

AT AUCKLAND

Appellants:	BA (Pakistan)
Before:	B L Burson (Member)
Counsel for the Appellants:	R Chambers
Counsel for the Respondent:	No Appearance
Date of Hearing:	25 March 2014
Date of Decision:	9 April 2014

DECISION

[1] These are appeals against decisions of a refugee and protection officer, declining to grant refugee status and/or protected person status to the appellants, citizens of Pakistan.

INTRODUCTION

[2] The appellant in appeal [2014] NZIPT 800335 is the husband of the appellant in appeal [2014] NZIPT 800336 and they will be referred to as the husband and wife respectively. The appellants claim to have a well-founded fear of being persecuted on account of their being members of the Ahmadi community, a branch of Islam. The husband also claims to be at risk from members of a militant group for his involvement in the filing of a complaint calling for the arrest and detention of persons who had assassinated the wife's brother, who was an active member of the Ahmadi community.

[3] The central issue to be determined in this case is the credibility of the appellants' account.

[4] Given that the same claim is relied upon by the appellants in respect of all limbs of their appeals, it is appropriate to record it first.

THE APPELLANTS' CASE

[5] By letter dated 19 March 2014, the appellants' counsel advised that, due to her infirmity, the wife would not be attending the hearing to give evidence in support of her appeal and that she consented to the evidence presented by the husband and their eldest son being taken as the evidence in her appeal. The account which follows is that given at the appeal hearing by the husband and the eldest son. It is assessed later.

The Husband's Evidence

[6] The husband was born in the late 1950s in a small village in Pakistan. He has three brothers and three sisters. His family were farmers and were the only Ahmadi family in their village. For many years, the family lived peacefully with their non-Ahmadi neighbours. However, in the years following the amendment of the Pakistani Constitution in the mid-1970s, which declared Ahmadis to be non-Muslims, animosity towards his family grew. In order to reduce the pressure on them, when the husband was aged in his mid-20s his family relocated to the Z village in the district of Dera Ghazi Khan where Ahmadis lived in greater numbers. By this time, the husband and wife were married, and Z village was the place where the wife's family, who were prominent in Ahmadi affairs in the district, resided.

[7] The husband's father purchased land in Z village and the family settled into their usual agricultural life. While Ahmadis were a minority in Z village, the community had its own mosque which the husband frequented from time to time. Nevertheless, given the official and societal discrimination against Ahmadis, this was something that was done by "stealth". To go to the mosque, the husband would first loiter outside and, when sure no one was looking, quickly dart inside to perform his prayers. When finished, he exited the mosque immediately.

[8] The appellants lived in Z village for approximately five years. Over time, the husband came to know people either socially or through business contact, and came to understand which persons in their community were more tolerant towards Ahmadis than others. He generally avoided having any conversations with people whom he knew or believed to be holding strong anti-Ahmadi feelings. However, with those of his neighbours and acquaintances who displayed curiosity about the situation of Ahmadis in Pakistan, the husband gladly ventured his opinion. He told the Tribunal that this was something which was fundamental to him as a Muslim.

He regarded the Ahmadi belief as representing the true Islam and it was simply not possible for him to deny this truth.

[9] The husband explained that, given the situation in Pakistan, this was not something that he actively sought to do. Nevertheless, when the subject was raised in the course of their ordinary conversations, he had no hesitation about explaining what Ahmadis believed and encouraging them to accept that this represented the true Islam. He explained that, on the whole, the people who he spoke to about his religion in the course of their general conversations were open to this discussion but that, on a couple of occasions, he misjudged the situation and people who had displayed an initial receptiveness quickly told him to be quiet and not talk about such matters any further.

[10] The husband stated that over the five years or so they lived in Z village the environment worsened for Ahmadis. Over time, some local mullahs became more strident in their preaching and began stating that people who killed Ahmadis would be guaranteed a place in heaven. Consequently, non-Ahmadis in Z village more frequently gave the husband menacing stares in the street as well as giving him verbal abuse and making threats. This deterioration greatly affected the family's peace of mind and the husband's father decided that it would be better if the family moved away from Z village to Rabwah where many Ahmadis lived. Around this time, two of the husband's brothers decided that they would leave Pakistan permanently and they went to a European country where they were recognised as refugees.

