The applicant asked his uncle why this was. The applicant said that he had also queried fasting. These things were not clearly stated in the Koran. His uncle thought that he was weird. His uncle considered it to be blasphemy. He considered the applicant as an infidel.
46. The applicant agreed that apart from his uncle slapping him on the one occasion he had had experienced no other incident in Algeria. The Tribunal noted later that in the hearing that it could conclude that he had not suffered persecution in Algeria in the past.
47. The applicant said that the police never became involved with him in Algeria. His father wanted the applicant “to stop” to avoid problems. He helped the applicant come to Australia. He contacted the college here, and arranged for the applicant to come. The applicant had to wait six months for his visa.
48. The applicant said that where he lived in Algeria, new views were spreading and becoming known by others gradually. His friends’ parents thought it was him that was influencing them.
49. The Tribunal asked the applicant what being a Koranist meant to him. The applicant said that it meant that he should abide by the Book – the Koran. The Book provided very comprehensive instructions. The applicant said that he rejected the Hadith and the Sunna. (He agreed that the Hadith were sayings, deeds and explanations of the Koran attributed to Prophet Mohammad and the Sunna was the Prophet’s tradition) The applicant said that Mohammed was a prophet like other prophets. Mohammed had received inspiration to put what was in the Koran. The applicant said that the Koran was the main text of belief. The sayings and deeds in the Hadith were developed over centuries. It was not clear that they were words from Mohammed.
50. The Tribunal asked the applicant if he would ever consider using violence as part of his beliefs or to promote his beliefs. The applicant said that the Book states that we should discuss issues in “a nice way”. If someone is convinced to become Koranist that is good, but we should be nice to them.
51. The applicant said that in Algeria it is alleged that there is freedom. However, he does not have freedom in Algeria.
52. The Tribunal asked the applicant about his most important beliefs as a Koranist. The applicant responded “God and the Koran.” The Tribunal pressed him for his important beliefs. The applicant said that he was to treat other people “nicely”. There was no distinction made in the Koran whether someone was Muslim or Christian. They should be treated nicely. The applicant said that there was one God, Allah.

53. The Tribunal asked the applicant whether his beliefs were religious, intellectual, philosophical or political or a combination of these. The applicant said that his views were mostly religious. He said that they were not political.
54. The Tribunal noted that the applicant's passport indicated that he had arrived in Australia on a student visa. The Tribunal noted that he had delayed several years before applying for protection visa. The Tribunal noted that this delay could indicate that the applicant did not fear persecution as he claimed. The applicant stated that he studied in Australia for several months. He completed his studies some time ago. His visa expired in the following month. He did not apply for protection visa because he was "completely oblivious" to the process. The applicant said that he did not know whether to stay in Australia, or to go back and face problems. He decided to stay here, even unlawfully, because it was better than the persecution that he would face in Algeria.
55. The Tribunal asked what he meant by "persecution". The applicant said that his Koranist views had improved or strengthened. He did not want to go back there. He had more freedom in Australia. He would be frustrated in Algeria because he would remain silent. In Australia, he can be outspoken. Even if he is not believed he could be free. He could not go back to Algeria.
56. The applicant said apart from Person B he had mentioned in his written statement, he did not know any other Koranists in Australia.
57. The applicant said that he attended a mosque in Australia about once a week. For his religious practice he prefers a private and secluded place with as few people around as possible. He goes before prayers. He does not attend sermons, because there is a lot of Hadith. He likes the small Tabligh Mosque. It is a Sunni Mosque.
58. The applicant said that he was studying at university in Algeria. He withdrew because he was going to come to Australia. In the last six months he was just going to university once or twice a week. His focus was on getting the visa.
59. The applicant said that he currently spoke to his family once or twice a month. He mostly spoke to his mother. His father does not agree with his views. They just say "hi" to each other.
60. The applicant said that apart from his travel to Australia he had only travelled to Country X. That had been for one day for his student visa to come to Australia.
61. The Tribunal asked whether in practising his beliefs as a Koranist did he encourage others follow his views. The applicant agreed. He said that he does not force anyone. He talks to people who are willing to listen, over a coffee. As long as it is doing no harm, and freedom is respected. He said that he thinks that there is one person, who is "about to be convinced".
62. The applicant said that if he saw someone wearing a long beard and long gown he would not speak to them. He would assume that they are Sunni, and they would be fanatical. He would not be able to convince them. Once he saw a Country Y man who was holding a Koran in his hand. He refused to talk to the applicant.

