

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76478**

**REFUGEE APPEAL NO 76479**

**REFUGEE APPEAL NO 76480**

**REFUGEE APPEAL NO 76481**

**AT AUCKLAND**

**Before:** B L Burson (Member)

**Counsel for the Appellants:** C Curtis

**Appearing for the Department of Labour:** No Appearance

**Dates of Hearing:** 30 & 31 March 2010

**Date of Decision:** 11 June 2010

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**DECISION**

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**INTRODUCTION**

[1] These are appeals against decisions of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) declining the grant of refugee status to the appellants, nationals of Pakistan.

[2] The appellant in *Refugee Appeal No 76478* is the husband of the appellant in *Refugee Appeal No 76479*. They will be referred to as the “the husband” and “the wife” respectively. The appellants in *Refugee Appeal Nos 76480 and 76481* are their children who are both minors. For the purposes of s141B of the Immigration Act 1987 (“the Act”) the wife is the responsible adult for the appellants

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in *Refugee Appeal Nos 76480 and 76481*.

[3] The husband and wife both gave evidence which, by consent, is to be treated as evidence in each of the appeals. The claim relates to activities undertaken by the husband from 2007 onwards to bring the plight of victims of human trafficking to popular attention in Pakistan via a series of activities in the public domain. As a result of these activities, two attempts have been made to kidnap the husband and threats to harm all the family have been received from a mafia gang engaged in human trafficking. The police advised the husband when he reported these incidents that they were unable to protect him and, to avoid further trouble, he should stop his activities. The family eventually went into hiding in Pakistan before leaving the country in mid-2008. Since that time, the husband has continued to undertake activities in the public domain regarding human trafficking and also other social issues such as corruption in Pakistani public life. The central issue to be determined in this appeal is whether or not any risk of harm faced by any or all of the appellants arises by reason of a Convention ground.

[4] What follows is a summary of the evidence given in support of the appeal. An assessment follows thereafter.

## **THE APPELLANTS' CASE**

### **Evidence of the husband**

*[Paragraphs [5]-[24] withheld pursuant to s129T Immigration Act 1987].*

### **Evidence of the wife**

*[Paragraphs [25]-[29] withheld pursuant to s129T Immigration Act 1987].*

### **Documents and submissions**

[30] On 17 March 2010, the Authority received a letter and memorandum of counsel of the same date. Attached to counsel's memorandum were a number of documentary evidence relating to the husband's various activities in the public domain relating to human trafficking and other social issues in Pakistan.

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[Paragraph 31 withheld pursuant to s129T Immigration Act 1987].

[32] Attached to counsel's submissions were 46 separate attachments comprising further statements of the husband, letters of recommendation and Items of country information relating to the general human rights situation in Pakistan and human trafficking.

[33] Also attached were a number of letters from company's with whom the husband had worked confirming his activities with them in relation to human trafficking and other issues. In particular:

[Paragraph 33(a)-(e) withheld pursuant to s129T Immigration Act 1987].

[34] At the conclusion of the hearing counsel made brief oral submissions to the Authority. Counsel submits that the threat to the husband is 'very real'. His advocacy is at a level which is, counsel submits, far more persuasive often than people engaging with the issue from an academic perspective. Counsel stressed the political nature of the appellants' claim. It was, counsel submits, impossible to separate out the issue of human trafficking in Pakistan from the wider political arena because police and other government agencies are implicated in, at the very least, allowing human trafficking to continue. The husband's actions are, counsel submitted, implicitly a criticism of government policy and inaction.

[35] On 5 May 2010, the Authority served on counsel a copy of its recent decision in *Refugee Appeal No 76339* (23 April 2010) relating to the proper approach to interpreting the Convention ground of political opinion. On 13 May 2010, the Authority received counsel's submissions in reply, together with copies of:

- (a) Chapter 1, Part II of the Constitution of Pakistan relating to 'fundamental rights' under the constitution;
- (b) Article by the husband dated 15 September 2009 'Tragedy on the Way';
- (c) Article by S Mahmud, Chair Department of International Relations NUML, Islamabad, *Pakistani Universities and Freedom of Expression* (21 April 2010) [www.weeklyblitz.net](http://www.weeklyblitz.net);

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- (d) Report by M Anwar (2004) *Child Trafficking for Camel Races: A Perspective from Pakistan*, Centre for Research and Social Development, Karachi;
- (e) Report by J Babha and C Alfiev (2009) *The Identification and Referral of Trafficked Persons to Procedures for determining International Protection Needs*, PPLAS/2009/03, UNHCR;
- (f) Material relating to activities in the public domain in Pakistan undertaken by the husband following completion of the hearing to which reference was made in the submissions.