[11] The situation was discussed with the husband's father-in-law and brother-in-law. While also concerned about the situation, both indicated they could not leave as they were heavily involved in the local Ahmadi association. The husband's father sold the family land in Z village and the family moved to Rabwah.

[12] After moving to Rabwah the appellant was unemployed for a number of years. The family lived off savings and the proceeds of the sale of their land in Z village. During this period, the husband's third brother also travelled to a European country where he too was recognised as a refugee. After approximately three years, the appellant entered into an informal partnership with a local non-Ahmadi man called AA. The husband worked land which AA had leased from a local landlord. They grew crops for sale. The husband continued working on this land until he left for New Zealand.

[13] The husband encountered no particular problems practising his religion in Rabwah. It had a majority Ahmadi population and, while the main mosque had been sealed, there were many street level mosques in Rabwah and the appellant could freely attend these. The husband explained that the only aspect of his religion that he could not freely perform in Rabwah was its “propagation”. As with his experiences in Z village, many people he came into contact with were not receptive to discussions about religious matters and he refrained from discussions which would reveal his being Ahmadi in order to avoid problems. He did engage from time to time in discussions about religion with AA, who was open-minded and tolerant, and the husband again expressed his view that the Ahmadi faith was, in fact, the true Islam.

[14] The husband’s continued reticence to openly discuss his religion reflected the fact that the radical Islamic movement *Khatm-e-Nabuwwat* held large rallies in Rabwah, denouncing Ahmadis and generally inciting animosity in non-Ahmadis towards Ahmadis. During such rallies, the appellant and other Ahmadis kept a low profile. However, from time to time when going about his daily affairs such as in the market, he would come into contact with *Khatm-e-Nabuwwat* activists who yelled verbal abuse at him and made derogatory comments.

[15] In 1999, the husband’s brother-in-law, who was the vice-president of the local Ahmadi association, was murdered. The husband, who was living in Rabwah at the time, heard the news late at night. Immediately he and his wife travelled to Z village to retrieve the body. His status in the community meant that he was entitled to be buried in Rabwah which was the centre of the Ahmadi community. The body was brought back to Rabwah and a large funeral was held.

[16] The husband then returned to Z village where he accompanied BB, the brother-in-law’s 13-14 year-old son, to file a First Information Report (“FIR”). The husband explained that he was now the eldest male in the family and it was his responsibility to accompany his nephew to the police station. Due to the BB’s relatively youthful age, the husband did most of the talking. He told the police of the family’s belief that the brother-in-law had received threats from *Khatm-e-Nabuwwat*, and that they believed the group had placed the brother-in-law on a “hit list”.

[17] Following the death of his brother-in-law, the husband received five to 10 threats over the telephone from *Khatm-e-Nabuwwat*. The callers mentioned his involvement in the filing of the FIR and threatened that, if he did not renounce his

religion, they would kill him. The husband also received five to 10 personally delivered messages, warning him of threats against him from *Khatm-e-Nabuwwat*.

[18] The husband told the Tribunal that due to all this pressure he determined that it was not safe for him and his family to remain in Pakistan. He therefore embarked upon a programme of sending his children one by one outside Pakistan, where they could be safe from the animosity displayed towards Ahmadis inside Pakistan. Between 2003 and 2009, four of the children came to New Zealand and a fifth went to the United Kingdom.

[19] The husband and wife arrived in New Zealand in August 2011. Since arriving here, they have been regular attendees at the mosque. The husband has also been helping the Ahmadi community in New Zealand to promote its affairs by distributing pamphlets in letterboxes around the city where they live to promote the Ahmadi faith generally, and to advise of specific events at which scholars associated with the faith would be in attendance. In addition, the husband attends a local community centre from time to time during the working day as he is at home and there he discusses matters of religion freely with other persons from different faiths.

The Evidence of the Eldest Son

[20] The eldest son confirmed he was born in Pakistan in 1980. From an early age he learned that, as an Ahmadi, he was the object of derision and hatred from other Muslims.

[21] The eldest son understands from his parents that when he was aged around five years they moved to Z village and remained for a further five years or so before finally relocating to Rabwah. In Rabwah, his father worked on the land in partnership with AA who was a non-Ahmadi. The eldest son had a maternal uncle who was a prominent person in the Ahmadi community in the Dera Ghazi Khan area. He organised many conferences and events and was well known in the area.

