

AT AUCKLAND

Appellant:	AD (Bangladesh)
Before:	S A Aitchison (Member)
Counsel for the Appellant:	H Ratcliffe
Counsel for the Respondent:	No Appearance
Date of Hearing:	17, 21 October 2011
Date of Decision:	24 November 2011

DECISION

INTRODUCTION

[1] This is an appeal against a decision of a refugee and protection officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining to grant either refugee status or protected person status to the appellant, a citizen of Bangladesh.

[2] The appellant fears that his relatives and other members of the Bangladesh community will subject him to serious harm or kill him because he has converted to the Ahmadiyya Muslim faith (Ahmadi faith). He believes that the police in Bangladesh are unwilling to provide him with any protection. The primary issue in this appeal is whether the appellant's claim is credible.

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

THE APPELLANT'S CASE

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

[5] The appellant was born in Bangladesh, and raised a Sunni Muslim. He has five siblings, four brothers and one sister, who live in Dhaka. His parents are deceased.

[6] The appellant graduated with a Bachelor of Arts Degree, awarded by the University of Dhaka in 1987. In the 1990s, he worked as a United Nations Volunteer for the United Nations Development Programme in India, Sri Lanka, and Bangladesh. He also worked for the United States International Volunteer Service in Bangladesh.

Interest in Ahmadi Faith

[7] While living in India, the appellant met a number of Ahmadis and became interested in the Ahmadi faith. During his time working abroad, he was also interested to learn about various other faiths such as Buddhism and Hinduism.

[8] From 2000 to 2008, the appellant engaged in various private business ventures. He was very busy during these years and it was not until the end of 2009 when he took time to explore the Ahmadi faith further. He began researching internet websites, which included the official website of the Ahmaddiya Muslim community, and read literature and books on the faith to increase his knowledge. He visited the Ahmadi Head Office in Dhaka and spoke to members there, including the Missionary in Charge. He visited their library and collected various brochures on the faith. He began questioning his Sunni Muslim beliefs and approached the leader of his local Sunni Mosque and questioned him about Sunni beliefs concerning prophecy. He was not satisfied with the answers he received.

[9] The appellant perceived that the main differences between the Sunni Muslim and Ahmadi beliefs concerned the second coming of Jesus Christ and prophet-hood. While Sunni Muslims believe in the second coming of Jesus Christ, Ahmadis believe that Jesus Christ lived until 120 years of age, died in Kashmir, and will not return. Ahmadis believe that Mirza Ghulam Ahmad is the Imadi prophet foretold in the Koran by Muhammad, the prophet of Islam, which Sunni Muslims do not believe. Ahmadis also believe, unlike Sunni Muslims, that

natural calamities and modern day living, warn that the time of Imadi has come. Other differences between the faiths lie in the physical expression of prayer and the timing of prayer throughout the day.

[10] The appellant understood that five successors had followed Mirza Ghulam Ahmad. The most recent successor, Mirza Masroor Ahmand, lived in the United Kingdom. The Ahmadis also believe that there are different types of prophets, including Jesus Christ. The appellant described four types of angels, in addition to Kiraman and Katibin (angels who make a record of our actions, whether good or bad). The Ahmadi faith is unified, however, there is one faction known as the Lahore group who do not believe in the succession of prophets.

[11] In Bangladesh, the appellant expressed his Ahmadi beliefs through prayer five times a day, and he attended the mosque three to four days a week. He also attended the Ahmadi library at the Head Office and spoke with Ahmadi people about his faith.

[12] In 2009, the appellant became less regular in his attendance at the Sunni mosque, which was located directly opposite his rented apartment. Previously, he had attended the mosque two to three times each day. A number of the appellant's cousins, including AA, BB, CC, DD and EE, also attended this mosque. As the appellant's commitment towards the Ahmadi faith increased, he moved residence and began attending the Ahmadi mosque on Fridays when he had time. He continued to attend a Sunni mosque near this new residence on occasion, a mosque that his father and his cousins also attended when they were in the area. When the appellant's father passed away in August 2010, the appellant stopped attending the Sunni mosque.