63. The applicant said that he is not working. He relies on “community workers” to support him. They invite him to dinners and lunch. He is sharing accommodation with someone. That person pays the rent. This person has to pay the rent in any case, so he allows the applicant to live with him. The applicant borrows his clothes too. This person brings back things to eat to share with the applicant. He is also an Algerian.
64. The Tribunal referred to the US Department of State, International Religious Freedom Report 2009: Algeria (the 2009 IRF Report). This Report states that the Algerian Constitution provides for freedom of belief and opinion.
65. The 2009 IRF Report also indicates that a person practising a non-mainstream form of Islam would face minimal discrimination and it appears that there would be no official or unofficial restrictions. The Tribunal read the following passage from the Report:
- The Constitution provides for freedom of belief and opinion and permits citizens to establish institutions whose aims include the protection of fundamental liberties of the citizen.
- ...
- Section III. Status of Societal Respect for Religious Freedom
- ...
- A very small number of citizens, such as Ibadi Muslims living in the desert town of Ghardaia, practice non-mainstream forms of Islam or other religions and generally experience minimal discrimination. Press reports concerning August 2008 riots between Maliki and Ibadi Muslim groups in Berriane, near Ghardaia, suggested that sectarian differences contributed to the violence. There were no reports, however, of religious persecution or any official or unofficial restrictions on Ibadi Muslims against practicing their religion.
66. The Tribunal noted that even if it were to accept his claims that he was a Koranist, independent information indicated that the applicant would not face persecution in regard to his beliefs if he were to return to Algeria. The Tribunal said that his family may be annoyed with him about his views and it was possible he could be ostracised but this by itself would not appear to be persecution. The applicant said he expected no problem from his family members, even if they were against his views. He said that the problem is that he is Koranist. He has strong beliefs and ideologies. How he could live in a society and not express his beliefs. He would be forced to be silent. He said that 99% of the population is Sunni. He would be involved with people who have different beliefs
67. The applicant also said that if he returned to Algeria, he would be in his father's care if he were to return to Algeria. He would be restricted. There are no benefits in Algeria. There is no Housing Commission in Algeria. Algeria is not like Australia.
68. The Tribunal noted that the applicant had also claimed that he would face persecution as a failed asylum seeker if he were to return to Algeria. The Tribunal noted that the applicant had not claimed to be involved in using any form of violence or with any group. Independent information indicated that it was people who were suspected of terrorist links returning to Algeria who may face difficulties on their return. However, this was not the case with the applicant, and he had made no claims in this regard. The

applicant said that if he returned to Algeria, it would be found out that he had stayed in Australia after his visa ceased. He would be asked about what he had done in Australia.

Discussion about the representative's submissions

69. The representative told the Tribunal that she had made submissions to the Department in regard to independent information. The Tribunal explained that it had read her submissions and had some concerns about them. There were not references for some of them and she had selected extracts without their relevant context.
70. The Tribunal referred to the Egyptian news article by Moustafa Soliman, apparently taken from alarabia.net (Department file, folio 57). The representative said that she would download the original article and the English version from the website and forward them to the Tribunal.
71. The Tribunal noted that the representative had submitted the following in her email:

10 men were tried for denigrating the dogma or precepts of Islam *because they were smoking during Ramadam*. They received four years prison, reduced to two months on appeal. www.amnestyUSA.org [sic] (Department file, folio 56).
72. The Tribunal noted that it had searched the Amnesty website for any reference to this claimed incident but had been unable to locate it. The representative told the Tribunal that this incident had been discussed in the 2009 IRF Report already referred to by the Tribunal. The Tribunal noted that the 2009 Report had referred to an incident which was different in detail. The Tribunal read from the Report out as follows:

On November 18, 2008, an appeals court in Algiers reduced the sentence from three years' imprisonment to two months of time served for three men convicted of smoking during Ramadan. On September 21 2008, authorities [had] arrested the men and detained them for the duration of their trial.
73. The Tribunal noted that if there was an Amnesty article about an incident involving 10 men whose sentence was reduced from four years to two months by the appeal court, she could submit the article to the Tribunal.
74. The Tribunal noted while it having regard to the 2009 IRF Report, the next paragraph of the Report was also of interest. The Tribunal read out from the Report as follows:

On October 5, 2008, a court in Biskra fined six Muslim residents \$1,670 (120,000 dinars) each for eating and playing cards during daylight hours of Ramadan. Six days later an appeals court judge overruled the decision, stating that the original sentence violated the Constitution, which provides for freedom of belief.
75. The Tribunal noted this information indicated the Algerian Constitution provided for religious freedom and the appeal court would overrule a decision which violated the Algerian Constitutional right of freedom of belief.
76. The Tribunal also noted that in the same email the representative had suggested that independent information indicated that the applicant could face harm because of the operation and enforcement of Ordinance 06-03. She submitted:

[The] 2008 US religious freedom report claims that a person may be arrested under Ordinance 06-03 [for] "shaking the faith of a Muslim" or "blashering [sic] the name

of the prophet and Islam”. In 2007, 1191 Books on Islam were banned as they did not comply with mainstream Islam as accepted in Algeria.

77. The Tribunal noted that it had found reference to “shaking the faith of a Muslim” and “blaspheming the name of a Prophet and Islam” in the 2008 US Department of State International Religious Freedom Report (the 2008 IRF Report) However, it had found no reference in the Report to any books being banned because “they did not comply with mainstream Islam as accepted in Algeria” The Tribunal also told the representative that there had been a relevant context in regard to both of the phrases that she had selected to submit to the Department. The Tribunal explained that “shaking the faith of a Muslim” had been discussed in the context of converting a Muslim to *another religion*. The Tribunal read from the 2008 IRF Report as follows:

Additionally, Ordinance 06-03 makes proselytizing a criminal offense, and the punishment for it is established at one to 3 years in jail and a maximum fine of \$7,100 (500,000 dinars) for lay individuals and 3 to 5 years of jail time and a maximum of \$14,285 (1 million dinars) for religious leaders. The law prescribes a maximum of 5 years in jail and a \$7,100 (500,000 dinars) fine for anyone who "incites, constrains, or utilizes means of seduction tending to convert a Muslim to another religion; or by using to this end establishments of teaching, education, health, social, culture, training...or any financial means." Anyone who makes, stores, or distributes printed documents, audiovisual materials, or the like with the intent of "shaking the faith" of a Muslim may also be punished in this manner. (US DOS International Religious Freedom Report, Algeria 2008 <http://www.state.gov/g/drl/rls/irf/2008/108479.htm> Accessed 23 November 2009.)