## **THE ISSUES**

[36] The Inclusion Clause in 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."

[37] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellants 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 APPELLANTS' CASE**

### **Credibility**

[38] The Authority has no doubt that the husband and the wife have given a truthful account of their circumstances. Their evidence was consistent with what they had said before and with each other. There is an abundance of credible documentary evidence to corroborate the core features of the appellants' claim.

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*[Paragraph [39] withheld pursuant to s129T Immigration Act 1987].*

[40] For these reasons the Authority accepts the accounts of the husband and wife in their entirety. The Authority accepts that the husband has become involved in trying to bring to wide public attention the issue of trafficking of women and children inside Pakistan. This has led him to deal with other social issues such as corruption. The Authority accepts that as a result he has been threatened by gangs associated with the human trafficking trade and two attempts have been made to kidnap him. The Authority has no doubt that the husband remains a person committed to using his skills and experience to fight against human trafficking in Pakistan.

[41] The husband's claim will be assessed against this background.

**Objectively, on the facts as found, is there a real chance of the appellants being persecuted if returned to the country of nationality?**

[42] Given the attempts that have been made in the past by the traffickers to kidnap the husband because of his activities, the Authority has no doubt that should he return to Pakistan he would be faced with a stark choice: abandon his belief that human trafficking can and should be fought in Pakistan by using his skills and experience to do so – or continuing to do this and expose himself to retribution at the hands of the human traffickers. The Authority finds that the husband's activities are a manifestation of a genuinely held belief in the essential human dignity of all and that nobody should be subjected to being trafficked and an opinion that corruption among public officials and politicians in Pakistan needs to be tackled.

[43] The husband undoubtedly has, under Article 19(1) International Covenant on Civil and Political Rights 1966 ("ICCPR"), the right to hold this opinion. He also has the right under Article 19(2) to freedom of expression – in this case to express his opinions and impart information and ideas about human trafficking in Pakistan through activity of his choice. Limitations are being placed on the husband's freedom of expression by non-state agents in the form of human traffickers who see his actions as undermining what is no doubt a lucrative activity. The appellant has been advised by the police when he reported the attempt to kidnap him that he could not be protected – in other words that the police were simply unable to protect him from the traffickers should he continue.

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[44] Being persecuted has been defined as serious harm plus the failure of state protection – see *Refugee Appeal No 71427/99* (16 August 2000) at [67]; *R v Immigration Appeal Tribunal; Ex Parte Shah* [1999] 2 AC 629, 653F; *Horvath v Secretary of State for the Home Department* [2000] 3 WLR 379, 403B. The exposure to harm the appellant faces in continuing to bring the plight of trafficked women and children inside Pakistan to public attention and from which the police have indicated they are simply unable to protect him should he continue is easily categorised as being persecuted so defined. The first principal issue is answered in the affirmative.

[45] In relation to the wife and children, the Authority notes that, while threats have been made against them, they have not been subjected to any actual attempted harm. The Authority finds that the threats against them are more in the nature of means to pressure the husband rather than the expression of any intent to actually cause them harm. The Authority finds that the risk to the wife and children is speculative in this context. The first principal issue is answered in the negative in respect of them.

### **Nexus to a Convention ground**

#### *Relevant principles*

[46] In discussing this issue, a number of points need to be borne in mind. First, the nexus between the anticipated harm faced by the husband should he return to Pakistan and continue with his activity and the proffered Convention ground of political opinion need only be that the political opinion constitute a contributing cause to the risk – see discussion in *Refugee Appeal No 72635/01* [2003] INLR 629 at [162]-[179]. The political opinion need not be the sole or main, or direct cause. The inquiry here is one of relevance, not relative significance. If a political opinion can be identified as a contributing factor, that other contributing factors may also exist and play a greater or more immediate role in causing the risk will not break the nexus between that opinion and the risk of serious harm for the purpose of establishing refugee status.