[22] The eldest son explained that, when at college, he hid where he was from as, if he ever stated he was from Rabwah, this would immediately identify him as Ahmadi and invite problems. He also explained that often *Khatm-e-Nabuwwat* would hold rallies in Rabwah. At such times, the Ahmadi community locked themselves in their houses to avoid problems.

[23] In 1999 when he was aged around 19, the family received a telephone call at 2am or 3am, advising that his uncle had been shot. His mother and father went to Dera Ghazi Khan. The uncle died of his wounds and his body was brought back to Rabwah for a large funeral. The person who is now the worldwide head of the Ahmadi association delivered the service. His father returned and filed an FIR in respect of the killing. It was clear that the family suspected activists of *Khatm-e-Nabuwwat* as being responsible for his murder.

[24] Since that time, the eldest son's father has received a number of telephone threats warning him to cease with the FIR process or he would be killed and on other occasions threatening that he should abandon his religion. The eldest son explained that his mother was badly affected by the death of her brother with whom she was particularly close, to the extent that she was hospitalised for some two and a half to three months thereafter. Her health has never been the same.

[25] Because of the threats they faced and because of the general situation of Ahmadis, his father decided it was not safe for his children in Pakistan and the eldest son was sent overseas. The eldest son explained that by this time he had obtained an IT-related qualification but could not find a job. He explained that, since arriving in New Zealand, he obtained work and set about saving money to fund his brothers' moving to New Zealand as students. This he did over the course of the next four or five years.

[26] This left only his mother and father in Pakistan and things came to a head when they heard from his mother in late 2010 that there had been a threat against his father which had been delivered by his father's business partner. The eldest son immediately set about obtaining temporary visas for his parents for them to come to New Zealand to avoid being harmed.

Material and Submissions Received

[27] Counsel filed written submissions dated 20 June 2013. Attached to counsel's submissions were a bundle of country information relating to the status of Ahmadis in Pakistan together with decisions of the Tribunal in *AM (Pakistan)* [2013] NZIPT 800274 and a decision of the United Kingdom Upper Tribunal (Immigration and Asylum Chamber) *MT (Ahmadi HJ Iran) Pakistan* [2011] UKUT 00277 (IAC).

[28] On 24 March 2014, the Tribunal received a document entitled "Persecution of Ahmadis in Pakistan" comprising a compilation of reports of attacks on and

imprisonment of Ahmadis at various places in Pakistan. On the morning of the hearing on 25 March 2014, the Tribunal received a further bundle of documents comprising:

- (a) Copy of attested statement by AA (20 March 2014) regarding his communicating to the husband of a death threat to him.
- (b) Letter dated 21 March 2014 from the national president of the Ahmadi Muslim Association of New Zealand confirming the appellants' involvement in that community.
- (c) Report by Pakistani Security Research Unit, Department of Peace Studies University of Bradford "The Jihadi Terrain in Pakistan: An Introduction to the Sunni Jihadi Groups in Pakistan and Kashmir" (5 February 2008).
- (d) Summary of videos and documentaries regarding episodes of anti-Ahmadi treatment in Pakistan.
- (e) Letter (24 March 2014) from the appellants confirming the obtaining by them of further country information in the form of the decision of the United Kingdom authorities on the claim of CC and a statement from DD, EE's daughter who was married to one of their sons.
- (f) Copy of decision of First Tier Tribunal (Immigration and Asylum Chamber) December 2013 in respect of a claim by CC.
- (g) Letter dated 24 March 2014 from DD relating the death of her father, stating that after the murder they were in communication with the appellants and stating that they received constant death threats from the *Khatm-e-Nabuwwat* group.
- (h) Various photographs showing rallies in public spaces, said to be *Khatm-e-Nabuwwat* rallies.

[29] On 1 April 2014, the Tribunal received a further piece of country information relating to the death of an Ahmadi teacher at a private university in Islamabad and his mother.

Assessment

[30] 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).

[31] 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

As to the appellants’ religious beliefs

[32] The Tribunal accepts that the husband and wife are Ahmadis. This has been a consistent feature of their claim and is corroborated by the letter from the national president of the Ahmadi Muslim Association of New Zealand.

