

**1004235 [2010] RRTA 796 (15 September 2010)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1004235

**DIAC REFERENCE(S):** CLF2010/21844 CLF2010/54030

**COUNTRY OF REFERENCE:** Pakistan

**TRIBUNAL MEMBER:** Shahyar Roushan

**DATE:** 15 September 2010

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the other named applicants satisfy s.36(2)(b)(i) of the Migration Act, being members of the same family unit as the first named applicant.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of Pakistan, arrived in Australia [in] January 2010 and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas [in] February 2010. The delegate decided to refuse to grant the visas [in] May 2010 and notified the applicants of the decision and their review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicants are not persons to whom Australia has protection obligations under the Refugees Convention.
4. The applicants applied to the Tribunal [in] May 2010 for review of the delegate's decisions.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(he)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

6. Under s.65(he) 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. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(he) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(he) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 for the purposes of the definition.
9. 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'**

10. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article he 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.

11. 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 he, *MIMA v Khawar* (2002) 210 CLR he, *MIMA v Respondents S152/2003* (2004) 222 CLR he and *Applicant S v MIMA* (2004) 217 CLR 387.
12. 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.
13. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
14. Second, an applicant must fear persecution. Under s.91R(he) of the Act persecution must involve “serious harm” to the applicant (s.91R(he)(b)), and systematic and discriminatory conduct (s.91R(he)(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.
15. 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.
16. 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(he)(a) of the Act.
17. 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.

18. 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.
19. 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**

20. The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
21. The applicants are husband, wife and their infant child and the first named applicant's mother. Only the first named applicant has made specific claims under the Refugees Convention. The second, third and fourth named applicants are relying on their membership of his family. For convenience and the purpose of this decision, the Tribunal will refer to the first named applicant as "the applicant".

### **Protection Visa Application**

#### *Application Form*

22. According to the information provided in the applicant's protection visa application, he was born in Lahore, Pakistan in [month and year of birth deleted: s.431(2)]. He claims to be Christian. He holds a Bachelor of Arts degree from the University of Punjab and was a Sales and Marketing Manager before coming to Australia. He worked in that position at [Organisation 1] in Peshawar from 1997 to 2009.

#### *Written Statement*

23. In a written statement attached to his application for a protection visa, the applicant made the claims outlined below.
24. He was born in Lahore and lived with his parents at [Address 1]. His parents brought him up as a Christian in a "strict environment" and encouraged his involvement in Church activities. After his father passed away, he was brought up by his mother who worked as [Occupation A].
25. After graduating from university in October 1997, he was offered a job at [Organisation 1] as [details deleted: s.431(2)] in the Islamabad Office. The company dealt with [businesses deleted: s.431(2)] in and around Pakistan providing [services deleted: s.431(2)].
26. In 2000, he was promoted as the Manager for Sales and Marketing and transferred to the Peshawar Office. In this role he was in charge of promoting the company and became well known among his colleagues in Karachi and Islamabad. He worked in Peshawar during the

week and travelled back home on weekends. As a result of this promotion and higher income, he asked his mother to retire. His mother, however, continued to remain involved in the community as [Occupation A] and active in the church. The applicant and his mother hosted prayer meetings or Christian gatherings at their residence. The local Muslims, who were antagonistic towards Christians, asked them to stop their activities. They gathered in front of the house and threatened Christian visitors to their home. As he was working in Peshawar, he could not protect his mother. However, he advised his mother to seek the assistance of the pastor and not to conduct meetings at home