[47] Second, the political opinion can be an actual opinion held by the refugee claimant or one that is imputed to them by the agent of persecution – see J C Hathaway *The Law of Refugee Status* (Butterworths, Toronto 1993) pp152-153; *Refugee Appeal No 2705/95 Re JEAH* (22 September 1996). In either case,

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the nexus requirement is identical. No special rules exist for establishing nexus in cases of imputed political opinions.

[48] Third, not every opinion capable of falling within the realm of Article 19 ICCPR, is protected. Rather, it is only those opinions which can, on the facts, be regarded as ‘political’ that are protected by the Convention. As noted by the Supreme Court of Canada in *Canada (Attorney General) v Ward* 103 DLR (4<sup>th</sup>) 1, at 41:

“Not just any dissent to any organization will unlock the gates to...asylum; the disagreement has to be rooted in political conviction.”

[49] In *Refugee Appeal No 76339* (23 April 2010), the Authority considered the proper approach to interpreting the Convention ground of political opinion. Noting, at [86], both the dangers of adopting overly broad and artificially narrow constructions of this ground, the Authority eschewed a definitional approach as encapsulated by the widely cited definition by Goodwin Gill *The Refugee in International Law* (Clarendon Press, Oxford, 1983) that:

“...“political opinion” should be understood in the broad sense, to incorporate, within substantive limitations now developing generally in the field of human rights, any opinion on any matter in which the machinery of State, government, and policy may be engaged.”

[50] Rather, the Authority determined that, in keeping with jurisprudence in the United Kingdom and Australia, a contextual approach was required. This approach is one that focuses on the particular context in which the event or action said to give rise to the actual or imputed political opinion arises.

[51] Fourth, for the purposes of interpreting Article 1A(2) of the Refugee Convention, the word ‘political’ is not to be properly understood as being limited to opinions contextualised by engagement with the process of government or electoral issues but rather can encapsulate opinions across a broader range of fields. In *Refugee Appeal No 76044* [2008] NZAR 719, the Authority considered a claim by a Kurdish Alevi woman from Turkey who feared death at the hands of her former spouse’s family as a result of for her “unilateral action in ending the marriage”. The Authority reviewed the structures of Turkish society, the prevalence of honour killing, and the lack of effective state protection for women who are subjected to ‘honour crimes’ and domestic violence (at [43]-[55]). The Authority found (at [89]), that her actions would be seen as a direct challenge to her gender-assigned duties, to the power of the husband’s family over her and to their own obligation under custom or law “to police the collective code of honour by

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removing from the collectivity the stain of dishonour". In this context, the Authority noted:

"Account must also be taken of how power is distributed and exercised in the particular society. The political opinion ground must be oriented to reflect the reality of women's experiences and the way in which gender is constructed in the specific geographical, historical, political and socio-cultural context of the country of origin. In the particular context, a woman's actual or implied assertion of her right to autonomy and the right to control her own life may be seen as a challenge to the unequal distribution of power in her society and the structures which underpin that inequality. In our view such situation is properly characterised as "political"."

[52] The context in the present case is that of human trafficking of women and children in Pakistan. To understand whether the husband's opinions on this subject can properly be said to be 'political' it is necessary to examine the phenomenon of human trafficking in Pakistan

#### *Human trafficking – the global context*

[53] Human trafficking (or trafficking in persons) is defined in Article 3(a) of the *2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the 2000 United Nations Convention against Transnational Organized Crime* (General Assembly resolution 55/25, annex I) ("the Trafficking Protocol") as being:

"...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

The Trafficking Protocol requires states to take action against the traffickers, protect and assist the victims and help prevent the trafficking.

[54] Concerned about the prevalence of human trafficking, in 2007, the United Nations established the United Nations Global Initiative to Fight Trafficking (UN.GIFT). Commenting on the prevalence and nature of human trafficking, the report UN.GIFT *Human Trafficking: An Overview* (New York 2008) (UN.GIFT 2008 report) observes, at [6]:

"Trafficking in persons is dynamic, adaptable, opportunistic and, like many other forms of criminal activity, it takes advantages of conflicts, humanitarian disasters and the vulnerability of people in situations of crisis. It is multidisciplinary and involves a wide range of actors. To combat the crime, it is essential to understand

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the nature of human trafficking and underlying conditions as well as the profiles of traffickers and victims.”