78. The Tribunal also noted that the other phrase selected by the representative, “blaspheming the name of the Prophet (Muhammad) and Islam”, was discussed in the 2008 IRF Report in terms of the treatment of Christian converts who had been accused of proselytising and illegally practising a non-Muslim faith. (For the relevant paragraph, see independent information below, paragraph 97)
79. In response to these observations the representative submitted that the applicant would be treated “in the same way”. The Tribunal noted that the representative may wish to submit some independent information to support her interpretation of the 2008 IRF Report, as it appeared that the 2008 IRF Report related only the specific circumstances expressed in it.
80. The Tribunal repeated that the 2009 IRF Report stated that the practice of non-mainstream forms of Islam would generally experience minimal discrimination.
81. The Tribunal asked the applicant if there was anything else he wished to add before the hearing concluded. The applicant said that there is a “very slight difference” between the Shi’a and Sunni groups. Despite this small difference there were many problems. If someone was the Koranist, that was different from a Sunni. They would be seen as against the Sunni. The applicant asked what would happen to him. He said that it was not possible to be silent. He would face persecution if he spoke out. There would be problems.
82. The Tribunal asked the applicant to describe the persecution that he would face. The applicant said over time, his beliefs had developed and become stronger and stronger. He would keep talking about his beliefs. He would be seen as influencing others. The

police would become involved. It was against the law. He said “you could end up in jail. If someone is outspoken and speaking freely, they could face trouble.”

83. The Tribunal allowed time for the representative to comment on the issues that it had raised in regard to her submissions about the independent information.
84. The representative requested an extension of time, which was allowed by the Tribunal.
85. By facsimile, the representative submitted that taking a view that there was no information relating to the persecution of Koranists in Algeria may represent “a very narrow understanding of the essence of the applicant's claims”. She submitted that Koranist beliefs are relatively new within the world of Islamic belief. Koranists are known by other names. The representative also submitted that the applicant's claims need to be assessed with respect to the chance of persecution due to his non mainstream beliefs of Islam She submitted that a “Sunni Muslim who converts to Christianity, for example, is considered an apostate because a Sunni Muslim must remain Sunni. - the accepted fact and this person no longer practises Sunni Islam.” She submitted that “the fact that this person is now called a Christian is irrelevant. It is no different when [the applicant] practises his Koranist views – that fact remains he also is an apostate because he, a Sunni Muslim has abandoned Sunni Muslim”. She also claimed that he would be proselytising and seen as “shaking the faith of a Muslim which is forbidden in Algeria.
86. The representative extracted information from the 2009 IRF Report, some of which was discussed in the hearing and the remainder of which is set out in “independent information” below. She also attached a copy of an article, which is already held on the Department file, *Algerian Sunni converting to Shi'ite sect of Islam*. (This article is discussed below, paragraphs 114 and 115.)
87. The representative submitted that the persecution of Koranists in Egypt is “better documented” than it is in Algeria. She submitted it is “highly plausible that the difference in reporting is not reflective of the situation”. She submitted that “essentially, persecution of a Koranist in a predominantly Sunni Egypt is not significantly different to persecution of a Koranist in a [sic] almost exclusive Sunni Algeria.”
88. She also stated that the applicant had spent significant time in Australia, utilising his freedom to spread his beliefs and was clearly at risk of persecution if he were to return to Algeria.
89. The representative submitted an English and Arabic copy of an article entitled *World Azhari: Qur'anis apostates – The Governor has the right to establish the limits* by Mustafa Suleman, Cairo. (This article relates to the translation, *Koranis are Apostates* held on Department file, folio 57). Sheikh Mahmoud Ashour is referred to a former member of the Under-Azhar Islamic Research Academy (Egypt). He had been speaking during a discussion held by an Egyptian independent newspaper in Egypt.
90. The representative did not further respond to the other issues concerning her submissions about independent information which the Tribunal raised during the hearing: refer paragraphs 71-73 and 76-77, above.

Independent information

91. Koranists (Quranists) only accept the Koran as the sole source of religious guidance. Sources report that Quranists views on *hadith* and *Sunnah*'s place in Islam vary. The Ahl Al-Quran group appears to view both *hadith* and *Sunnah* as unreliable, although one of its followers considers that they should not be rejected out of hand. Quranists do not consider themselves to be a religious sect or political party. Sources refer to Ahl Al-Quran being founded in Egypt in the 1980s by Dr. Ahmed Subhy Mansour, a professor at the Al-Azhar University in Cairo and dismissed in 1987 because of his beliefs. One article refers to these developments as being "part of a historically-rooted "Quran Alone" movement with a rich intellectual heritage". A 2007 *Gulf News* article noted that the Quranist movement started in the 1970s in Pakistan and then spread elsewhere (US Commission on International Religious Freedom 2009, *Annual Report 2009*, May, p. 161; Al Sherbini, Ramadan 2007, 'Egypt to further probe Quranists', *Gulf News*, 9 August <http://gulfnews.com/news/region/egypt/egypt-to-further-probe-quranists-1.194832> – Accessed 9 November 2009; 'The Sunnah is in the Quran!!!'(undated), Quranists.org website <http://quranists.org/> – Accessed 10 November 2009 ; Momen, Moojan 1985, *An Introduction to Shi'i Islam: The History and Doctrines of Twelver Shi'ism*, Yale University Press, New Haven, p.173 – Attachment 4; Elmarzouky, Nora & Jones, Marisa 2007, 'Crackdown on the Quranists', *Civil Society and Democratization in the Arab World*, Ibn Khaldun Center for Development Studies, Vol. 13, No. 150, p.3 <http://www.eicds.org/english/publications/civilsociety/07/June07Issue.pdf> – Accessed 9 November 2009 ; El-Khashab, Karim 2007, 'Matters of Faith', *Al-Ahram Weekly Online*, Issue no. 852, 5-11 July <http://weekly.ahram.org.eg/2007/852/eg12.htm> – Accessed 9 November 2009; Witter, Willis 2007, 'Anti-al Qaeda base envisioned; Exiled Egyptian cleric seeking to reclaim Islam in 'war of ideas'', *Washington Times*, 26 September).
92. The Quranist website (<http://quranists.org/>), affiliated with a group named People-Pro-God, describes a Quranist as "someone who follows the Quran and the teachings that are found in it". It states that Quranists are also known as "Ahlul-Quran, Quranies, Quranites, Quraniyoona, Quran-aloners & Quranists". It continues, however, "not all of these Quranist groups hold the same opinions about Salat, Ramadan, the role of the Hadeeth or Pilgrimage" ('Welcome to the Quranist Path', 'Disclaimer' (undated), Quranists.org website <http://quranists.org/> – Accessed 10 November 2009).
93. According to the Quranists.org website Quranists have the following beliefs in common:
 - Faith, Submission & Devotion to the god of Abraham (God bless him & Keep him)
 - Faith in God's prophets, laws & angels
 - Belief in the Quran as God's message
 - Avoidance of Evil deeds & Racing towards all Good.
 - God & The Quran as our Guide
 - Prayer
 - Fasting
 - Respect for others' freedom of religion & of culture.
 - Doing Right by our families, friends, neighbors, migrants, the abandoned and those less fortunate.
 - The study and practice of the whole Quran with intelligence and reason as an axis of our faith.
 - The belief that extremism (Al-I'tidaa'u) is disliked by God.

