

AT AUCKLAND

Appellant:	BQ (Pakistan)
Before:	B L Burson (Member)
Counsel for the Appellant:	K Gore
Counsel for the Respondent:	No Appearance
Date of Hearing:	1 April 2015
Date of Decision:	29 April 2015

DECISION

[1] This is an appeal against a decision of a refugee and protection officer, declining to grant refugee status and/or protected person status to the appellant, a citizen of Pakistan.

INTRODUCTION

[2] The appellant claims to have a well-founded fear of being persecuted or otherwise being subjected to serious harm on account of her being an Ahmadi woman. The principal issue for determination by the Tribunal is whether her fear of such harm is well-founded. 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

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

[4] The appellant was born in a small village in Punjab province in 1970. She is an Ahmadi and grew up in a household where religious identity was important. As is customary in Ahmadi families, the appellant's marriage to her husband was arranged through a member of the Ahmadi community whose role was to broker such arrangements. Prior to her marriage, the appellant was assured that her husband's family were strong in their religious convictions and were committed servants of the Ahmadi community, matters important to her own family.

[5] Following her marriage, the appellant moved to her husband's village which was situated in another province. They lived in the same compound as her husband's family who encountered ongoing problems because of their Ahmadi status. On a number of occasions their harvest and crops were burnt or otherwise destroyed by non-Ahmadis. There were also ongoing attacks against Ahmadis in the village by Sunni Muslims associated with the Islamist group *Khatm-e-Nabuwwat*, which frequently attacked Ahmadis

[6] Over and above such problems, the appellant's husband's family also encountered problems because they were deeply involved in the affairs of their community. Her husband's eldest brother, a doctor, was the head of the local *Jamaat Ahmadiyah*, (the *Jamaat*) the principal Ahmadi association responsible for overseeing the religious and cultural affairs of the community. Approximately a year or so after she married, this brother-in-law was targeted by non-Ahmadi Muslims which culminated in his clinic being fire-bombed. Concerned for his life, the appellant's brother-in-law fled to Australia where, in 2000, he was granted refugee status.

[7] Over the course of the early-2000s, all of the appellant's husband's siblings and his parents fled abroad where they were recognised as refugees due to the family being active in the affairs of the Ahmadi community. The appellant's parents-in-law are in the United States along with a number of the husband's siblings. Another brother who had been elected to a senior role within the *Jamaat* fled to New Zealand in the mid-2000s where he was also recognised as a refugee. By about 2007, the only people left in the house were the appellant, her husband and their five children.

[8] In around 2010, her husband was elected to be the head of the *Jamaat* section dealing with youth and young people and was its financial secretary. He was nominated to be the leader for one of the small villages which surrounded their village which fell under the authority and control of the local *Jamaat*. He too began receiving threats and was harassed by local Muslims due to his role. In

2013, he was attacked outside the Ahmadi mosque by two men. He was hit with a rifle butt and received bruises and injuries over his body. He was taken to hospital and required treatment for a number of days.

[9] The appellant was never subjected to any physical assault. Given the security environment, the family ensured that, where possible, her husband accompanied her in the street. Nevertheless, from time-to-time threatening comments have been made to her on occasion when she was required to be outside the house alone when going about her daily affairs, and letters threatening to kill the family were slipped under the door or thrown into the courtyard.

[10] Also in around 2010, following attacks on Ahmadi churches in Lahore, the head of the Ahmadi religion issued an edict that women should only attend religious gatherings at the mosque if local conditions allowed. The appellant told the Tribunal that this had a great impact upon the way in which she practised her religion. Prior to these attacks, it had been an integral part of her life to attend the mosque. She attended her local mosque daily for prayers and attended Friday prayers. Moreover, the *Jamaat* would often arrange for guest speakers to attend to talk about aspects of the Ahmadi religion about the role and affairs of the *Jamaat*. The wife explained that, on some occasions, the women were free to attend the mosque and attend the same lectures as men whereas other lectures on aspects of religious education were designated for women only.