[55] In addition to the fundamental assault on human dignity inherent in being trafficked, and exposure it brings to a range of other human rights abuses, the phenomenon of human trafficking also has wider structural and development implications for states – see here commentary by Irena Omelaniuk, Migration Advisor to the World Bank *Trafficking In Human Beings*, United Nations Expert Group Meeting on International Migration and Development, UN/POP/MIG/2005/15 (8 July 2005) at p3-4.

[56] The UN.GIFT 2008 report notes that despite a recent “boom” in information on trafficking in persons, there exist evidential lacunas in terms of the nature and severity of the problem of trafficking in persons as well as issues around the reliability of available data. Nevertheless, the report notes, at p6, that several estimates on the size of the problem have been recently released. With these caveats in mind the report cites data from four organisations with databases on trafficking in persons and notes:

“The ILO has estimated that the minimum number of persons in forced labour, including sexual exploitation, as a result of trafficking at any given time is 2.5 million.

Research sponsored by the United States government completed in 2006 estimates that approximately 800,000 people are trafficked across national borders annually – a figure that does not include those trafficked on an internal basis only.

An non-governmental organisation Free the Slaves estimates there are 27 million slaves in the world today.”

[57] Victims of trafficking for exploitation have, in some cases, been recognised as Convention refugees – see *AZ (Trafficked Women) Thailand CG UKUT 118 (IAC)* (26 January 2010) and cases cited there at [139] and [142];

#### *Human Trafficking – the regional context*

[58] Commenting specifically on human trafficking in South Asia, the UN.GIFT 2008 report notes, at p8, that:

“In South Asia, there are many countries used as origin, transit and destination countries for trafficking. Victims are sent to other countries in the region and to other parts of the world. Even more prevalent is the movement of persons within the countries for exploitation in various forms. Even though there are no definite numbers of victims, it is estimated that 150,000 victims are trafficked from the region annually. Many studies have revealed that trafficking in women and children is on the rise in Asia.”

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[59] It notes that trafficking for commercial sexual exploitation is the most virulent form of trafficking in the region. The movement of young girls from South Asian countries to brothels is common, taking place either between countries or within countries. There is further movement to the Middle East as well as other destinations. Internal displacement due to conflict in some countries, poverty and lack of employment opportunities increase the vulnerability to being trafficked.

*Human trafficking in Pakistan*

[60] As for Pakistan itself, the UNODC report *Responding to Trafficking for Sexual Exploitation in South Asia*, Report of UN.GIFT Meeting, New Delhi, 10-11 October 2007 (2008 at p4) notes that Pakistan is listed by UNDOC as a country of high origin and destination of trafficked persons.

[61] Further details on the general nature and severity of human trafficking in Pakistan can be gained from the United States Department of State *Trafficking in Persons Report* (June 2009): pp231-233 (“the 2009 TIPR”). The 2009 TIPR also states that Pakistan is a source, transit and destination country for men, women and children trafficked for the purposes of forced labour and sexual exploitation.

[62] The report observes, however, the largest human trafficking problem in Pakistan is that of bonded labour concentrated in the Sindh and Punjab provinces. Trafficked persons are concentrated in working in brick kilns, carpet making, agriculture, fishing, mining, leather tanning and production of glass bangles. The 2009 TIPR notes that while estimates of the Pakistani victims of bonded labour vary, the numbers involved are “likely” to exceed one million persons. The 2009 TIPR notes there is a significant gender dimension to human trafficking in Pakistan. It states, at p231:

“Parents sell their daughters into domestic servitude, prostitution, or forced marriages, and women are traded between tribal groups to settle disputes or as payment for debts. Pakistani women and men migrate voluntarily to Gulf states, Iran and Greece for low-skilled work as domestic servants or in the construction industry. As a result of fraudulent job offers made and high fees charged during recruitment, however, some find themselves in conditions of involuntary servitude or debt bondage once abroad, including restrictions on movement, non payment of wages, threats and physical or sexual abuse. Moreover, NGOs contend that Pakistani girls are trafficked to the Middle East for sexual exploitation. Pakistan is also a destination for women and children from Afghanistan, Azerbaijan, Bangladesh, India, Iran and Nepal trafficked primarily for forced labour.”