27. Following the US led invasion of Afghanistan in 2001 and the invasion of Iraq in 2003, the situation of Christians in Pakistan deteriorated. Local Muslim militants who were supporting the Taleban condemned the US invasions. The detention and torture of Muslim militants in Guantanamo Bay resulted in a majority of Pakistani Muslims giving their full support to the Taleban. Pakistani militant groups supporting the Taleban began targeting westerners and Christians in Pakistan. Many Christians were attacked and abducted. With the settlement of Afghan refugees in the North Western Frontier Province (NWFP), including Peshawar, their gradual relocation to other parts of Pakistan facilitated Taleban's infiltration into the whole of Pakistan. Christians and Christian institutions were attacked by the Taleban and local militant groups resulting in the displacement of many Christians.
28. The applicant could not relocate away from Peshawar due to his work commitments. He was married in April 2003 and lived with his wife at [address deleted: s.431(2)]. As his mother was fearful of living and travelling alone in Rawalpindi, she moved in with the applicant and his wife in Peshawar. In Peshawar, his mother resumed her community service, [Occupation A] and looking after the refugees. As his wife was educated, she started her own business from home, teaching computer and English language skills for IELTS purposes to Christian students who were eager to travel to and study abroad.
29. In Peshawar, the applicant had five to six employees working under him. He had trained these employees to manage the business during his absence. One of his employees, [Mr A], was a "Muslim fanatic" who disrupted the office during his absences. The applicant had to warn him on several occasions and advised him not to disrupt the office by discussing religious and political issues. [Mr A] did not observe office hours and received many Muslim visitors. Together with his visitors, he humiliated Christians in his absence, but he was informed of this by other employees. On one occasion, [Mr A] asked him in front of all the other employees why his wife only trained Christian students in preparation for IELTS. He had to reprimand [Mr A] and tell him not to raise private and personal matters at work.
30. In March 2006, [Mr A] complained to the head office against the applicant, accusing him of harbouring an "un-Islamic" attitude and speaking against Islam. He also accused the applicant of prohibiting him from practising his religion at the office. This was untrue as he had always provided [Mr A] with time and space to say his prayers when he was required to do so. The applicant complained about this to [Mr B], a resident engineer of another company, who also worked for [Organisation 1]. [Mr B] told him that he should be careful dealing with [Mr A] because of his direct contacts with radical Muslim groups and the Taleban in Peshawar. He also informed the applicant that he had learned from his Muslim colleagues that [Mr A] was passing internal and trade information about [Organisation 1] to the Taleban. After investigating [Mr A]'s complaints, the head office asked him to resign for providing a false and misleading complaint against the applicant. [Mr A] initiated court proceedings in relation to his dismissal which were eventually unsuccessful.

31. [Mr A], however, never stopped harassing him when they met “on the streets or in the main cities such as Rawalpindi or Islamabad”. In the street he would shout out that the applicant had caused him to lose his job and that a Christian does not have a right to sack a Muslim in a Muslim country”. The applicant found this humiliating and feared the impact of this behaviour on his reputation and employment.
32. Around November 2007, a group of Muslim men whom he had previously seen “loitering in front of his office with [Mr A]” came to the office to discuss some issues. These men told him that as a Christian he should have thought twice before sacking a Muslim as the country belonged to Muslims and Christians have no right to sack them. Fearing another court case or altercation, he kept quiet, listening to all what they said. They warned him that if he were to become involved in the sacking of another Muslim employee he would be taught a lesson. They told him that they had his personal details and will be keeping an eye on him
33. In 2008, his mother was prevented from visiting a sick Christian woman in an area close to Peshawar by the head of the village. When his mother contacted the local police, they ordered her to go back to Rawalpindi. His mother did not want to leave the sick woman alone so she went to his office and asked him for help to transport the sick woman to Peshawar to be treated by a Christian doctor. Subsequently, they hired a van and went and picked up the patient. However, on their way back, a mob stopped the van, assaulted all the occupants and took the old woman away. The applicant reported the matter to the police, but the authorities reprimanded him for taking the woman away against the village headman's order. He was ordered to pay compensation. The authorities refused to help the patient or the applicant and his mother because of their religion. This incident affected the applicant, his mother and his wife, making them fearful of living in Peshawar. His mother never visited remote areas again and the applicant and his wife seldom went out together after the incident.
34. In March 2009, [Mr A] and four other men stopped him on his way to work and accused him of disrespecting Islam by not permitting employees to pray at prayer times. They said they had been told by Peshawar police officers that he had attempted to take a woman out of the village and he complained to the police against the village headmen. They told him that their leaders had said that the applicant should be charged under the Muslim Sharia Law for disrespecting Islam and disobeying the orders of the Muslim authorities. Being fearful, he sent his wife and his mother to Rawalpindi. He was unable to get a transfer and his friends in the head office told him to travel out of the office on a holiday so that “these guys” could forget him. He applied for an Australian visa in July 2009
35. The applicant stayed away from Peshawar on weekends as many abductions and bombings were taking place and he was concerned that [Mr A] may bring charges against him under the *sharia*. He also feared Taleban militants who were involved in converting Christians and members of other minority religious groups to Islam.
36. In October 2009, [Mr A] came to see him in Rawalpindi and asked him to speak to the head office and acknowledge that he had acted in an “un-Islamic manner and had stopped him from conducting his prayers at the work place”. He also wanted the applicant to recommend to reinstate him. [Mr A] threatened to “try” the applicant under *sharia* law and convert him to Islam. The applicant told [Mr A] that he would try to help him but he needed time to speak to the company’s directors.
37. The applicant was questioned by the head office for applying to travel to Australia and did not want to relay to them what had happened between him and [Mr A].