[33] The husband’s explanations about his manifestation of religious beliefs were plausible and consistent. His demeanour when giving his evidence suggested that this was someone for whom his religious identity is central to his own identity. In this regard, the Tribunal observes there was a palpable difference in the quality of the evidence given by the father when talking about the matters of religion, what it meant to him and how it informed his actions, when compared to the evidence he gave surrounding the supposed lodgement of the FIR and associated problems. Whereas the latter was characterised by hesitancy, vagueness, discrepancies his evidence in relation to his engaging in conversations with persons about his faith, as an integral aspect of his own sense of identity and self-worth as an Ahmadi was clear consistent and compelling.

[34] The Tribunal notes that the eldest son painted a far more evangelical picture of his father (the husband) than the husband himself did in his evidence.

The husband was far more understated and nuanced in his evidence. The Tribunal is satisfied that the picture painted by the eldest son is an exaggeration, borne of a misguided but understandable attempt to help his father.

As to the husband's involvement in the filing of an FIR against Khatm-e-Nabuwwat

[35] There were a number of credibility issues which arose in relation to this aspect of the claim. First, the FIR that has been submitted to the Tribunal in support of the claim was, the husband said, obtained from the Ahmadi association for which the brother-in-law held executive office and conducted activities. There are two translations of this document on the file, one handwritten and one typed. The typed copy is of an extremely poor quality, making bare sense in English and written on a barely functional typewriter. Nevertheless, the gist of this translation is identical to that which is contained in the handwritten document, namely, that the murder of the brother-in-law was not linked to his religious profile but rather to a land dispute.

[36] The husband had no idea how it was the reference to a land dispute came into the content of the FIR. He could give no explanation as to why the FIR did not correspond to that which he claims he filed with the police, apart from raising an issue about the competency of the translator. For his part, the eldest son explained that the reference to a land dispute in the FIR arose because BB had mentioned both the land dispute and the family's suspicions of *Khatm-e-Nabuwwat*. BB was, he stated, aged about 20 or 21 at the time. However, this contradicts the husband's evidence which was that, at the time the FIR was filed, BB was a boy aged about 13 or 14 and, apart from mentioning that they wished to file a complaint as the nearest blood relative, all the talking was done by the father as the eldest relative.

[37] Also, the determination of the United Kingdom authorities in respect of the refugee claim filed there by CC does not mention an FIR being filed at all. The husband could not explain why CC would not have mentioned that an FIR had been filed by his own brother in relation to their father's own murder at the hands of the same extremist group that CC indicated was seeking to cause him harm.

[38] Furthermore, the eldest son also stated that the FIR and other documents had been sourced from the maternal uncles of BB who had recently gone to the United Kingdom. However, this also contradicted the father's evidence that he had obtained the FIR and other documentation from a friend, who he named. The explanation of the eldest son, that the maternal uncle sent it to the friend, is

nonsensical. There is no good reason why it would not have been sent directly to New Zealand and he could provide none.

[39] Finally, among the documentation produced was a document purporting to be a ballistics report prepared by the Pakistani police. However, the person named in the report as being the person from whom the police allegedly seized two weapons for comparison with casings found at the scene of the brother-in-law's murder, is not named in the FIR. Furthermore, the person from whom the weapons were allegedly seized is named as being both the son of the brother-in-law and of another person altogether.

[40] For these reasons, the Tribunal does not accept that the FIR is genuine, calling into question whether an FIR was lodged at all, or with the assistance of the husband as he claims.

As to the threats claimed to have been received

[41] The husband's evidence on the threats he received has been mobile. In his statement, he referred to receiving "constant threats" but did not provide any detail. When questioned on this issue by the Refugee Status Branch ("RSB"), the husband indicated that he had received two telephone calls in the months immediately after the murder but then he had received a third call approximately two years prior to coming to New Zealand. He also told the RSB that he had only received one personal visit, this being the 2010 visit by AA. The husband was categorical in his evidence that, apart from these telephone calls and a single visit in 2010, he had received no other threats although there was "tension in his mind the whole time".

[42] However, the wife told the RSB that there had been several calls. When this issue was put to the husband and the eldest son for comment by the RSB in their interview report, the explanation was simply that the wife received more calls because she was the one at home. Before the Tribunal, the husband indicated, for the first time, that he received multiple threatening telephone calls and, for the first time, indicated he had also received multiple personally delivered warnings. When reminded of his evidence before the RSB, the husband's evidence became confused and incomprehensible.