The belief that Submission to God is the only religion God accepts from humanity ('Quranist Beliefs' (undated), Quranists.org website <http://quranists.org/> – Accessed 10 November 2009).

94. Al-Azhar University, based in Cairo, Egypt is a famous university in the Muslim world. The university founded in 358/969 has acquired “great prestige and reputation for authority in religious domains which it has kept to the present day”. Al-Azhar University has reportedly rejected the views of the Quranists (Glassé, Cyril 2001, ‘al-Azhar’ in *The Concise Encyclopaedia of Islam*, Stacey International, Rev. ed., London, p.72; Al Sherbini, Ramadan 2007, ‘Egypt to further probe Quranists’, *Gulf News*, 9 August <http://gulfnnews.com/news/region/egypt/egypt-to-further-probe-quranists-1.194832> – Accessed 9 November 2009.
95. No information could be found about Quranists in Australia. The only information on Quranists in Algeria found was that Ahl Al-Quran’s representative in Algeria is Ibrahim Dadi ('About Us' (undated), International Quranic Centre website <http://www.ahl-alquran.com/English/aboutus.php#iqc> – Accessed 9 November 2009.)
96. Extracts from the 2009 IRF Report follow:

The Constitution provides for freedom of belief and opinion and permits citizens to establish institutions whose aims include the protection of fundamental liberties of the citizen. The Constitution declares Islam the state religion and prohibits institutions from engaging in behavior incompatible with Islamic morality. Ordinance 06-03 provides for the freedom of non-Muslims to practice religious rites, on condition that the exercise thereof is in keeping with the ordinance, the Constitution, and other laws and regulations and that public order, morality, and the rights and basic freedoms of others are respected. The law prohibits efforts to proselytize Muslims, but it is not always enforced.

There was no change in the status of respect for religious freedom by the government during the period. In February 2008 the government began enforcing Ordinance 06-03 which regulates non-Moslem practice. The Ordinance increased restrictions on non-Moslem worship including court proceedings and fines against some Christian converts, however, the number of court cases during the reporting period is compared with previous period decreased significantly.....

Although society generally tolerates foreigners and citizens who practice religions other than Islam, some local converts to Christianity kept a low profile out of concern for their personal safety and potential legal and social problems. Radical Islamists harassed and threatened the personal security of some converts to Christianity. Islamists continued to justify their killing of security force members and civilians by referring to interpretations of religious texts. Muslim religious and political leaders publicly criticized acts of violence committed in the name of Islam. Anti-Semitic articles occasionally appeared in the independent press. Press reports concerning riots between Maliki and Ibadi Muslim groups in Berriane suggested that sectarian differences contributed to the violence....

Section I. Religious Demography

The country has an area of 919,595 square miles and a population of 36 million. More than 99 percent of the population is Sunni Muslim. There is a small community of Ibadi Muslims in the province of Ghardaia. Unofficial estimates of the number of Christian and Jewish citizens vary between 12,000 and 50,000. The vast majority of

Christians and Jews fled the country following independence from France in 1962. In the 1990s, many of the remaining Christians and Jews emigrated due to acts of terrorism committed by Muslim extremists. According to Christian community leaders, evangelical Christians, mostly in the Kabylie region, account for the largest number of Christians, followed by Methodists and members of other Protestant denominations, Roman Catholics, and Seventh-day Adventists. A significant proportion of Christian foreign residents are students and illegal immigrants from sub-Saharan Africa seeking to reach Europe; their numbers are difficult to estimate.

For security reasons, due mainly to the civil conflict, Christians concentrated in the large cities of Algiers, Annaba, and Oran in the mid-1990s.

During the reporting period, the press occasionally reported that Christian proselytizing had resulted in significant numbers of Muslims in the Kabylie region converting to Christianity; however, Christian sources reported those figures as exaggerated. There were no standardized statistics on the number of religious conversions. Reporting suggests that citizens, not foreigners, made up the majority of those actively proselytizing in Kabylie.

...

Legal/Policy Framework

...

Conversion is not illegal under civil law, and apostasy is not a criminal offense. The Government permits missionary groups to conduct humanitarian activities as long as they do not proselytize.