38. In early November 2009, one of his Muslim employees told him that [Mr A] had asked to meet him for a discussion. [Mr A] had threatened the applicant with abduction if he did not keep the appointment. Fearing abduction, he met with [Mr A] and told him that his friends at the head office had told him that the applicant had never asked the head office to reinstate him. He assaulted the applicant and pushed him to the ground. He again asked the applicant to approach the head office and threatened him with charges under Pakistan's blasphemy laws and forced conversion to Islam. He accused the applicant of acting against "customary laws" by taking a woman away from her village against the headman's order and that he should be taught a lesson for disrespecting Muslim elders. The applicant asked for another couple of months within which he could secure [Mr A]'s reinstatement.
39. Upon returning home after the meeting, he immediately asked his wife and mother to make applications for Visitor visas to travel with him to Australia. He also spoke to his superior about the possibility of reinstating [Mr A]. He explained his fear to his superior, who understood his predicament and publicly announced that the applicant had requested [Mr A] to be reinstated. Later, he was told by his superior that [Mr A] could not be reinstated under any circumstances as he had brought the company into disrepute. He was advised by his superior to resign and leave the country as soon as possible as [Mr A] and his men could take him away as they had promised. He was told that he would not be able to get any assistance from the authorities or Muslim politicians because they are all fearful of militants.
40. In early December 2009, he received a phone call from [Mr A] ordering him to meet him once again in Peshawar to discuss the delay in his reinstatement. Fearing the worse, he left his home with his mother, wife and child and moved to his brother's friends house in Islamabad so that they could leave the country before they could be found by [Mr A] and his militant friends. When he called his neighbour on his mobile, asking him to hand over his spare house keys to his relatives, he was told that six men along with a few police officers had visited his residence the previous night searching for him.
41. They spent sleepless nights at his brother's friend's house. His brother was not available to assist them and he feared leaving the house as he did not want to be seen by [Mr A] or his men. Eventually, he left the country with his family.
42. The applicant's statement included a number of references to news reports relating to the treatment of Christians and general violence in Pakistan. Except for three reports sourced from Compass Direct, no sources were cited for the other news reports. He also submitted a number of reports and news articles in relation to the operation of blasphemy laws against Christians, attacks on Christians, terrorism and violence in Pakistan, particularly the NWFP.

*Interview with the Delegate*

43. The applicant was interviewed by a delegate of the Minister [in] May 2010. The Tribunal has listened to the audio recording of the interview and what follows is a summary of the applicant's evidence to the delegate.
44. The delegate noted that the applicant had been issued with visas to travel to Thailand in August and November 2009. He was asked why he had obtained these visas. He stated that he was advised by his colleagues to take a holiday in order to avoid [Mr A]. He did not travel to Thailand on either occasion because he did not want to leave his family behind. The delegate asked him why he had not initially included his family in his application for a Visitor visa to

Australia, lodged in June 2009. He said he was not functioning properly, was upset and his friend told him to go on a holiday.