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*Specific forms of trafficking in Pakistan – the problem of forced labour and debt bondage*

[63] Part II Chapter 1 of the Pakistan Constitution of 1973 sets out a number of rights described as ‘fundamental rights’:

**“11. Slavery, forced labour, etc. prohibited.**

- (1) Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form.
- (2) All forms of forced labour and traffic in human beings are prohibited.
- (3) No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.”

[64] Apart from the Constitutional prohibition on slavery, forced labour and trafficking mentioned above, the Prevention and Control of Human Trafficking Ordinance (“PACHTO”) prohibits all forms of transnational trafficking in persons. This ordinance prescribes penalties ranging from seven to 14 years’ imprisonment. Furthermore, the Bonded Labour System Abolition Act prohibits bonded labour, with prescribed penalties ranging from two to five years’ imprisonment or a fine, or both – see the 2009 TIPR.

[65] Despite these prohibitions on slavery, forced labour and trafficking in human beings, slavery in the form of debt bondage remains a widespread social problem in Pakistan. In 1995, Human Rights Watch (“HRW”) conducted a comprehensive review of this practice. Its resulting report, “Contemporary Forms of Slavery in Pakistan” (July 1995) runs to over 100 pages and contains an appalling litany of abuse being visited on men, woman and children engaged in forced labour in Pakistan. These abuses include the illegal detention of bonded labourers in private detention facilities run by landlords, where they are subjected to torture and other forms of harm to coerce them against registering complaints against their employer, for intimidation, or to extract bribes (pp100-106). The report reveals a consistent pattern of sexual harassment and rape of female bonded labourers. Bonded labourers cannot organise collectively into unions and those who seek to do so are often arrested by the police.

[66] At p98 the report notes that bonded labourers are often kept in jail for extended periods of time. The police do not notify anyone of the arrests except, perhaps, the employer. They are often held in prison until a payment is made to the police by either the suspect or by the employer. The report further notes that employers of bonded labourers often visit the lock-ups or jails or to bribe officials

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for the return of “their” employees and tend to have established contacts with local police and negotiate the release of those arrested.

[67] The report also documents the widespread usage of child bonded labourers who, like their adult counterparts, are subjected to physical, sexual and psychological abuse. The report also contains interviews with children who claim to have been abducted by strangers and sold into bondage. They were taken to a region of the country where the language differed from their own – see p71.

[68] The report notes that debt bondage and servitude is prevalent in the agricultural sector, export-oriented carpet weaving industry, the mining industry and in the operation of brick kilns located on the outskirts of most major cities in Pakistan. It is an economy-wide problem and therefore fairly described as a basic structure of the Pakistani economy. Of these sectors, however, it appears that it is most prevalent in the agricultural sector and in the provinces of Sindh and southern Punjab. The report notes:

“Bonded labour is most widespread in agriculture, particularly in the interior of Sindh and southern Punjab where land distribution is highly inequitable. Bondage in agrarian regions involves the purchase and sale of peasants among landlords, the maintenance of private jails to discipline and punish peasants, the forcible transference of teachers who train peasants to maintain proper financial accounts, and a pattern of rape of peasant women by landlords and the police.”

[69] What is significant for present purposes is that bonded labour in agriculture is stated, (at p10) to emerge from historically hierarchical relationships between landlords and peasants. These relationships are reinforced by contemporary agricultural policies which give landlords privileged access to land, resources, and credit. In many cases peasant children inherit the debt, and thus the working conditions of their parents. At p83, the report notes in relation to debt bondage in the agricultural sector that:

“The abuse of bonded labourers is rarely questioned in this context, as the power of prominent landlords is entrenched in Pakistan’s political, economic and social structure.”

[70] The agricultural sector is critical to Pakistan’s economy, generating one-quarter of the nation’s gross national product and employing approximately 50 per cent of its labour force. Bonded labour in this sector is rooted in a land tenure system which favours those who own vast tracts of fertile land. Landless rural labourers are dependant on such landowners for employment, credit, and access to irrigation and agricultural inputs.

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[71] The interface between the system of forced labour/debt bondage and trafficking lies in transactions for the sale and purchase of bonded labourers between different employers. With each sale and purchase the individual “sold” will be transported from one place of labour to the other. It is at this point they become a trafficked person within the definition set out in Article 3a of the Trafficking Protocol.