[43] The eldest son also told the Tribunal that, by the time he left Pakistan in 2003, there had already been several calls and he understood that a few more had been received after he left. However, the weight that the Tribunal places on his

evidence is limited by his demonstrated desire to try and help his father by exaggerating matters. The Tribunal also notes that DD also asserted that the appellants received “constant threats”. The Tribunal places little weight on this evidence. She had not been called as a witness (even though she is in New Zealand) to permit the veracity of her evidence to be tested and the weight that can be placed on her evidence is limited. Similarly, the weight that can be placed on the affidavit from AA is also limited.

[44] Further doubt as to the veracity of the claim in this regard arises from the evidence presented as to whether BB, in whose name the FIR was lodged, and the rest of the brother-in-law’s family also received threats for lodging the FIR. The husband explained that, while he understood that following the death of his brother-in-law, life for the brother-in-law’s wife and children necessarily became more difficult, he was not aware of them receiving any specific threats from *Khatm-e-Nabuwwat*. However, this contradicted the wife’s statement where she stated that she was in regular contact with her sister who told her specifically that she and the children had received threats from this group. The husband could not explain why his wife would make this statement alleging specific threats while he remained ignorant of them.

[45] Also, the wife’s account of the specific threats to the family members is not corroborated by the evidence given by CC, as that evidence is recorded in the determination from the United Kingdom Tribunal. Indeed, that decision is notable for the very little emphasis placed on the death of the brother-in-law (CC’s father) at all. Rather, it is described as being only of historical importance. CC did not mention any threats being made to himself or his brother or mother following the death of the father. Furthermore, CC is recorded as saying that he is not aware of any of his relatives ever having any similar problems apart from a maternal uncle who also gave evidence. The husband could not explain why CC would not have mentioned ongoing threats and harassment, of both his own immediate family and relatives such as the husband, given that the wife claims she was in regular contact with CC’s mother.

[46] The husband explained that he was illiterate and of an age where it was difficult to remember with great precision what happened and when it happened. It is accepted that the husband’s memory may be less than perfect and that his recall of events may be affected by his age and background. However, when the husband’s evidence is assessed against the evidence as a whole, the Tribunal is not persuaded that this accounts for the mobility in his evidence and that the

mobility reflects the essentially untrue nature of his claim to have received ongoing threats from *Khatm-e-Nabuwwat*.

[47] In this regard, the Tribunal also observes it has never been convincingly explained as to why the activists associated with *Khatm-e-Nabuwwat* would make these threats to him in relation to the FIR for over a decade. In his statement the husband hinted at a personal dimension in that he claimed that the *Khatm-e-Nabuwwat* was assisted by extended family members who are non-Ahmadi. Yet, when questioned about this by the Tribunal, he retreated from this and asserted that, while some members of the extended family had, under duress, converted to non-Ahmadi forms of Islam, he had only guessed they had been involved.

[48] Similarly, in his written statement he said that a number of *Khatm-e-Nabuwwat* activists had been arrested for the murder but were released two months later. When giving evidence to the Tribunal, he could not recall if anybody had been arrested and when his statement was put to him he said he was just guessing.

[49] Finally, the husband told the Tribunal that the filing of an FIR was something of a formality, and the family had no expectation that the authorities would do anything in response to it and, indeed, as far as he was aware nothing ever happened. If this was the case, there is no compelling reason why *Khatm-e-Nabuwwat* would make such an issue of the FIR as to be making threats against the appellant, a farmer with no involvement in Ahmadi organisations or associations over a decade later.

Conclusion on credibility

[50] The Tribunal accepts that the husband and wife are Ahmadi. It accepts the husband's evidence as regards his Ahmadi religious beliefs, and the importance to him of propagating his faith in his day-to-day interactions with people, albeit in an unobtrusive manner. This is accepted as credible.

[51] It is also accepted that the wife is the sister of EE who was involved in the affairs of the Ahmadi community in an executive capacity and was killed in 1999. This is confirmed in [credible country information filed on appeal]. It is also accepted that, in this capacity, he was awarded the honour of a funeral in Rabwah where senior Ahmadi officials led the service. It is accepted that the husband was there at the funeral as claimed.