[13] The appellant was not on good terms with his cousins. In 1987, as a consequence of marrying for love, he was beaten by them. The appellant never forgot about this matter and would avoid his cousins whenever he could and only talk to them if he met them directly. After ceasing his attendance at the Sunni mosque, the appellant's cousins began to question him about his non-attendance whenever they ran into one another on the street. Because he was mentally upset, the appellant would often not answer them.

Appellant's Conversion to Ahmadi Faith

[14] The appellant made a decision to convert to the Ahmadi faith and was advised to wait to be informed of a date for conversion. On 16 December 2010, he attended a Bai'at at the Darut Tablitabligns Complex mosque and, before 300 people, converted to the Ahmadi faith. The process of conversion involved holding the Ahmadi priest's hand and reading the ten conditions of the Bai'at initiation. The appellant and the priest both signed this initiation form.

[15] The appellant advised his wife and children of his conversion immediately following the Bai'at. On 17 December 2010, he met various locals and told them about his conversion. He also met his cousin BB on the street and told him. BB did not believe him. The same day, the appellant's cousin, DD, visited the appellant at his home and put pressure on him to attend the Sunni mosque with him. The appellant told him that he had converted to the Ahmadi faith and could not pray behind a Sunni Muslim.

[16] On 18 December 2010, the appellant met his cousin AA on the street and told him of his conversion. AA also did not believe him. AA asked who else knew about his conversion in the family and the appellant told him that one of his brothers knew. The appellant then telephoned his brother FF and told him of his conversion. His brother informed him that he was too busy to talk. His brother GG then contacted the appellant and asked if it was true that he had converted and he agreed.

[17] On 18 December 2010, the appellant featured on a British Ahmadi television programme known as Muslim Television Ahmadiyya ("MTA broadcast") that was broadcast on a local television station and available to those who received cable television. The appellant telephoned the show and asked the host how he could make his family believe that he had converted to the Ahmadi faith. He was advised by the host to continue praying about it. The appellant did not know if his relatives had watched this programme but guessed that they might have.

Attack on 25 December 2010

[18] On 25 December 2010, the appellant's cousins, AA and BB, along with one other unknown person, arrived at his home around 11.00 am. They threatened to kill the appellant if he did not leave the Ahmadi faith. They beat him, and when the

appellant's wife and son attempted to intervene they were beaten also. The encounter lasted approximately 20 minutes, and the appellant fell to the ground several times during the attack. He was kicked on his body, including his left shoulder, and pushed against a wall. Crockery on the living room table was also broken. While two of the men held the appellant's wife and son, and another searched the house for the appellant's daughter, the appellant lifted himself up from the ground and escaped out of the apartment, down four flights of stairs (at first running, then walking) the distance of approximately one kilometre to a friend's house where he sought refuge. He then walked to another friend's house and stayed there until evening when he returned to his family home. His friend administered first aid, giving him pain medication and some ointment for the scratches on his hand and shoulder. His daughter was not harmed as she was attending university at the time.

[19] On 26 December 2010, the appellant reported the assault at a local police station in Dhaka. The police refused to record the incident and told the appellant that it was a religious matter between family members that they should solve themselves. On the same day, the appellant also met with the Missionary in Charge at the Ahmadi Head Office in Dhaka, and informed him about the attack on 25 December 2010.

Attack on 27 December 2010

[20] On 27 December 2010, when the appellant was walking to work on the highway, which was lined with shops and houses on one side and a railway on the other, he was approached from behind by three of his cousins, CC, DD and EE, along with three to four other unknown persons. The group caught him and started beating him with sticks. One of the men had a knife and attempted three times to stab the appellant, but the appellant successfully dodged the knife each time. While attacking the appellant the men threatened "we will kill you Kafir" (meaning "unbeliever"). During the incident, which lasted approximately five minutes, the men noticed a journalist on the opposite side of the street taking photographs of the attack. The men told the appellant to approach the journalist and tell him to stop photographing the incident. When the appellant crossed the road as commanded, he found a taxi driver waiting, leapt inside the taxi and made his escape. The appellant was taken to a bus station where he caught a bus to another area and stayed there with a colleague for three days.