[72] Further insights into the nature and severity of human trafficking in Pakistan is gained from the report by M Anwar *Child Trafficking for Camel Races: A Perspective from Pakistan* (2004) submitted by counsel. At p3, the report notes that while local groups are involved in human trafficking “it is mainly international networks that have made it a sophisticated and well-organised industry in Pakistan”. Although no accurate figures are available, the report notes that as a result of media and NGO highlighting the issue, it was raised in the upper house of the Pakistani Parliament in 1992. In the course of that debate statements were made that approximately 19,000 children had been trafficked from Pakistan to the United Arab Emirates (UAE) since 1980 to serve as camel riders. In response, the then interior minister ordered an inquiry but as at the date of the report in 2004 no report had officially been produced on the issue. Commenting on the organised crime and trafficking networks in this context the report states at p16:

“Camel racing during the last about two decades has become a highly organised crime, being committed by gangs through well co-ordinated networks. (*sic*)

This involves from small gangs comprising a few individuals, operating since beginning to large scale enterprises and international networks. Investigations also revealed involvement of law enforcement agencies officials, who were also found in corruption and has poor service record at the same time. (*sic*)

Children’s recoveries and repatriation are just the tip of the iceberg. And this did not bring the menace to its end. Children in large number are still successfully trafficked and brought under the very nose of government agencies.”

[73] The report states, at p18, that its investigations have revealed three different networks involved in trafficking of children operating solely or collectively but in an intra and interconnected manner, each complementing the efforts of the other. The networks are made up of local gangs operating at a grassroots level, the international mafia and occasional traffickers. The report states that their investigations estimate eight to 10 well co-ordinated and active child trafficking networks in Pakistan and the UAE. The report states:

“They have more than 300 agents and sub-agents working in government and private departments. ... In many cases, traffickers were found to have strong links and affiliations with influential and government, political and bureaucratic, police,

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customs, border forces, overseas recruiters, travel agents, transport agencies, religious institutions etc and have their direct or indirect blessings at difficult times.”

### *State response to trafficking*

[74] The HRW report at p95, argues that, as at 1995 at least, Pakistan was complicit in the labour bonded system. Despite the *de jure* outlawing of the practice, it was allowed to continue. The report states:

“The complicity of the state in the bonded labour system is explicitly illustrated by the fact that employers of bonded labourers are rarely arrested, prosecuted or punished for holding workers in bondage. Furthermore, employers usually escape punishment for illegal confinement, rape, or physical abuse of bonded labourers all of which are clearly prohibited under the Pakistan Penal Code. Thirty-two bonded labourers interviewed by Human Rights Watch/Asia attempted to register complaints against employers; five of these cases made it to court. None of the accused employers was detained and none were prosecuted. The failure to arrest employers lies primarily with the police. A representative of ... a peasant organisation in Sindh and [a representative] of the Bonded Labour Liberation Front told Human Rights Watch/Asia that their organisations had tried to register cases against employers and landlords, but either the police refused to register cases or judges were reluctant to prosecute and punish them. Moreover police rarely register FIR (First Information Reports) filed by bonded labourers seeking prosecution of their employers. Police failure appears to be tolerated. Human Rights Watch/Asia found no evidence of members of the police being investigated for not taking necessary steps to protect bonded labourers.”

[75] As for the present date, the problem does not seem to have been resolved. As the 2009 TIPR notes the trafficking of persons for use as bonded labourers continues to remain a problem, as does the trafficking of children to the UAE to serve as camel jockeys. This is despite the fact that the legal system in Pakistan outlaws trafficking and bonded labour. Commenting on the state response to trafficking, the 2009 TIPR, at pp231-232 observes that:

“The Government of Pakistan does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Despite these significant overall efforts, including the prosecution of some trafficking offenses and the launch of public awareness programming, the government did not show evidence of progress in addressing the serious issues of bonded labor, forced child labor, and the trafficking of migrant workers by fraudulent labor recruiters; therefore, Pakistan is placed on Tier 2 Watch List. Convictions of trafficking offenders decreased during the reporting period. The government continued to punish victims of sex trafficking and did not provide protection services for victims of forced labor, including bonded labor.

...