[11] This all now became impossible to do as the local *Jamaat* felt that, given attacks on Ahmadi in the area, conditions were not conducive to women attending the mosque. From this time onwards, the appellant never attended a mosque for the purposes of religious instruction. Any prayer or discussion has had to be limited to meeting with some of the women in her neighbourhood.

[12] The ongoing violence against Ahmadis in the area also forced the family to change their own personal habits. The appellant no longer took the children to school or to the mosque as a matter of course, only doing so when absolutely necessary. The husband also now began assuming more responsibility for the purchasing of food for the family. On one occasion in 2012, however, the appellant was forced to go to their farm when her husband was attending a funeral elsewhere. On arrival, she noticed two masked men stealing some of their cows. The appellant, who was with her eldest son, shouted at the men who in turn threatened to kill them and pelted them with stones. The wife reported this incident to her husband on his return. Her husband lodged a First Information Report with the police but nothing was done.

[13] In 2013, the appellant was granted a visa to enter New Zealand to help a sister-in-law following the delivery of a child. Once she arrived in New Zealand, the appellant began attending the local Ahmadi mosque. She was amazed to see how openly and freely Ahmadis in New Zealand could practise and propagate their faith. She quickly realised the degree to which she was being hindered in her own religious practice.

[14] The appellant was particularly saddened to realise the limited degree to which Ahmadi children could be immersed in religion in Pakistan. Her own children were not able to do this and one of her sons had encountered problems at school once it became known he was Ahmadi. While they went to the mosque from time-to-time with her husband, this was infrequent due to the security situation.

[15] The appellant told the Tribunal that the situation in their neighbourhood has changed since she left. They had lived in a mixed neighbourhood in the village and there were many tolerant Muslims. However, a house in the neighbourhood had been bought by hard-line Sunni Muslims who have begun to harass her husband.

[16] Not wishing to return to Pakistan where she would be unable to freely practise her religion or be able to live openly as an Ahmadi, the appellant lodged her claim for refugee status.

Evidence of AA

[17] The Tribunal heard from AA who is the brother of the appellant's husband. AA came to New Zealand in the mid-2000s and was recognised as a refugee by the Refugee Status Branch on account of his activities for the *Jamaat*. He confirmed that the appellant was invited to New Zealand at his request to look after his wife in the course and aftermath of her pregnancy.

[18] AA told the Tribunal that his family had been very active in the *Jamaat* and that, with the exception of the appellant's husband, all the family had fled overseas. The appellant's husband has become active in the *Jamaat*. While he understood that the appellant's husband had encountered some problems, he could not give details. AA explained that, on the whole, it was widely understood in the community that, as an Ahmadi, one would face problems in Pakistan and for this reason he did not to talk in-depth about the problems the appellant's husband faced during their telephone contact.

[19] Following the appellant's arrival in New Zealand he came to understand more about the particular situation. The appellant explained to him that in recent times one of their neighbours, formerly a tolerant Muslim, had sold the house and that the new owners were hard-line Sunni Muslims who began harassing the family. Rubbish was thrown at the doors and the eldest son had faced particular problems with a teacher once the teacher had discovered that he was an Ahmadi.

[20] AA confirmed that, since being in New Zealand, the appellant has become deeply involved in the local Ahmadi mosque. Her ability to interact with non-Ahmadis is limited by her lack of English but she fully participates in the affairs of the community. AA told the Tribunal that the appellant had told him that she was unable to attend lectures and educational programmes in Pakistan. He described her as having a "great thirst" for information and was now attending as often as she could on a weekly basis. He also stated that the appellant was upset by the degree to which her children's religious instruction was being affected by the restrictions placed on Ahmadis in Pakistan. She remarked how amazed she was to see how openly and freely Ahmadi children received their religious instruction in New Zealand.