Threatening Telephone Call

[21] On approximately 28 or 29 December 2010, the appellant received a telephone call from an unknown caller. The caller told him that his son had been involved in an accident at school and asked for the appellant's location. The appellant informed the caller of his full address. The caller then threatened the appellant that he would be caught. The appellant initially thought that the caller was a staff member from his son's school, but upon being threatened realised that it must be one of the relatives or men who sought to harm him. On 30 December 2010, the appellant moved to another area to stay with a friend.

Appellant's Contact with Ahmadi Head Office

[22] On 31 December 2010, the appellant met with the Missionary in Charge at the Head Office and the National President of the Ahmadi community in Bangladesh, and informed them that his wife and children were ready to convert to the Ahmadi faith. He also reported the attack of 27 December 2010.

[23] On 7 January 2010, the appellant visited the Missionary in Charge at the Head Office and informed him that he could not stay in Dhaka. He also intended to pay his monthly donation, but the administration was unable to find the initiation form as evidence of his conversion. The Missionary in Charge told him not to worry and that they had an official record of his conversion as he had expressed his beliefs publically.

[24] On 8 January 2011, the appellant emailed the Missionary in Charge about the lost form and was advised again not to worry about this. He also called the Missionary in Charge on the telephone the same day and told him about his problems and that he had been relocating between various places and was moving to New Zealand.

Relocation of the Appellant's Family

[25] On 10 January 2011, to ensure their safety, the appellant's wife and children moved from their address in Dhaka to live with a relative, approximately 40 kilometres away from their rented address. They returned intermittently to their rented address to retrieve belongings when needed. The appellant's daughter ceased attending university and his son stopped attending school on account of fears they held of attacks from the appellant's relatives.

Events Since Arrival in New Zealand

[26] The appellant arrived in New Zealand on 13 January 2011. On 16 January 2011, he contacted the Missionary in Charge in Dhaka who put him in contact with the Ahmadi society in New Zealand. He visited the Ahmadi mosque in Auckland in January and continues to visit whenever he is in Auckland as there is no Ahmadi mosque where he is currently living in New Zealand. The appellant presented a letter from the National President of the Ahmadi community in New Zealand, attesting that the appellant had joined the Ahmadi faith in Bangladesh on 16 December 2010. The National President also advised that he had written to the Ahmadi Head Office seeking confirmation of his membership.

[27] Since arriving in New Zealand, the appellant's wife and children have received threatening telephone calls.

Material and Submissions Received

[28] Counsel filed submissions with the Tribunal on 12 October 2011. On the morning of the hearing on 17 October 2011, counsel tendered country information as follows:

- (a) "Fresh attack on Ahmadiyyas" *The Daily Star* (20 October 2010);
- (b) Amnesty International Press Release *Bangladesh: Ahmadiyya Community Under Attack* (5 November 2004);
- (c) "Bangladesh: Ahmadiyya books banned" *The Daily Star* (9 January 2004).

[29] At the hearing on 17 October 2011, the appellant produced two undated photographs which he said were taken by a journalist while he was being attacked on 27 December 2011. The first photograph shows one man being held on the ground by a group of four men, one holding what appears to be a wooden baton poised above the man on the ground, another holding a knife. The second shows a man being held on the ground by three men. His hand is raised in defence towards a knife that is raised above him. It is difficult from the photographs to discern the features of the persons captured. The person held on the ground could be said to generally resemble the appellant.

[30] On 21 October 2011, the appellant also submitted a registration card for his attendance at the Bai'at on 16 to 17 December 2010, a donation form from the Head Office, and various pamphlets and booklets that he had obtained on the Ahmadi faith written in the Bengali language.

[31] At the conclusion of the hearing on 21 October 2011, counsel presented written submissions to the Tribunal.

ASSESSMENT

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

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

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

Credibility

Conversion to Ahmadi faith

[34] While the Tribunal holds some concern over the level of knowledge the appellant demonstrates in the Ahmadi faith (particularly as represented at the RSB) and the timing of his conversion (corresponding with his arrangements to travel to New Zealand), the Tribunal accepts that he is a new convert to the Ahmadi faith, and such concerns are displaced by his subsequent actions. The Tribunal accepts that his practice of the faith involves attending the mosque, meeting with fellow believers, and praying five times daily.