45. The applicant stated that initially he lived at [address deleted: s.431(2)]. In March 2009, his family moved to Rawalpindi but he remained in Peshawar for work reasons. However, he moved to a new address at [deleted: s.431(2)]. In December 2009, he moved in with his family in Rawalpindi. However, he had to move out of his home in Rawalpindi to stay with a friend for a short time because [Mr A] and a group of men had come to his place. His house in Rawalpindi is now occupied by a distant relative.
46. In relation to his employment, the applicant stated that he resigned from his job in December 2009 because of the harassment [Mr A] subjected him to. He explained that [Mr A] had complained to his employer's head office that the applicant had been talking "badly" about Islam and had prevented Muslim employees from practising their religion.
47. The applicant stated that he was born and raised in a Christian family. He regularly attended church and, along with his mother, took part in community activities. His wife taught English to Christian students and he obtained air tickets for students at lower fares.
48. It was put to the applicant that it appeared that he had been able to practise his religion in Pakistan without difficulty all his life. He stated that there was a mosque near their home and they were prevented from holding meetings at their home by their Muslim neighbours. It was put to him that there is a large Christian community in Rawalpindi. He was asked why he did not live where a majority of Christians lived.
49. The applicant was asked what type of difficulties he faced in Pakistan as a Christian. The applicant essentially repeated the claims he had made in his statement in relation to [Mr A]. He explained that he was [Mr A]'s immediate supervisor. The head office investigated [Mr A]'s complaint against him, but found the allegations to be unfounded and sacked [Mr A]. Subsequently, [Mr A] initiated proceedings in the Peshawar labour Court against the company, the applicant and the person investigating his complaint. [Mr A] withdrew the case at the end of 2006 after the company made a payment to [Mr A]. Subsequently, he was approached by the "Taleban" and asked why he had fired a Muslim employee.
50. The applicant was asked about the incident involving him and his mother. He stated that in 2008 he and his mother were told by the church to help a sick Christian woman in a nearby village by taking her to Peshawar for medical treatment. They were prevented from doing so by the villagers and assaulted. When he complained to the police, he was told that he had to listen to the village elders and that he could not take a Christian woman away from her home.
51. The applicant was asked if he had reported [Mr A] to the police. He said he did not because of his previous experiences.
52. He stated that he fears being assaulted and seriously harmed by [Mr A] and the Taleban if he were to return to Pakistan. [Mr A] wanted the applicant to reinstate him at the company and he had not done so.
53. The applicant was asked why he had delayed his departure from Pakistan if he was continuously harassed by [Mr A]. He stated that his friend advised him to go on a holiday and the harassment may stop. He was asked why he did not take the advice and leave at that time. He stated that when he discussed the matter with his supervisor, he was questioned as to why



he wanted to leave at that time. As he did not want to discuss his personal matters with his supervisor, he did not disclose the exact reasons behind his desire to leave. It was put to him that it did not make sense that he did not discuss the matter with the company if [Mr A] had caused problems for the company as well. He said they were all Muslims and he did not feel comfortable discussing the matter.

54. The applicant was asked why he would be unable to relocate internally. He stated that [Mr A] had told him that he would find him even if he were to go “to hell”.

### **Application for Review**

#### *The Hearing*

55. The applicants appeared before the Tribunal [in] September 2010 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Urdu and English languages.
56. The applicant was asked about the preparation of his application for a protection visa. He stated that he was assisted by a lawyer in completing his application form and writing his statement. A friend who spoke his language assisted him in communication with the lawyer. The applicant confirmed the accuracy of the information contained in his form and written statement.
57. The applicant was asked about his movements and residential history. He stated that before he arrived in Australia [in] January 2010.
58. He was born in [month and year of birth deleted: s.431(2)] and lived at the family home in Rawalpindi until 1998 when he moved to Peshawar for work reasons. In Peshawar he lived at a flat in [address deleted: s.431(2)]. In March 2009, his wife and mother moved back to Rawalpindi as a consequence of his circumstances and he moved to a flat in [address deleted: s.431(2)]. He remained there until approximately mid December 2009 when he moved to his family house Rawalpindi where he stayed for five or six days before leaving to stay at his brother’s friend’s house, located close to [church deleted: s.431(2)] in Islamabad. He departed for Australia after approximately 25 days, [in] January 2010.
59. He was asked about his family. He stated that he was married in April 2003. His mother moved in with him shortly after he got married. He has been supporting his mother since then. His daughter was born in [date deleted: s.431(2)]. He stated that his father passed away in 1995. He has a younger brother and a younger sister. His brother migrated to the UK in November 2009, while his sister continues to live in Rawalpindi with her family.
60. He was asked about his education and employment. He stated that he obtained a Bachelor of Arts from Punjab University in [year deleted: s.431(2)] and immediately began working at [Organisation 1] as [occupation deleted: s.431(2)]. He explained that [Organisation 1] [details deleted: s.431(2)]. [In this position] he responded to all enquiries by [businesses deleted: s.431(2)] in relation to the product. In 2000, the company opened a new office in Peshawar. He was promoted to the position of Sales and Marketing Manager in the Peshawar office. He explained that in 1998, he began travelling to Peshawar on behalf of his company to explore business opportunities. After establishing a client base, the company opened its office in Peshawar. As a Sales and Marketing Manager he was responsible for promoting the company’s products and increasing its client base. He was the head of the office in Peshawar,

but he reported to the assistant Vice President (AVP) in Islamabad or others in the head office in Karachi. He resigned from his post at [Organisation 1] in December 2009.