Ordinance 06-03, which entered into effect in September 2006 and has been enforced since February 2008, limits the practice of non-Muslim religions, restricts public assembly for the purpose of worship, and calls for the creation of a national commission to regulate the registration process. The ordinance requires organized religious groups to register with the Government, controls the importation of religious texts, and orders fines and punishments for individuals who proselytize Muslims. Many representatives of churches and some human rights organizations reported that the Government has not provided the administrative means to process and approve requests to register non-Muslim religious groups under the ordinance. The National Commission for Non-Muslim Religious Services, the governmental entity responsible for regulating the registration process for non-Muslim religious groups, reportedly had not approved any requests for accreditation by non-Muslim religious associations by the end of the reporting period. Christian citizens who converted from Islam reportedly constitute the vast majority of the groups who have sought legal registration.

...

Ordinance 06-03 made proselytizing a criminal offense, and established the punishment for it as one to three years in jail and a maximum fine of \$6,945 (500,000 dinars) for lay individuals and three to five years' imprisonment and a maximum fine of \$13,890 (one million dinars) for religious leaders. The law stipulates a maximum of five years in jail and a \$6,945 (500,000 dinars) fine for anyone who "incites, constrains, or utilizes means of seduction tending to convert a Muslim to another religion; or by using to this end establishments of teaching, education, health, social, culture, training...or any financial means." Anyone who makes, stores, or distributes

printed documents, audiovisual materials, or the like with the intent of "shaking the faith" of a Muslim may also be punished in this manner..

...

It is legal for citizens and foreigners to bring personal copies of non-Islamic religious texts, such as the Bible, into the country. Non-Islamic religious texts, music, and video cassettes are available, and two stores in the capital sell Bibles in several languages. Government-owned radio stations continued their practice of broadcasting Christmas and Easter services in French. The Government prohibits the dissemination of any literature that portrays violence as a legitimate precept of Islam.

According to the Ministry of Religious Affairs, female employees of the Government are allowed to wear the hijab (headscarf) or crosses but are forbidden to wear the niqab (Islamic veil that covers the face)....

Government officials assert that Ordinance 06-03 is designed to apply to non-Muslims the same constraints it imposes on Muslims. In practice, Ordinance 06-03 and the Penal Code enable the Government to shut down any informal religious service that takes place in private homes or in secluded outdoor settings. Imams are hired and trained by the state and observances of Muslim services, with the exception of daily prayers, can only be performed in state-sanctioned mosques. Article 87 bis 10 of the penal code states that only government-authorized imams can lead prayer in mosques.

In September 2008 local press reported that the Ministry of Religious Affairs dismissed 53 imams and closed 42 locations used for unauthorized Islamic worship.

The Government appoints imams to mosques and provides general guidance on sermon topics. The Government legally may prescreen and approve sermons before they are delivered publicly during Friday prayers. In practice, each wilaya (province) and दौर (county) employs religious officials to review sermon content.

All persons, including imams recognized by the Government, are prohibited from speaking during prayers at the mosque in a manner that is "contrary to the noble nature of the mosque or likely to offend the cohesion of society or serve as a justification for such actions." If an imam's sermon is suspected by a ministry inspector of being inappropriate, he can be convoked to a "Scientific Council" composed of Islamic law scholars and other imams who assess the correctness of the sermon. An imam can be relieved of duty if convoked multiple times. The Government's right of review has not been exercised with non-Islamic religious groups. The Government also monitors activities in mosques for possible security-related offenses and bars the use of mosques as public meeting places outside of regular prayer hours.

Article 87 bis 10 of the Penal Code establishes strict punishments, including fines of up to \$2,780 (200,000 dinars) and prison sentences of one to three years, for anyone other than a government-designated imam who preaches in a mosque. Harsher punishments were established for any person, including government-designated imams, who acts "against the noble nature of the mosque" or acts in a manner "likely to offend public cohesion." The law does not specify what actions would constitute such acts.

The country has no hate crime legislation

Restrictions on Religious Freedom

The Government continued to implement Ordinance 06-03, including court proceedings and fines against some Christian converts. The Government began applying Ordinance 06-03 in February 2008, which resulted in the closure of approximately 27 churches and legal action against members of some Christian groups

...

Although the National Commission for Non-Muslim Religious Services convened quarterly, most recently on April 7, 2009, it did not establish an administrative means to implement the ordinance and Christian practitioners reported that it did not approve any requests for accreditation by their religious associations. The governmental commission was created to regulate the registration process established by Ordinance 06-03.

Leaders of the Anglican Church, the Seventh-day Adventist Church, and other Protestant churches reported that their applications for registration remained pending, in some cases for more than three years. Some said the Ministry of Religious Affairs offered occasional legal guidance on association laws and noted that complicated bureaucratic rules sometimes required that applications be resubmitted. According to reports, some Christian groups did not attempt to obtain legal status from the Government. During the reporting period, church groups reported that approximately 22 churches that lacked government recognition reopened and held services.

...

Section III. Status of Societal Respect for Religious Freedom

In general, society tolerates foreigners who practice religions other than Islam. Although some local converts to Christianity keep a low profile out of concern for their personal safety and potential legal and social problems, many openly practice their new religion.

Radical Islamists, who seek to rid the country of those who do not share their extremist interpretation of Islam, committed violent acts and posed a significant security threat. Moderate Muslim religious and political leaders publicly criticized acts of violence committed in the name of Islam, such as the August 19, 2008 suicide bomb attack in Issers that killed 46 and injured 45 civilians.