[52] However the account of the husband being centrally involved in the filing of the FIR, and to have received any adverse attention from *Khatm-e-Nabuwwat* as a result, is not accepted as credible. There are too many discrepancies in the evidence, both between the accounts given by the husband at various stages in the course of his application, and between what he has said in comparison to what was stated by the wife, by the eldest son, and by CC in the course of his refugee claim in the United Kingdom. The documentary evidence supporting the existence of the FIR has suspicious provenance. When these matters are considered cumulatively, the Tribunal is left in no doubt that this aspect of the claim is not true, designed to boot-strap the claims of elderly Ahmadi facing general discrimination, prejudice and hostility without the benefit of close family support.

Findings of fact

[53] The Tribunal is satisfied that appellants are an elderly Ahmadi couple whose children all reside abroad. The husband is an Ahmadi for whom being Ahmadi lies at the core of his identity. Where he has felt safe to do so he has engaged in conversations with persons who he trusts about matters of faith and has explained to them why he believes the Ahmadi faith represents the true Islamic faith.

[54] The Tribunal also accepts that, since being in New Zealand, the husband has been a member of the Ahmadi community attending the mosque regularly and assisting them from time to time with distribution of flyers aimed at promoting the Ahmadi faith. It further accepts that he has from time to time also engaged in discussions with people at his local community centre about his faith.

[55] In relation to the wife, although no evidence has been filed in relation to her physical, emotional or psychological condition, the Tribunal accepts that she is in a generally poor state of health.

[56] Their claims will be assessed against this background.

The Refugee Convention

[57] 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.”

[58] 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.”

[59] 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

[60] 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].

[61] 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 appellants being persecuted if returned to Pakistan?

[62] The Tribunal has had occasion to consider the situation in Pakistan for Ahmadis on a number of occasions recently. The country information was reviewed in *AM (Pakistan)* [2013] NZIPT 800274, *AP (Pakistan)* [2013] NZIPT 800401-404 and *AV (Pakistan)* NZIPT 800275-276. The position was summarised in *AP (Pakistan)* as follows:

“[85] Conditions for Ahmadis in Pakistan were recently considered by the Tribunal in *AM (Pakistan)* [2013] NZIPT 800274. It is not intended to repeat *in extenso* what was said there, but, in summary, it was noted at [44] that the United States Department of State, *Report on International Religious Freedom: Pakistan* (30 July 2012) records:

‘A 1974 constitutional amendment declared that Ahmadis are non-Muslims. Sections 298(b) and 298(c) of the penal code, commonly referred to as the ‘anti-Ahmadi laws’, prohibit Ahmadis from calling themselves Muslims, referring to their religious beliefs as Islam, preaching or propagating their religious beliefs, inviting others to accept Ahmadi teachings, or insulting the religious feelings of Muslims. The punishment for violation of these provisions is imprisonment for up to three years and a fine. Religious parties oppose any amendments to the constitution affecting its Islamic clauses, especially the ones relating to Ahmadis. Freedom of speech is subject to “reasonable restrictions in the interest of the glory of Islam”, as stipulated in sections 295(a), (b), and (c) of the penal code. The consequences for contravening the country’s blasphemy laws are death for ‘defiling Prophet Muhammad’; life imprisonment for “defiling, damaging, or desecrating the Qur’an”; and 10 years’ imprisonment for “insulting another’s religious feelings”. Under the Anti-Terrorism Act (ATA), any action, including speech, intended to incite religious hatred is punishable by up to seven years’ imprisonment.’

[86] It was also found that the mistreatment of Ahmadis has intensified in recent years, noting the May 2010 attacks against two Ahmadi mosques in Lahore in which 85 people were killed and 150 were injured, for which no investigation has ever been completed. Further attacks against Ahmadi places of worship and the community continued in 2012, often condoned and supervised by police officers.

[87] It was also noted that there are numerous reports of Ahmadi mosque entrances being blocked by Muslim leaders who encourage their followers to hostility and violence against Ahmadis with impunity. Attacks against individuals also appear to have increased. The social space in which the Ahmadi community can retain and practise their beliefs without interference is being seriously eroded. Blasphemy laws are sometimes used as a pretext for the issue of FIRs against Ahmadis and can lead to prolonged detention, interrogation, physical mistreatment and unfair trials (though they are usually overturned on appeal). The targeting of individuals in workplaces, villages and educational facilities is also reported. Dominant among the Sunni Muslims harassing Ahmadis in the Punjab is the Islamist group, who conduct provocative marches through Rabwah, physically attack Ahmadis and generally intimidate the community.”