Pakistan did not provide data to demonstrate any significant law enforcement efforts against labor trafficking. Though Pakistan has a substantial problem of bonded labor, neither the federal nor the provincial governments provided evidence of criminal prosecutions, convictions, or punishments for perpetrators of bonded labor, or for other acts of forced labor, including fraudulent recruitment for the purpose of forced labor, and forced child labor. With respect to sex trafficking, primarily prosecuted as a transnational crime under PACHTO, during the reporting

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period, the government secured the convictions of 28 trafficking offenders – 24 fewer than last year; unlike in past years, the Federal Investigation Agency (FIA) did not make available the specifics of the punishments given to trafficking offenders. During the reporting period, FIA, with assistance from IOM and NGOs, continued to offer training on investigating trafficking cases and sensitively treating victims; FIA did not provide data on the number of law enforcement officials that received such training. Government officials at all levels have been implicated in human trafficking; there were reports of bribery of government and law enforcement officials during the reporting period. Pakistani authorities disciplined 147 law enforcement officers for complicity with human trafficking under the Government Service Rules and Regulations; 12 were permanently removed, four were compulsorily retired, and seven were reduced in rank. The remaining cases resulted in administrative actions.”

[76] In much the same vein the 2004 report on the trafficking of camel jockeys, at p23, notes that the problem has only very recently been brought to the government’s attention and as a result some arrests have been made but all of those arrested tend to be low-level operators or agents. The author of the report considers that the connivance of law enforcement immigration and employment agencies personnel is “still surely there” in human trafficking. The author states that “in addition to the deliberate connivance of a few corrupt officials there is a lack of understanding among the government officials”.

[77] In summary, the state response to trafficking is uneven. It is certainly going too far to say that no steps are being taken by the state to address this issues. Nevertheless, as the husband asserts, it remains a substantial problem and corruption does play a part in the persistence of trafficking in Pakistan, as do structural features of Pakistani society and economy. There are large gaps in the response, particularly around issues of trafficking for purpose of forced labour.

#### *Application to the facts*

[78] The cover of the UNODC *Global Report on Trafficking in Persons* (February 2009) is aptly subtitled “*Human Trafficking: a crime that shames us all*”. Human trafficking is most certainly a matter of profound humanitarian concern. But is it also, in the context of this case, properly to be regarded as political?

[79] In this regard, the Authority has no doubt that no political opinion is being imputed to the husband by the agents of persecution in this case – the human traffickers. Their motivation in silencing him is to protect their economic interests. The involvement of corrupt officials in their networks does not, of itself, transform the traffickers concern about the husband into the political. At the end of the day, those officials are involved in these networks for economic gain.

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[80] If this appeal is to succeed, it must be because the opinions held by the husband, in their context, can themselves be appropriately categorised as 'political'. At paragraphs [27] and [28] of her submissions dated 13 May 2010, counsel argues that the husband's concerns are political. Relying on the constitutional limitation under Article 19 of the 1973 Pakistan Constitution authorising reasonable restrictions on freedom of expression, *inter alia*, "in the interest of the glory of Islam", counsel submits that the father's activity amounts to a "direct critical comment about that Islamic state [Pakistan]".

[81] Yet, as remarked by Brook LJ in *Storozhenko v SSHD* EWCA Civ 895; [2002] Imm AR 329 at [46]; cited with approval in *Refugee Appeal No 76339* at [97], there is:

"... the need to be cautious about over-enthusiastically seeking a Convention reason for persecution where such a reason cannot be found without distorting the facts...."

While counsel is correct in her submission that freedom of expression is constitutionally subject to "the glory of Islam", that Pakistan is an Islamic state is irrelevant to the husband's activity and predicament. The religious identity of the Pakistani state has absolutely nothing to do with the question of human trafficking and at no time did the husband suggest this was the case. The submission amounts to a distortion of the facts.

[82] In order to determine the issue of the proper characterisation of the husband's actions, it is instructive to look at some other cases where claims have been raised against the background of illegal activity by public officials. In *Storozhenko*, the context was the lodging of a complaint by a man who had witnessed apparently drunken police officers run down and injure a young girl in a police car and narrowly miss hitting the claimant. When he remonstrated with officers he was assaulted. The claim stemmed from reprisals against him for lodging and pursuing a complaint against these officers – see *Storozhenko* at [3]. In *Suarez v Secretary of State for the Home Department* [2002] EWCA Civ 722; [2002] INLR 540 at [30] (UKCA), the case arose out of a conversation the claimant overheard which indicated that some officers in his unit in the Colombian army were selling arms captured from guerrillas back to the guerrillas via a particular middleman. One of them was also engaging in drug dealing. The claimant later witnessed one of these officers shoot the same middleman. When he voiced his objection to this illegal activity he was threatened with death – see Potter LJ at [9]-[10].