61. The applicant was asked about his religion and related activities. He stated that he is a Christian and denominationally a Protestant. In Rawalpindi he attended the [church deleted: s.431(2)] and in Peshawar the [church deleted: s.431(2)]. He attended church every Sunday. Apart from that, he attended classes and other Christian gatherings when he had the opportunity to do so.
62. The applicant was asked if he was the only Christian employee in [Organisation 1]'s Peshawar office. He stated that there was another Christian in the office working under him.
63. The applicant was asked what would happen to him if he were to return to Pakistan. He stated that he would be killed or a false case could be registered against him in the Shari'a Court. This would happen because he has been accused of speaking against Islam, defaming the Koran and preventing a Muslim employee from practising his religion. These accusations were levelled against him by [Mr A], a former employee of the company. He fears [Mr A] and his Taleban contacts. He was asked how he knew [Mr A] had Taleban contacts. He said these people used to visit [Mr A] at work. He was also told by another employee of the company, [Mr B], about [Mr A]'s associates.
64. The applicant stated that [Mr A] was like an "office boy" who ran errands and served tea. [Mr A] was employed by the AVP and began working in the Peshawar office in 2000. [Mr A] was a religious person and received many visitors. He had heard [Mr A] refer to Christians using derogatory terms and had questioned the applicant as to why his wife only taught English to Christian students. He began experiencing problems with [Mr A] in March 2006, when [Mr A] wrote a letter to the head office and made the above mentioned accusations against him. He was asked what prompted this complaint. He said he did not know and may be [Mr A] had a problem with his religion. When pressed, he said he had been hard on [Mr A] by telling him not discuss religious matters in the office and to observe the office hours.
65. In April 2006, the head office investigated [Mr A]'s complaint, dismissed the complaint and forced [Mr A] to resign. [Mr A] went to the Labour Court and registered against the company, naming the applicant and individuals from head office. However, towards the end of 2006, an agreement was reached between [Mr A] and the company and he was probably paid an amount of money in an out of court settlement.
66. He stated that [Mr A] and his associates subsequently started to harass him. For instance, whenever [Mr A] saw him in the street he pointed a finger at him and said to others that because of the applicant he lost his work and because of people like him he had to suffer. [Mr A] also spat at him and told him that if he were to fire someone else, "we will fix you" He accused the applicant of having stopped him from praying in the office and told him to ask the head office to reinstate him.
67. In November 2009, [Mr A] sent a message to the applicant asking him to meet him at a vacant lot near his office. He threatened to abduct him if he refused the meeting. When they met, [Mr A] asked him why he had not asked the head office to reinstate him. The applicant asked for more time, but [Mr A] pushed and slapped him and he fell to the ground. The applicant told him that he would speak to the head office and [Mr A] left. He then spoke to his superior and was told that reinstating [Mr A] was not an option. When the applicant explained his predicament, he was told by his superior that no one can help him. His superior,

however, understood his problem and promised to delay the matter until the applicant had an opportunity to leave. Shortly after this incident, he resigned from his job and left. Ten or fifteen days later, he left Peshawar for Rawalpindi. In Rawalpindi, he received a call from [Mr A] telling him to expect a visit. The applicant got scared and left his home.