[35] To support his claim to be a genuine convert to the Ahmadi faith, the appellant produced a letter from the National President of the Ahmadi community in New Zealand attesting that the appellant joined the Ahmadi faith in Bangladesh on 16 December 2010. The appellant also produced a registration card for his attendance at the Ba'ait in Bangladesh on 16 December 2010 when he converted. While he has been unable to provide official confirmation of his Ahmadi status from the Ahmadi headquarters in the United Kingdom, as counsel submits, the process of confirmation takes time, and includes testimonial evidence of attendance at the mosque, which the appellant has been prevented from doing, living a significant distance from the Ahmadi community in New Zealand.

[36] The Tribunal accepts that the appellant is a converted Ahmadi and that he continues to practice the faith. For the reasons that follow, however, the Tribunal is unable to accept as credible the chain of events that the appellant claims stemmed from his conversion.

How family members learned about conversion

[37] The appellant told the Tribunal that he guessed that his cousins learned about his conversion to the Ahmadi faith after watching the MTA broadcast, but he could not be sure if they had. However, before the RSB he had claimed that his cousins had watched the MTA broadcast and this way learned of his conversion. The relevant portion of the RSB interview transcript reads as follows:

- Q. Going back to the TV programme, how did you know some of your relatives had watched it.
- A. Because they say they ask me we have watched the TV programme that was you and it was your name and that was when you had become a AH and now we believe you.
- Q. What were the names of your relatives that watched it?
- A. AA and BB and DD and EE.

[38] When asked to explain this discrepancy in his evidence, the appellant stated that when his cousins came to attack him he thought that they must have watched the show and that he might have used "different wording" at the RSB.

Attack on 25 December 2010

[39] The appellant claims to have been physically attacked by a group of three men in his home, who threatened to kill him. The incident lasted approximately

20 minutes, during which time the appellant was knocked to the ground several times. Notwithstanding these circumstances, the appellant managed to raise himself from the ground and escape the men with ease. When asked how he could have escaped the three men so readily, after prolonged beatings and their close proximity, he stated that he made his escape while two of the men were busy restraining his wife and son while another looked for his daughter. When pressed further, he stated that maybe the broken glass on the floor had prevented the men from following him.

[40] Compounding the unlikely nature of this incident was the appellant's claim that his daughter was not home at the time because she was attending university. Country information is clear that 25 December is a public holiday in Bangladesh known as 'Bara Din' or 'Big Day'; see Q++Studio *Bank and Public Holidays for Bangladesh* (2011) www.qppstudio.net. When asked to comment on this point, the appellant responded that his daughter might not have been attending classes at the university but that she was doing work there. Later in evidence, he varied his explanation, and stated that his daughter had told him that she was attending classes at the university that day.

[41] While the appellant had received death threats, been beaten, and consequently fled and sought refuge at the homes of friends, he returned to his own home the very evening of the attack. When asked why he returned home, he stated that his wife had assured him that his attackers would not come at night. Notwithstanding that the appellant, later in evidence, stated that he did not think at this time that his cousins would actually kill him, the Tribunal finds it surprising that, having had his life threatened, and been recently beaten *en masse*, he would return home the very evening of the attack and place himself at further risk, and on his wife's surmise that his attackers would not come at night.

Attack on 27 December 2010

[42] The appellant claims to have been accosted on a busy highway by six or seven men who attacked him while threatening to kill him. The men beat him with sticks while one attempted on three to four occasions to stab him with a knife. The fact that the men would choose such a busy highway to conduct such an endeavour is surprising. When asked why the men would attempt to kill him on a busy highway, he responded that Muslims believe that if they can kill an evil man in public they are sent straight to heaven. The Tribunal was unable to locate conclusive evidence on this point.

[43] In spite of falling to the ground, and being held down by the men, the appellant was able to dodge successfully each attempt to stab him. How he could do so is difficult to comprehend.

[44] Then, fortuitously, on sighting the journalist, the attackers instructed the appellant to approach him and ask him to stop taking photographs. That they should permit the man they had, moments earlier, been attempting to kill, to not only escape their clutches but to actively engage in their criminal acts against him defies belief.