A very small number of citizens, such as Ibadi Muslims living in the desert town of Ghardaia, practice non-mainstream forms of Islam or other religions and generally experience minimal discrimination. Press reports concerning August 2008 riots between Maliki and Ibadi Muslim groups in Berriane, near Ghardaia, suggested that sectarian differences contributed to the violence. There were no reports, however, of religious persecution or any official or unofficial restrictions on Ibadi Muslims against practicing their religion.... (USDOS 2009 IRF Report <http://www.state.gov/g/drl/rls/irf/2009/127344.htm> - Accessed 1 December 2009)

97. The 2008 IRF Report states the following in regard to the treatment of Christian converts in respect of proselytising, and illegally practising a non-Muslim faith.

On June 25, 2008, the Tissemsilt Court began a retrial of two local Christian converts, Rachid Seghir and Djammal Dahmani, whom it had convicted in absentia on November 20, 2007, to 2 years in prison and fines of \$7,775 (500,000 dinars) each on

charges of proselytizing and illegally practicing a non-Muslim faith. The case was pending at the end of the reporting period. On June 8, 2008, a Tiaret Court handed Rachid Seghir a 6 month suspended prison sentence and a fine of \$3,190 (200,000 dinars) on charges of evangelism. The Courts in Tiaret and Djilfa charged three other Christian converts, Jillali Saidi, Abdelhak Rabih, and Chaaban Baikel, on the same grounds as Seghir; however, their cases were pending at the end of the reporting period. In February 2008 in the town of Ain Al-Turck, near Oran, Seghir, Youssef Ourahmane and another convert to Christianity faced charges under Ordinance 06-03 for "blaspheming the name of the Prophet (Muhammad) and Islam." Their trial was pending at the end of the reporting period. (US DOS International Religious Freedom Report 2008 <http://www.state.gov/g/drl/rls/irf/2008/108479.htm> - Accessed 1 December 2009)

98. In a 2007 paper published by the European University Institute, George Joffe writes on the threats to the safety of returnees in the following terms:

In fact, it has long been the case that threats to personal safety face persons arrested for involvement in terrorist activities inside Algeria, persons returned from abroad whom the Algerian authorities suspected of involvement or association with terrorist activities in Europe, and former members of the FIS who may also be suspected of such activities. For persons who do not generate such suspicions – because, for example, they are clearly economic migrants, or have been involved in non-political criminal activities and have therefore been deported – there is probably little danger of return, apart from interrogation by the border authorities. However, if such a person has been involved in investigations into terrorist activities in Europe and this is known to the Algerian authorities, then there are severe risks that he or she will face such treatment upon return, even if they have not been charged in Europe. In short, the Algerian authorities, whatever assurance may have been given, will detain and mistreat persons they consider to be involved in violence... (Joffe, George 2007, *Britain and Algeria: Problems of Return*, European University Institute, pp.15-16 http://cadmus.eui.eu/dspace/bitstream/1814/7984/3/MIREM_AR_2007_03.pdf – Accessed 13 November 2009).

FINDINGS AND REASONS

99. The applicant travelled to Australia on an apparently valid Algerian passport and claims to be a national of Algeria. A copy of the applicant's Algerian passport is held on the Tribunal file, folios 49-54. The Tribunal accepts that the applicant is a national of Algeria and has assessed his claims against Algeria as his country of nationality.
100. The applicant gives his religion as Muslim. He claims that he will be persecuted on his return to Algeria because as a Koranist he would be viewed as Anti-Sunni or anti-government. In practising his beliefs, his representative claims, he would be seen as proselytising, which is illegal in Algeria. The applicant also claims that he would be persecuted as a failed asylum seeker if he were to return to Algeria.
101. The only physical act that the applicant claimed had happened before he left Algeria was that his uncle slapped him on one occasion when the applicant queried a prayer practice. The Tribunal accepts that this happened but does not consider that this incident amounts to persecution as it is not systematic and discriminatory conduct, and it did not involve serious harm to the applicant.
102. As noted in the hearing, the Tribunal had a few concerns about the applicant's evidence. He initially claimed in the hearing to have left Algeria because as a Koranist he could not stay there any longer. However, in his written claims he claimed to have

become a Koranist after meeting an Egyptian Koranist in Australia. And the Tribunal remains concerned that he delayed applying for protection for several years, even though he has claimed to be oblivious of the process. However, the Tribunal has considered whether, if he is a Koranist, he could be said to meet the Convention criteria.

103. The applicant states that he considers that God and the Koran are the basis of his faith, without the Hadith and the Sunna.
104. The Tribunal accepts that the applicant's beliefs and questioning of his family's beliefs could cause a strain in their relationships, particularly with his father and uncles. They may be annoyed. He could be ostracised by members of the family. There may be a further incident such as that encountered on one occasion with his uncle. However, the Tribunal does not consider that this would amount to persecution because it does not involve serious harm. Further, during the hearing the applicant told the Tribunal that he would not expect any problems from his family members if he were to return to Algeria, even if they were against his views.
105. The 2009 IRF Report states that the Algerian Constitution provides for freedom of belief and opinion and permits citizens to establish institutions whose aims include the protection of fundamental liberties of the citizen.
106. The applicant claims that although people say that there is freedom of belief in Algeria, there is no freedom for him. The Tribunal considers that his claim is not supported by actions of two appeals courts in the 2009 IRF Report. In one of these cases the court overruled a decision stating that the original sentence violated the Constitution which provides for freedom of belief. In the other, the court released the men who had already been detained for two months pending the appeal. The Tribunal does not accept that the applicant has no freedom. There may be some consequences of the applicant expressing his beliefs. Other, mainstream Islamic followers could disapprove. He may be ostracised, and thought of as "weird" However, the Tribunal considers this would be the extent of the reaction. These consequences do not amount to persecution as they do not involve serious harm to the applicant. The Tribunal does not accept that applicant cannot express his beliefs and that he would be forced to be silent.
107. On the basis of the independent information set out above in paragraphs 91 and 92, the Tribunal accepts that Koranist beliefs are relatively new within the world of Islamic belief and that Koranists are also known by other names. However, there is no independent information available to the Tribunal to support the applicant's claim that as a Koranist he would be persecuted on his return to Algeria. Further, taking a wider view and categorising the applicant's beliefs as non-mainstream Islam, the Tribunal considers the applicant will not face persecution for his beliefs if he were to return to Algeria. According to the 2009 IRF Report 99% percent of Algeria's population is Sunni. However, the Report also indicates that Algerian citizens who practice non-mainstream forms of Islam generally experience minimum discrimination. The report notes:

A very small number of citizens, such as Ibadi Muslims living in the desert town of Ghardaia, practice non-mainstream forms of Islam or other religions and generally experience minimal discrimination. Press reports concerning August 2008 riots between Maliki and Ibadi Muslim groups in Berriane, near Ghardaia, suggested that sectarian differences contributed to the violence. There were no reports, however, of

religious persecution or any official or unofficial restrictions on Ibadi Muslims against practicing their religion.

108. The Tribunal is of the view that the applicant's claims that Koranists are perceived as anti-Government and that he will be persecuted in Algeria for his religious beliefs are not supported by independent information.
109. The representative submits that the Tribunal should have regard to the situation in Egypt, in considering the applicant's claims. She appears to do this on the basis that both countries have Sunni majority populations. However, the Tribunal is not persuaded that it should do so. They are different countries, with different histories and cultures, different constitutions and legal systems. In considering whether the applicant is a "refugee" Tribunal must assess his claims in regard to Algeria, not Egypt or any other North African country To do otherwise would introduce irrelevant considerations.
110. The representative claims the applicant would be regarded as an apostate in Algeria. She submitted an Egyptian news article in support of her claims. This article is entitled Koranis are Apostates. Given this statement was made by an Egyptian Sheik during a discussion in Egypt which was held by an Egyptian newspaper, the Tribunal considers that it is entitled to place little weight on this article.
111. The representative also claims that the applicant would be treated in a similar or same way to a Sunni Muslim converting to a Shi'a Muslim in Algeria, and that such a convert would face persecution.
112. In an email the representative made the following submissions giving a website address <http://www.unhcr.org/refworld/docid/49c75c6c5.html> as supporting them:

In September 2008 the Algerian Interior Minister spoke of harsh punishment for those who act "against the noble nature of the mosque" and to reinforce government control of mosques in order to control the proliferation of new Muslim rites from overseas. In November 2006 the Algerian minister for education dismissed 11 teachers for conducting Shite missionary work. In January 2007 a group was investigated on the basis that they were proselytizing to a certain Muslim creed among a different Muslim community which is forbidden. While the article refers to Shite and the applicant is Korani the relevant issue is that both sects are persecuted not to be mainstream Sunni Islam as required in Algeria.
113. The above link is to an article entitled *Algerian Sunni converting to Shi'ite sect of Islam* CORI. Query ID: HCR00001E; 2 March 2009. The response was written in regard to the following two request for information: *1. Description of the ethno-religious composition of Algerian society 2. How does one convert from Sunni to Shia sects in Algeria? What are the legal (including Sharia) or practical ramifications, if any of such conversions?* The representative submitted a copy of the article to the Tribunal (and a copy of it is also held on the Tribunal file.) Relevant parts of the article are set out in context below (bold font added)

Ethnicity

99% of the Algerian population are of Arab, Berber or Arab-Berber mixed ethnicity with Europeans making at less than 1% of the population. Although one US source states that "almost Algerians are Berber in origin, not Arabic" several sources stressed an Arab-Berber history...

Since independence in 1962, programs of Arabisation have been introduced regulating Society in public life as a result, many Algerians identify as Arab... Berber groups experienced the process of Arabisation as a repression of their cockerel and linguistic identity. Reuters reports that tensions between Arabs and Berbers stemming from the economic, linguistic and religious differences have boiled over into clashes periodically in the last 20 years...

Religion

... 99% of the Algerian population is Sunni Muslim of the Maliki School. The Algerian Constitution declares Islam as the state, religion. Minority rights group International states that all Berbers apart from Mozabites are Sunni Moslems. Mozabites practice a form of Islam called Ibadi...

No information was found concerning the number of Shia Muslims or the nature of their communities in Algeria...

Political attitudes towards Sunni-Shia conversion

The Centre on Islam, Democracy and the Future of the Muslim World reports that in the Middle East, “The Sunni-Shi’a divide is becoming a central feature of regional politics, reflect seeing the reaction of sorties to what they term the “Shi’a surge” or “tide” ...

The Economist reports that the Iranian President and the supreme guide of the Muslim Brotherhood, accuse Israel and America of stirring Sunni-Shia tensions. Iran is a Shia state and the Muslim brotherhood and influential Sunni organisation.

However, Arab media sources have reported that conversions have Sunni Muslims to Shia Islam is causing concern to government is of Arab and Muslim countries.

...

The Centre on Islam, Democracy and the Future of the Muslim World reports that Sunni governments in North Africa are “on alert” to activity perceived to be attempting to spread Shiism.

In November 2006 Algeria’s Minister of Education, **reportedly** dismissed 11 teachers for conducting Shia’a missionary work (dawa) in the schools. Teachers who are Shi’a expatriates from Iraq, Syria and Lebanon are held to be primarily responsible for the spread of Shiism in Algeria, but Hezbollah’s al-Manar television channel is influential as well.

News source Al Aribya.net reports that the 11 teachers were transferred to administrative post to prevent them coming into contact with students, and were forbidden to have any contact with this students. It reported that this measure was aimed at combating Shi’ite proselytism and as the number of conversions was spreading in Algeria.