68. The applicant was asked why [Mr A] had continued to harass him for three years. He said he did not know. He probably thought that he (the applicant) had to pay the price for firing him and speaking against Islam. When it was put to him that he had not in fact spoken against Islam, he said in Pakistan people are falsely accused of doing something and punished. The applicant was asked what did [Mr A] want from him. He said he wanted to be reinstated He also wanted the applicant to admit to his “mistakes”.
69. The applicant was asked why [Mr A], who knew where he lived and worked, had waited for three years before taking serious action against the applicant. He stated that he was approached in 2007 by some people who threatened him of facing consequences if he fired anybody else. He added that [Mr A] just wanted to take revenge from him.
70. The applicant was asked why [Mr A] believed that he had the power to reinstate him. The Tribunal noted that if [Mr A] had caused so many problems for the company, surely he must have known that the company would not want to take him back. He said he was not aware of [Mr A]’s exact motives. All he knew was that [Mr A] wanted to exact revenge and make an example out of him.
71. It was put to him that it appeared that he had no problems with the other Muslim employees in the company, which may indeed suggest that [Mr A]’s motives were purely personal. He said he was accused of speaking against Islam and in Pakistan the punishment for that is death. Such accusations may easily mobilise others to harm one.
72. The applicant was asked if anything else had happened to him in Pakistan. He said this was the biggest issue.
73. The applicant was asked why he would be unable to relocate away from Peshawar and [Mr A]. He said [Mr A] had told him that he would find him anywhere. It was put to him that Pakistan is a big and densely populated county. He said [Mr A] and his Taleban associates had told him that they would find him He lived with fear for three years and cannot continue to do so. He may have been killed or kidnapped without trace.
74. The Tribunal referred to his claims of assault at the hands of villagers when he and his mother had tried to assist a sick, old Christian lady. He was asked why the villagers had objected to an old woman receiving medical assistance. He said the villagers had expected them to have provided the same level care for Muslims in the village. He added that in the surrounding areas of Peshawar, there are elders who are in charge. It was the head of the village’s view that he and his mother had taken the woman out of the village without his permission. He also wanted them to visit the other sick people in the village. It was put to him that it appeared that the villagers did not have a problem with his religion. He said they did not like the fact that they were going in the village to help a Christian woman. He was slapped and kicked as a result. His mother was not assaulted, but she fell down.
75. The Tribunal put to him that, leaving his relationship with [Mr A] to one side, it appeared that he had been able to practise his religion without any problems in Pakistan. He said the church people in Pakistan used to pray for him because he had been accused of a “big crime” by [Mr

A who] was gradually increasing the pressure he was placing on him and others were joining forces with him.

76. The Tribunal explained to the applicant that it wished to discuss with him information that may be a reason for affirming the decision to refuse him a protection visa. The Tribunal explained that he would be asked to respond to this information and would be entitled to seek additional time to comment on, or to respond to, the information the Tribunal was about to put to him.
77. The Tribunal put to him that he was issued with visas to Thailand in August 2009 and November 2009, but he did not depart Pakistan until January 2010. The Tribunal explained to him that his failure to depart Pakistan at the earliest opportunity was relevant because it may cast doubt on the genuineness of his fear and the truth of his evidence. He was asked if he wished to comment. The applicant stated that it was the “high season” in October, November and December. Initially he obtained a transit visa to Thailand. His flights were not confirmed and the duration of his stay was going to be short.
78. The Tribunal put to the applicant that his visa to Australia was issued [in] June 2009, but he did not leave Pakistan until January 2010. The Tribunal explained to him that the delay in his departure was relevant because it may cast doubt on the genuineness of his fear and the truth of his evidence. He was asked if he wished to comment. He stated that he wanted to leave, but his wife and mother pleaded with him not leave as they feared being harmed. He wanted to bring them with him and had to wait.
79. The Tribunal informed the applicant that he was entitled to seek additional time to comment on, or to respond to, the information discussed with him. He said “ok”.

## **FINDINGS AND REASONS**

80. The applicant’s claims are based on the Convention ground of religion. Essentially, he claims to be Christian. He claims to fear a former work colleague, [Mr A], who had made allegations of blasphemy against the applicant. After losing his job, [Mr A] had waged a campaign of harassment against the applicant, threatening, intimidating and assaulting him. The applicant fears being harm by [Mr A] and his “Taleban” cohorts if he were to return to Pakistan.
81. Having sighted the applicant’s passport at the hearing, the Tribunal accepts that he is a national of Pakistan.
82. At the hearing, the applicant presented his evidence in a manner consistent with his oral and written evidence to the Department. While the applicant’s delayed departure from Pakistan, despite being in possession of a valid Australian visa, raised concerns in the Tribunal’s mind, the Tribunal is prepared to accept the reasons he presented at the hearing, namely his concerns for the safety of his wife, daughter and mother if he were to leave them behind.
83. The Tribunal accepts that the applicant is a practising Christian. While he was not particularly involved in religious activities, he attended church regularly and was known to be a Christian. It is clear from his evidence that until 2006 and his encounters with [Mr A], the applicant had encountered no problems on account of his religion.
84. The Tribunal accepts the applicant’s account of the conflict which had brewed between him and [Mr A] at his work place. The Tribunal accepts that [Mr A] was a devoted Muslim and