Evidence of Mohammad Iqbal

[21] The Tribunal also heard from Mohammad Iqbal, the President of the New Zealand Ahmadi Association. Mr Iqbal explained the importance attached to the role played by women in the propagation of the Ahmadi faith on an inter-generational basis. One of the distinguishing features of the Ahmadi branch of Islam was in relation to the role played by women. Not only were women the primary caregivers for children in the community and the focal point of early religious instruction within the family unit, but they were also generally more able to participate in the religious affairs of the community than in other branches of Islam.

[22] For this reason, in the wake of the Lahore bombings in 2010, the *Jamaat* in Pakistan issued a prohibition on Ahmadi women attending the mosque. It was widely believed that the attackers understood the role women played and that women would be present. The Pakistani *Jamaat* was concerned that if women were killed in further attacks on mosques, this would inevitably weaken the family unit and impact upon the inter-generational transmission of their religion given the central role women played in this area in the home environment.

[23] While women could and did gather in the privacy of their own homes, this was regarded as being less than ideal. First and foremost, there were restrictions on the number of women who could congregate within any particular home. It was not possible for large-scale gatherings for women to take place in Pakistan. Moreover, Ahmadi women lost the opportunity to attend the mosque which was a place of particular spiritual connection with the Ahmadi faith and a means by which they could become full participants in the religious and other activities of the community. Mr Iqbal explained that in New Zealand there was a strong emphasis on outreach and community charity work which was a core tenet of the Ahmadi faith. It was not possible for this sort of work to be done openly in Pakistan by Ahmadi living there and it was certainly not an option for women.

[24] More generally, outside attending the mosque, the degree of freedom of movement of individual Ahmadi women was varied. The *Jamaat* had issued guidance that families should take precautions in the heightened security environment appropriate to their own particular circumstances. Mr Iqbal gave examples of differentials in freedom of movement within his own family. For example, one female relative was able to freely travel in Lahore to other relatives' houses but could not freely travel on her own to do shopping. For this reason she took a maid who pretended to be the purchaser while she, the Ahmadi employer, pretended to be the servant.

[25] Mr Iqbal explained that his wife was the head of the women's branch of the *Jamaat* in New Zealand and she had told him that, although the appellant was not a member, she was regularly and frequently involved in the work of the group. Mr Iqbal agreed that as with other religious communities there were degrees of devoutness with some being no more than occasional visitors to the mosque. The appellant, however, was someone who he believed and understood from his wife to be a regular attendee at the mosque and in its related activities. This caused him to believe that she was relatively devout or quite devout in her faith.

Material and Submissions Received

[26] On 30 March 2015, the Tribunal received witness statements from AA and Mr Iqbal dated 3 and 4 March 2015. On 24 March 2015, the Tribunal received a written memorandum of submissions from counsel together with country information relating to the situation of Ahmadis in Pakistan and relevant Tribunal decisions. On 15 April 2015, the Tribunal received counsel's closing written submissions together with a letter dated 5 April 2015 from the head of the

Women's Organisation in the New Zealand branch of the *Jamaat* confirming the appellant's regular attendance at the mosque and participation in the *Jamaat's* activities and further documents relating to the role of woman within the Ahmadi faith.

ASSESSMENT

[27] Under section 198 of the Immigration Act 2009 (the Act), 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).

[28] 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

[29] The appellant presented as a sincere and open witness. Her claim to come from a family, and have married into a family, for whom religious observance and service to the Ahmadi community is particularly important is accepted. It is also accepted that, as a result of their faith, various family members have had to flee abroad and seek refugee status. Their flight is amply corroborated. The appellant has produced the grants of refugee status to various members of her family as well as a grant of refugee status to her own brother in a European country. Although the documents did not record the basis of their claims, there is no reason to doubt the evidence of the appellant that it was because of their faith and activities. Her evidence was also materially corroborated by the evidence of AA and Mr Iqbal. Her account is therefore accepted in its entirety.