[45] The appellant's good fortune extended further and, on arrival in New Zealand, he was able to track down the journalist and obtain copies of the photographs that he took of the incident, which he produced to the Tribunal. When asked how this feat was possible, given the fact that the appellant had no knowledge of who the journalist was at the time of the incident, the busy nature of the street, and the lapse in time between the incident and finally tracing the journalist, the appellant stated that his contacts went to the location where he was attacked and asked if locals had seen anyone taking photographs there. He later added that the locals knew the journalists who operated in the area.

[46] While these photographs do depict a man who resembles the appellant being held by a group of men with a baton and knife poised above him, they are undated, and their ability to corroborate the appellant's account is undermined by the combined implausibility of his evidence of the attack as a whole. Viewed also in the context of the ease with which such photographs can be staged, the Tribunal does not accept the photographs as credible evidence.

Threats by telephone conversation of 28 or 29 December 2010

[47] The appellant claims to have received a threatening telephone call from an unknown caller while in hiding. Before the RSB and Tribunal, he gave inconsistent evidence as to how, during the telephone conversation, he came to divulge his location to the caller. To the Tribunal, he stated that the caller had said that the appellant's son had been in an accident and asked the appellant for his whereabouts. Thinking that the caller was a school teacher, the appellant divulged his full address. Later, he added that he had asked where the caller was from and he had been told "from school". However, before the RSB, he had responded that he had simply volunteered his address:

Q. What did you do in these three days?

...I got an unknown call from an unknown numbers, I get some mobile calls and I receive, because I get really worried about my family member, and then one of them the person says is your surname name Zishan? And then I said what happened and I say I am in Bogura? And then finally I am thinking I received the wrong call, I got it from the people that hate me. Finally, I got the this are people who hit him before but I told them already that I am in Bogura and they got your location.

When asked by the Tribunal to comment on this inconsistency, the appellant gave no sensible answer, merely repeating that the caller asked for his whereabouts, then added, “maybe they asked where I am”.

Threats to family

[48] The Tribunal asked the appellant whether his wife and children received any threats while he was in hiding in Bangladesh. At first, the appellant responded that they had not received any threats, but then changed his evidence and claimed that they had. When questioned about this inconsistency he responded that they may have said they received threats but he could not remember. He then changed his evidence again and stated that they had received threats over the telephone. When asked when these threats were made he stated that he could not remember. When asked who had made the threats he said he could not remember their names. He then qualified that he was mentally depressed at the time. While it is accepted that mental states such as depression can cause significant interference with recall, no independent medical evidence was presented to support this claim of the appellant's, and in the context of all the appellant's evidence, the Tribunal finds this a convenient explanation and rejects it.

[49] At the conclusion of the hearing, the appellant also added that since his arrival in New Zealand his wife had received telephone calls from two of his brothers expressing their anger about the appellant's conversion. He did not remember when his wife told him she received these calls. When asked why, if he had known this before the RSB interview, he had not mentioned it to the RSB, he stated that he had not been asked about this, notwithstanding that at the conclusion of the RSB hearing he was asked if there was anything he would like to add to his claim. He added that he was in New Zealand at the time he received the news and did not take this news seriously.

Conclusion on credibility

[50] The Tribunal accepts the appellant's evidence of being a recent Ahmadi convert and to continue to practice this faith. However, it rejects his evidence concerning the difficulties he experienced as a consequence of this conversion, on the basis of the combined effect of his inconsistent, implausible and contradictory evidence. It is on this basis that the Tribunal will assess the appeal.

The Refugee Convention

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

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

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

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

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

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

Assessment of the Claim to Refugee Status

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

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

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

[56] Religious minorities, including Ahmadi (who number approximately 100,000 in Bangladesh), have the right to worship freely in Bangladesh; See Freedom House *Freedom in the World 2011 – Bangladesh* (26 May 2011); United States Department of State *International Religious Freedom Report – Bangladesh* (13 September 2011).