had made false allegations against the applicant, accusing him of defaming Islam and the Koran. The Tribunal accepts that a subsequent investigation by the employing company had exonerated the applicant and caused [Mr A]’s dismissal. The Tribunal accepts that [Mr A] had taken the matter to court and although he had withdrawn the case after a settlement was reached, he had continued to harbour a grudge against the applicant. The Tribunal accepts that [Mr A] had continued to variously verbally abuse, threaten and assault the applicant over a period of three years. The Tribunal accepts that these acts and the threat of further harm had resulted in the dislocation of the applicant and his family and their eventual departure from Pakistan.

85. While it is possible that [Mr A] may have been motivated by revenge or other factors in acting with increasing hostility towards the applicant, it is not inconceivable that [Mr A] had not been able to tolerate a Christian as his superior and the applicant’s religion had not been a significant and essential reason behind his acts. The sources consulted by the Tribunal suggest that in general, Christians form the poorest class in Pakistani society. They are typically employed as rubbish collectors, street sweepers and sanitary workers. Ordinary Pakistani Muslims look down on them and their limited socio-economic opportunities make them vulnerable to abuse and exploitation. In many cases, the discrimination against Pakistani Christians is comparable to that suffered by the untouchables in India. Many Muslims will not, for example, let Christians share their eating and drinking utensils and they regard many of the jobs performed by Christians as unclean (Malek, I 2001, ‘Caught in a cruel crossfire’, *Al-Ahram Weekly Online*, Issue No. 559, 8-14 November <http://weekly.ahram.org.eg/2001/559/5war1.htm>)
86. The status of Christians is influenced by the general attitude of Pakistani law and society toward religious minorities. In discussing religious freedom, the US Department of State’s (USDOS) 2008 *International Religious Freedom Report – Pakistan*, quotes Pakistan’s Constitution as saying “subject to law, public order and morality, every citizen shall have the right to profess, practice, and propagate his religion”. However, the Constitution also requires that “laws be consistent with Islam” and in practice, the Government allegedly imposes limits on freedom of religion. The report goes on to say:
- The Government took some steps to improve its treatment of religious minorities during the period covered by this report, but serious problems remained. Law enforcement personnel abused religious minorities in custody. Security forces and other government agencies did not adequately prevent or address societal abuse against minorities. Discriminatory legislation and the Government’s failure to take action against societal forces hostile to those who practice a different religious belief fostered religious intolerance, acts of violence, and intimidation against religious minorities. Specific laws that discriminate against religious minorities include anti-Ahmadi and blasphemy laws that provide the death penalty for defiling Islam or its prophets. The Ahmadiyya community continued to face governmental and societal discrimination and legal bars to the practice of its religious beliefs. Members of other Islamic sects also claimed governmental discrimination.
- Relations between religious communities were tense. Societal discrimination against religious minorities was widespread, and societal violence against such groups occurred. Societal actors, including terrorist and extremist groups and individuals, targeted religious congregations (US Department of State 2008, *International Religious Freedom Report 2008 – Pakistan*, September).
87. Within the context of general intolerance towards religious minorities in Pakistan, it is not surprising that Christians are targeted by authorities through blasphemy laws, as well as from

Sunni Muslim society at large due to their low social status. Violence against Christians was reported, both in terms of communal violence by ordinary Muslims, as well as targeting by organised extremist groups.

88. According to the sources consulted by the Tribunal, the situation for Christians in Pakistan “evidences a complex and multi-dimensional pattern of persecution, intimidation and lack of protection”. In a report written by Shaun Gregory, Professor of International Security in the Department of Peace Studies at the University of Bradford, on average “between 30 and 50 Christians are subjected, for reasons of faith, to violent death” each year between 2000 and 2007. The causes of this violence and discrimination are said to be woven into Islamic writings and practice, warped interpretations of the Quran, and Pakistan’s politics, law and society. Gregory argues that these causes are “systemic and persistent factors which operate across Pakistan”. (Gregory, S. 2008, ‘The Christian Minority in Pakistan: Issues and Options’, Pakistan Security Research Unit (PSRU), University of Bradford, 17 July <http://spaces.brad.ac.uk:8080/download/attachments/748/brief+37.pdf>)

89. The Australian Department of Foreign Affairs and Trade (DFAT) has stated that Pakistan’s blasphemy laws provide an avenue for persecution of Christians:

Since October 2001, approximately 65 Christians have reportedly been killed in religiously motivated violence, usually related to allegations of blasphemy.