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[83] In each case, the ground of political opinion was advanced but rejected. It is not difficult to see why. Each of these cases involved the actual or threatened exposure of particular activity, either conducted by a public official or in collaboration with a public official, which was of a purely criminal nature. In these cases, the action concerned related to the particular activities of particular public officials which the claimant had witnessed.

[84] These cases can be easily distinguished from the present appeal. In contrast to these cases, the husband is not expressing an opinion about any particular corrupt transaction or the role of any official in the trafficking of any particular individual. Rather the husband has engaged with the issue from a more systemic perspective. As Merkel J noted in *Zheng v Minister for Immigration and Multicultural Affairs* [2000] FCA 670 at [33]:

“It needs to be emphasised that where individual, rather than systemic, corruption is exposed it is less likely that the act of exposure will be one in which a political opinion will be seen to have been manifested. This is because the exposure in that instance is more likely to be seen as the reporting of criminal conduct rather than any form of opposition to, or defiance of, state authority or governance.”

The Authority agrees with this broad proposition but emphasises that the question of whether exposure of systemic corruption amounts to a political opinion is to be determined on a case-by-case basis in the particular context that the act of exposure arises. No automatic rule applies.

[85] Turning to the facts of the present appeal, when asked to explain why he initially became involved in the issue of human trafficking, the husband spoke of his ‘heart asking him to do so’. He was concerned that vulnerable groups in Pakistani society such as women and children were the persons suffering from human trafficking in Pakistan. He wanted to let the Pakistani people know of this suffering. Had matters stopped there, the Authority would have been satisfied that his activity was not grounded in anything that might properly be described as political.

[86] However, his evidence before the Authority was that, as he became drawn into this issue, his research revealed that systemic and widespread corruption and the structure of Pakistani society play an important role in the phenomenon of human trafficking in Pakistan. He understands that police, influential politicians and other officials collude with the traffickers, at the very least turning a blind eye to human trafficking if not actively facilitating it in some instances. This research has led him to have an opinion that there is a linkage between the structure of

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Pakistani society and the scourge of human trafficking in Pakistan. While the husband agreed that country information establishes that the Pakistani government does undertake some action to deal with human traffickers, he believes that they are undertaken, in effect, to pay lip-service to the demands of the international community and that nothing is done to address its root causes. In his opinion, powerful elites control the political system at both national and state levels. Their patronage determines who occupies senior positions in the police. He believes there is a direct relationship between this system of patronage and the tolerance of corruption which allows trafficking to occur.

[87] Whether or not this is strictly the case is not important to analyse in any detail. Its significance is that his aims in conducting his activity have broadened from being a matter of simple humanitarian concern to informing the Pakistani public that human trafficking occurs as a direct result of corruption and structural features of Pakistani society. This sensitivity to the debilitating effects of corruption on Pakistani society has led him to undertake further activity in the public domain dealing with other pressing social issues in Pakistan.

[88] The Authority is satisfied that while his initial involvement in the issue for human trafficking was not by reason of any political opinion, the position as of now is different. The Authority finds his opinions about the structures of Pakistani society and economy including corruption, and its role in perpetuating bonded labour and other forms of exploitation is, in this context, political. This political opinion directly relevant to his continued involvement in activities aimed at raising awareness of human trafficking and other social issues in Pakistan.

[89] The predicament of serious harm the husband faces should he be returned to Pakistan, from which the police will simply be unable to protect him, is contributed to by his political opinions in the sense explained in *Refugee Appeal No 72635/01*.

[90] The second principal issue is therefore also answered in the affirmative in respect of the husband.

## **CONCLUSION**

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[91] The Authority finds that the husband is a refugee within the meaning of Article 1A(2) of the Refugee Convention. His appeal is allowed. Refugee status is granted.

[92] As regards the wife and children, the Authority finds they are not refugees so defined. Their appeals are dismissed. Refugee status is declined.

"B L Burson"

B L Burson  
Member