Findings of fact

[30] The Tribunal finds that the appellant is a devout Ahmadi woman from Pakistan who married into a family which has been active in the affairs of the *Jamaat Ahmadiyah* in their local village. Over the course of the decade post-2000, all her husband's siblings and his parents fled Pakistan to seek asylum abroad, due to the risk of harm as a result of the family's active involvement in the *Jamaat* affairs. Her husband, who has also taken up a senior role in the local *Jamaat* has become targeted by local Muslims on this basis, suffering a serious assault in 2013. The family home has been targeted by an extremist Sunni family which has moved recently into the neighbourhood.

[31] Attendance at the mosque is an integral part of the appellant's belief and practice as an Ahmadi and as a mother. However, since approximately 2010 the degree to which she could freely practise her religion by attending religious instruction and other prayer at the mosque has been severely curtailed and she could no longer attend the mosque for religious instruction. Since she has been in New Zealand, the appellant has been attending the mosque regularly.

The Refugee Convention

[32] 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."

[33] 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."

[34] 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

[35] 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].

[36] 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 Pakistan?

[37] In a number of cases in recent years, the Tribunal has examined the situation of Ahmadis in Pakistan: see *AM (Pakistan)* [2013] NZIPT 800274; *AP (Pakistan)* [2013] NZIPT 800401-404; *AV (Pakistan)* [2013] 800275-276; and *BF (Pakistan)* [2014] NZIPT 800487-489. These cases acknowledged that Ahmadis in Pakistan continue to face various restrictions in the enjoyment of their religion and that, for those Ahmadis who are devout in their faith, manifestation of their religious beliefs gives rise to a range of state-sanctioned, tolerated or condoned practices capable of amounting to being persecuted. Little point is served by traversing this material in any great detail. The situation was succinctly summarised in *AP (Pakistan)* as follows at [98]:

“There is no doubt that there is state-sanctioned discrimination against Ahmadis in Pakistan, including in Karachi. The country information records sustained, well-planned and serious efforts to marginalise and intimidate Ahmadis, solely because of their religious beliefs. That such acts are state-sanctioned is evident from the constitutional denial of the right of Ahmadis to call themselves Muslim, legislation which criminalises almost any public manifestation of Ahmadi beliefs, the frequent failure of police and courts to investigate, prosecute and punish offending against Ahmadis, the complicity of the police and courts in the bringing of specious charges against Ahmadis and the systemic failure of all branches of government to curb, or even speak out against, the violent rhetoric which emanates from mosques and those at the helm of the Sunni Muslim faith in Pakistan.”

The relevant human rights framework

[38] The right to freedom of religion is contained in Article 18 of the ICCPR, which relevantly provides:

“Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”

[39] In the context of a claim by an Ahmadi woman, it is not sufficient to consider the predicament simply through the lens of Article 18. The right to freedom of religion exists not only in relation to the underlying religious belief but also in relation to the freedom of men and women to equally enjoy the freedom of religion. The right of the appellant to hold and have her freedom of religion without discrimination on the basis of her gender is set out in Article 3 of the ICCPR which provides:

“The states parties to the present covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present covenant.”

Application to the facts

[40] There can be little doubt that attending the mosque to receive religious instruction, to conduct prayer, and to be part of a religious community, is an integral part of the manifestation by the appellant of her religious belief. In this sense, the appellant's predicament can be truly distinguished from the appellant in *AV (Pakistan)* [2013] NZIPT 800275-276 where the Tribunal noted in that particular case that the wife did not regularly attend the mosque and had failed to establish that her non-attendance was a restriction on her right to manifest her Ahmadi faith. Yet, the appellant has not established that it is sufficiently important to her to be able to express her faith in such a way as to elevate the risk to her of being charged with blasphemy to above the real chance threshold. The focus of her manifestation of belief is very much within her own Ahmadi community.