An Algerian news source reported in January 2007 that security services opened investigation into two Shi’a groups run by converts in the area of Mascara. The groups were alleged to have been attempting to Shi’a beliefs and convert young men by holding debate meetings in houses and public places. The article reported the executives of the Mascara Religious Affairs Direction as condemning this on the

grounds that proselytising to a certain Muslim creed among a different Muslim community is forbidden....

Conversion process

The Washington Post and New York Post reported conversion from sSunni to Shia can be as simple process in which a Sunni attends a Shi'ite mosque and adopts the Shi'ite matter of performing in Islamic rights.... For more formal conversion, with the Washington Post states that "a Sunni can go to a Shiite cleric and declare his belief that the Prophet Muhammad's son-in-law Ali is his rightful heir, which Sunnis do not believe...

Implications for Sunni's who convert to Shiism

No specific information was identified about the implications for individuals who convert to Shiism. However "sources" speaking to US media including converts wished to remain anonymous due to the sensitivity of the issue and a fear of recrimination.

The Algerian newspaper, El Khabar reported that people are fearful of openly announcing their conversion and don't do so through belief in the principle of hiding one's course from those who do not share it, resulting in little being known about the issue of conversion in Algeria...

Legal implications

The Algerian Constitution adopted on 28 November 1996 provides that freedom of conscience and belief are inviolable (art. 36). However, the US Department of State reported that the Ordinance 06-03 in effect in September 2006 and enforced since February 2008, and the 2001 Penal Code for Muslim Worship limit the practice of religions and restrict public assembly for the purpose of worship. It reported that the law requires organised religious groups to register with the government and increases punishments for individuals who proselytise Muslims. It stated that: "Credible reporting indicates that the government has used the penal code to restrict Shi'a worship."

The US Department reported that amendments to the Penal Code in 2001 established harsh punishments for any person, who act "against the noble nature of the mosque" or act in a manner "likely to offend public cohesion" but that the amendments do not specify what action is to constitute such acts.

Radio France Internazionale reported in September 2008 that the Algerian Minister of the Interior wants to reinforce government control over the mosques to respond to the proliferation of new rights adopted from abroad. Radio France Internazionale also stated that in addition to closing sites of non-authorized Muslims sects, the Algerian government has decided to undertake a more extensive training of imams. The Minister intends to give an accelerated and obligatory training to imams in order to favour a strict application of the malakite rite [Sunni practice] and intends to reduce the influence of practices from outside the country..

114. The Tribunal does not accept the representative's claim that the applicant would be considered an apostate on the basis that a Sunni Muslim converting to a Shi'a Muslim would be considered an apostate. First, it is appears that there is no specific information available about the implications of conversion from Sunni to Shi'a. The 2009 IRF makes no mention of Shi'a and does not include the reference that Ordinance 06-03 has

been used to restrict Shi'a worship. Secondly, the Tribunal considers that it overly simplistic to seek to compare the implications of conversion from Sunni to Shi'a to that of Sunni to Koranist, particularly when the "Sunni-Shia" divide "is becoming a central feature of regional politics."

115. The Tribunal does not accept that the applicant would be persecuted by Sunni Muslims.

116. The representative also claimed that he would be treated in the same or similar way to Sunni Muslim converting to become a Christian; he would be seen an apostate because he abandoned Sunni Muslim. However, the Tribunal considers that the independent information available does not support these claims. It does not accept that a Sunni Muslim becoming a Koranist would be treated in the same was a Sunni Muslim converting to a completely different religion.

117. Further, the 2009 IRF Report states:

Conversion is not illegal under civil law, and apostasy is not a criminal offense.

118. The Tribunal has considered the applicant's evidence and the independent information. It does not accept the applicant would be persecuted as an apostate (or as a perceived apostate) by anyone, including the State, society in general, his family, or his friend's parents.

119. The representative claims that the applicant has spent significant time in Australia utilising his freedom to spread his beliefs and is therefore clearly at risk of persecution in Algeria. The applicant gave evidence during the hearing that he encourages others to follow his beliefs. He talks to people who are willing to listen, as long as it is doing no harm and freedom is respected. The Tribunal accepts his evidence. However, the independent information available to the Tribunal does not support the representative's claim that he would be at risk of persecution because of his conduct in this regard in Australia. The representative also claims that he faces harm because if he were to return to Algeria his activities would be seen as proselytising. The 2008 IRF Report notes that:

[T]he law prohibits efforts to proselytize Muslims, but it is not uniformly enforced. The Government interprets Shari'a (Islamic law) as banning conversion from Islam to any other religion.

120. References in the 2008 and 2009 IRF Reports in regard to proselytizing are in terms of converting a Muslim to another religion. There is no information in the Reports to support the representative's claim that the law is or would be applied in regard to a non-mainstream Muslim encouraging another Muslim to follow his or her beliefs.

121. The applicant also claimed to fear persecution if he returns to Algeria as a failed asylum seeker. The independent information available indicates that returnees who have labelled as terrorism suspects could face difficulties in Algeria. However, this is not the case with the applicant. He does not claim to be involved with any group, political or otherwise. He knows only one Koranist in Australia. The views that he expressed were that other people's religious freedom should be respected. The applicant may be questioned on his return to Algeria about his stay in Australia. However, the Tribunal considers that the applicant will not be perceived or suspected by the Algerian Government as having been involved in international terrorism.

122. The Tribunal has carefully considered the applicant's claims. For the reasons explained above, the Tribunal finds that the applicant does not have a well-founded fear of persecution for a Convention related reason in the reasonably foreseeable future.

CONCLUSIONS

123. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

124. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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