[57] The Awami League government generally respects religious freedom in law and in practice. While mainstream Muslims reject some of the Ahmadi teachings, most of them support the Ahmadi right to practice without fear of persecution; United States Department of State *International Religious Freedom Report – Bangladesh* (13 September 2011). Notwithstanding this, Ahmadi face societal discrimination by some Muslims who consider Ahmadis to be heretical; See Freedom House *Freedom in the World 2011 – Bangladesh* (26 May 2011); United States Department of State *International Religious Freedom Report – Bangladesh* (13 September 2011).

[58] Ahmadis have faced physical attacks and demands by extremists groups that they be declared non-Muslims; Freedom House *Freedom in the World 2011 – Bangladesh* (26 May 2011). In 2010, there were reported attacks on institutions of the Ahmadi community and isolated instances of harassment against them; United States Department of State *International Religious Freedom Report – Bangladesh* (13 September 2011).

[59] Sources indicate that attacks and threats upon Ahmadi have in recent years decreased in frequency. The Awami League government has made explicit commitments to defend minority rights and deployed police to protect the Ahmadi; See Freedom House *Freedom in the World 2011 – Bangladesh* (26 May 2011). On account of government efforts, and more vigorous police protection, violence against Ahmadi has reportedly diminished in recent years; United States

Commission on International Religious Freedom *USCIRF Annual Report 2011 – Additional Countries Closely Monitored: Bangladesh* (28 April 2011). While, in January 2004, the former Bangladesh Nationalist Party government (in coalition with Jamaat-e-Islami Bangladesh and a smaller Islamist party), banned the publication of Ahmadi religious literature, this ban has not been enforced. In February 2011, however, Ahmadis were prevented from holding their annual convention in the Gazipur district; United States Commission on International Religious Freedom *USCIRF Annual Report 2011 – Additional Countries Closely Monitored: Bangladesh* (28 April 2011). While the Ahmadi community had advance permission to hold the event, the police in the area shut it down on the basis of public order concerns.

[60] The Tribunal has assessed the reports referred to above, in conjunction with the country information submitted by counsel and that set out in previous decisions of the Refugee Status Appeals Authority, and concludes that Ahmadis can freely practice their religion in Bangladesh; *Refugee Appeal No 75849, 75850, 75880* (14 December 2006); *Refugee Appeal No 76194, 76196, 76197* (30 June 2008). Threats and attacks on Ahmadi remain isolated and sporadic. While counsel submits that no protection is offered by police to prevent these attacks, referring to instances where perpetrators have attacked Ahmadi believers with impunity, the Tribunal finds that it cannot be said that the police force as a whole is unwilling or unable to afford Ahmadis' protection. Further, counsel's submission that the demands of some Muslims to declare Ahmadis' non-Muslim could lead to a risk of harm to them comparable to that seen in Pakistan, is purely speculative and does not inform the Tribunal's assessment of the well-founded nature of the appellant's fear at this particular point in time.

[61] Applying this country information to the appellant's circumstances, the Tribunal finds that his ordinary, low-level practice as a convert of the Ahmadi faith will not give rise to him holding a well-founded fear of being persecuted in Bangladesh. There is no evidence that there is a real chance that he will suffer serious harm on account of practising the Ahmadi faith.

Is there a Convention reason for the persecution?

[62] The first framed issue being answered in the negative, the second issue does not fall for consideration.

Conclusion on Claim to Refugee Status

[63] The evidence does not establish that the appellant has a well-founded fear of being persecuted in Bangladesh for any of the reasons enunciated in the Refugee Convention.

The Convention Against Torture

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

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

Conclusion on Claim under Convention Against Torture

[65] For the reasons discussed above, the Tribunal also finds the evidence does not establish that there are substantial grounds for believing that the appellant would be in danger of being subjected to torture if deported from New Zealand.

The ICCPR

[66] Section 131(1) of the Act provides that:

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

Conclusion on Claim under ICCPR

[67] For the reasons discussed above, the Tribunal also finds the evidence does not establish that there are substantial grounds for believing that the appellant would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

CONCLUSION

[68] For the foregoing reasons, the Tribunal finds that the appellant:

- (a) is not a refugee within the meaning of the Refugee Convention;

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

[69] The appeal is dismissed.

"S A Aitchison"

S A Aitchison

Member

Certified to be the Research
Copy released for publication.

S A Aitchison
Member