[41] Nevertheless, in this case it is not possible to ignore the gendered impacts upon the appellant as an Ahmadi woman. The conditions in the appellant's village have caused the local *Jamaat* to issue guidance in the wake of the 2010 bombings of Ahmadi mosques in Lahore, prohibiting all women in the area under its authority – the appellant included – from attending their mosque. The effect of these instructions is that the appellant's husband is able to continue to manifest his religion as before while the appellant, as an Ahmadi woman, is not. While this instruction has been from the local *Jamaat* and not the Pakistani state, the root cause of the instruction is the longstanding and ongoing state-sanctioned discrimination against Ahmadis which has emboldened hard-line elements within the non-Ahmadi Muslim community in Pakistan to attack and kill Ahmadis from time-to-time, including in the appellant's local area.

[42] As to the incidence of attacks on Ahmadis, it is impossible to obtain any accurate picture. While attacks do occur, the reported incidences are not so frequent as to suggest that all Ahmadi are at risk to the real chance level by this reason alone. That said, the nature of the pervasive oppression of Ahmadis in Pakistan means that, to some extent, the level of reported attacks is due to the Ahmadi community deliberately keeping a low profile so as to not place themselves in harm's way; see here the discussion in *AP (Pakistan)* at [89], referring to the decision of United Kingdom Upper Tribunal in *MN and others (Ahmadis – country conditions – risk) Pakistan* CG [2012] UKUT 389 (IAC) at [103]-[104].

[43] Whatever the more general position, an important factor to weight in this case is that the appellant is the wife of a *Jamaat* leader and a member of a family which is widely known within the local community to be active in support of Ahmadi affairs. While the appellant has not suffered any physical attacks in the past, this is in part a function of the restrictions she and her family has placed on her freedom of movement. Moreover, after she left the country a hard-line Sunni family moved into their locality and began harassing her husband who has been physically assaulted. This family will soon learn who the appellant is should she return to Pakistan to live which will increase the risk to her.

[44] Weighing these factors, the Tribunal is satisfied that this particular appellant does have a well-founded fear of being persecuted. The appellant would not be able to freely attend her local mosque to manifest her religion on a non-discriminatory basis and to publically assert her identity as a Muslim as she would like to do, without exposing herself to harm. The recent taking up of residence by

the extremist Sunni family propels the risk to her to above the real chance threshold. The first principal reason is answered in the affirmative.

Is there a Convention reason for the persecution?

[45] The appellant's predicament is plainly being contributed to by her religion. It is also being contributed to, to a significant extent, by her identity as an Ahmadi woman. This would constitute a particular social group for the purposes of the Refugee Convention.

[46] For these reasons the second principal issue is also answered in the affirmative.

Conclusion on Claim to Refugee Status

[47] For the above reasons, the appellant is entitled to be recognised as a refugee under section 129 of the Act

The Convention Against Torture

[48] 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."

[49] Because the appellant has been recognised as a refugee, she is entitled to the protection of New Zealand from *refoulement* to Pakistan. The recognition of the appellant as a refugee means that she cannot be deported from New Zealand to Pakistan; see Article 33 of the Refugee Convention and sections 129(2) and 164 of the Act. The exception to section 129, which is set out in section 164(3) of the Act, does not apply. Therefore, there are no substantial grounds for believing the appellant would be in danger of being subjected to torture in Pakistan.

The ICCPR

[50] Section 131 of the Act provides that:

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

...

- (6) In this section, cruel treatment means cruel, inhuman, or degrading treatment or punishment.”

[51] The appellant is entitled to the protection of New Zealand from *refoulement* to Pakistan. For the reasons already given in relation to the claim under section 130 of the Act, there is no prospect of the appellant being deported from this country. Therefore, there are no substantial grounds for believing that she is in danger of being subjected to arbitrary deprivation of life or to cruel, inhuman or degrading treatment or punishment in Pakistan. Accordingly, the appellant is not a person who requires recognition as a protected person under the ICCPR.

CONCLUSION

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

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

[53] The appeal is allowed.

“B L Burson”
B L Burson
Member

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