...In Pakistan’s political and legal system, there is an inherent discrimination against religious minorities in favour of the Muslim majority. Although the country’s constitution and political ideals provide for and uphold religious freedom as a basic principle of law making, its criminal and civil laws go against this. The Blasphemy Laws provide a staging ground for the persecution of Christians through accusations of insult to the Prophet Muhammad and desecration of the Quran. (The Pakistan Penal Code’s section 295 provides for a death sentence for anyone convicted of blasphemy against Islam.) Such laws have rendered Christian communities vulnerable to abuse and violence in the name of the sanctity of Islam and its ideals (DIAC Country Information Service 2009, Country Information Report No. 09/72 – CISQuest PAK9803 – Persecution of Christians and Dawat-e-Islami, (sourced from DFAT advice of 30 September 2009), 1 October)

90. According to the US Department of State, Pakistan’s blasphemy laws are often used to settle *personal scores* as well as to intimidate vulnerable Muslims, sectarian opponents, and religious minorities (US Department of State 2008, *International Religious Freedom Report 2008 – Pakistan*, September, Section 2). This view was echoed by the Archbishop of Canterbury in stating that Christians are disproportionately affected by the draconian laws against blasphemy, which in recent years have frequently been abused in order to settle local and personal grievances (‘Blasphemy laws behind anti-Christian violence’ 2009, *Dawn*, 5 August <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/front-page/blasphemy-laws-behind-antichristian-violence-589>).

91. On the basis of the above evidence, the Tribunal cannot exclude as remote and insubstantial the chance that he would face serious harm, including death, in Pakistan. In other words the Tribunal is satisfied that the applicant faces a real risk of facing significant physical harassment and ill-treatment at the hands of [Mr A] and his associates, who may also use false allegations to engage the operation of Pakistan’s blasphemy laws against the applicant. The Tribunal is satisfied that such treatment would amount to serious harm for the purposes of s.91R(1)(b) of the Act. The Tribunal is satisfied that the harm he fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or

intentional and involves selective harassment for a Convention reason. The Tribunal is satisfied that the applicant's religion constitutes the essential and significant motivation for the harm he fears (s.91R(1)(a)).

92. On the basis of the evidence before it, the Tribunal is not satisfied that the applicant would be afforded protection by the authorities against the harm he fears, as the state itself provides avenues for persecution of Christians through the operation of the blasphemy laws. Independent country information indicates that actions against religious minorities are widespread although not every part of the country has been affected. Given the current circumstances of Pakistan, the rise of Islamic fundamentalism and the prevalence of religiously motivated violence, it is difficult to identify with any confidence a part of Pakistan to which he could reasonably relocate and where it could be said he would be free from facing a real chance of coming to serious harm at the hands of fundamentalist militants who object to people who follow anything other than Sunni branch of Islam.
93. For the reasons outlined above, the Tribunal is satisfied that the applicant's fear of persecution is well-founded.
94. The Tribunal is satisfied that the applicant does not have a legally enforceable right to enter and reside in any country other than his country of nationality, Pakistan. The Tribunal finds that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act (see *Applicant C v Minister for Immigration and Multicultural Affairs* [2001] FCA 229; upheld on appeal, *Minister for Immigration and Multicultural Affairs v Applicant C* (2001) 116 FCR 154).

## CONCLUSIONS

95. The Tribunal is satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the first named applicant satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, provided he satisfies the remaining criteria for the visa.
96. The Tribunal is satisfied that the second, third and fourth named applicants and **are members** of the same family unit as the first named applicant for the purposes of s.36(2)(b)(i). As such, the fate of their application depends on the outcome of the first named applicant's application. As the first named applicant satisfies the criterion set out in s.36(2)(a), it follows that the other applicants will be entitled to a protection visa provided they meet the criterion in s.36(2)(b)(ii) and the remaining criteria for the visa.

## DECISION

97. The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the other named applicants satisfy s.36(2)(b)(i) of the Migration Act, being members of the same family unit as the first named applicant.