[63] Little point is served in traversing the country information filed by the appellants in great detail as it supports the general picture painted here of state-sanctioned discrimination against Ahmadis in Pakistan. This contributes to a climate in which Ahmadis are targeted by non-state actors for beatings and killings in which the state does little, if anything, to provide effective protection to Ahmadis from these harms; see for example, Amnesty International *Annual Report 2013: Pakistan* (23 May 2013); Human Rights Watch *World Report 2013: Pakistan* (31 January 2013); and Freedom House *Freedom in the World 2012: Pakistan* (22 August 2012).

[64] However, the Tribunal has found the evidence led in this case regarding a specific risk to the husband from *Khatm-e-Nabuwwat* arising from the involvement of the father in the lodging of a FIR not to be credible. While there can be little doubt that anti-Ahmadi violence is an all too present reality, the Tribunal is not

persuaded that these particular appellants are at risk of being subjected to such violence at a real chance level simply by being Ahmadi.

[65] This leaves the claim relating to the freedom of religion. The right to freedom of religion is contained in Article 18 of the ICCPR and provides as follows:

“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.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

[66] There can be little doubt that, for the husband, his attendance at a mosque and his ability to enter into discussions about religion are matters which lie at the heart of his desire to manifest his religion. It is fundamental to this freedom to manifest religion that persons for whom it is important be able to express their adherence to religion in conversations without the fear of violence or harm. Yet the country information makes clear that, should the husband freely manifest his beliefs in these ways in Pakistan, he faces significant risks. Blasphemy charges may be brought against him or his openness would attract the ire and attention of activists from *Khatm-e-Nabuwat* or other groups which are opposed to Ahmadis declaring themselves to be Muslims. The appellant is not free to manifest his beliefs in ways he keenly feels lie at the core of his identity, without exposing himself to a risk of serious harm. In this regard his position may be distinguished from the appellant in *AV (Pakistan)*.

[67] For these reasons the Tribunal is satisfied that, should the appellant return to Pakistan, he would, all things being equal, wish to manifest his beliefs as he is doing here. The Tribunal is satisfied that, for this individual, the need to manifest his beliefs in these ways goes to the core of his right to religion – for him it is not simply an activity at the margins of the right. See the discussion in *Refugee Appeal No 74665 (7 July 2004)*, particularly at [113]-[115]. However, to do so would carry significant risk to him of prosecution for blasphemy or risk of physical harm. The restrictions he faces can hardly be said to be necessary to protect

public safety, order, health, or morals or the fundamental rights and freedoms of others.

[68] He cannot be required to exercise discretion in order to avoid these serious harms that would be visited on him from choosing to express his fundamental belief that his version of Islam is not only a version of Islam but the true version of Islam.

[69] For these reasons the Tribunal is satisfied that the husband is entitled to be recognised as a refugee.

Application to the Wife

[70] The Tribunal has not heard from the wife. It has no evidence before it to satisfy itself that being Ahmadi is something which would cause her to manifest her religious belief in a way which will expose her to serious harm. Rather, the evidence was that she was a woman from an Ahmadi family but who nevertheless was someone who restricted her life to very much home duties. She herself has received no individual threats, and the risk of her suffering serious harm arising from general anti-Ahmadi prejudice does not rise past the real chance threshold. For these reasons the Tribunal is satisfied that the wife is not entitled to be recognised as a refugee.

Is there a Convention reason for the persecution?

[71] The predicament for the husband arises from his being an Ahmadi which falls squarely within the Convention ground of religion. It is not necessary to address this question as regards the wife.

Conclusion on claim to refugee status

[72] For the above reasons, the Tribunal is satisfied the husband is entitled to be recognised as a refugee under section 129 of the Act. The wife is not, however, entitled to be recognised as a refugee.

The Convention Against Torture

[73] 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.”

[74] Section 130(5) of the Act provides that torture has the same meaning as in the Convention Against Torture, Article 1(1) of which states that torture is:

“... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

[75] The husband has been found to be a Convention refugee. The recognition of the husband as a refugee means that he 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 husband would be in danger of being subjected to torture in Pakistan.

[76] As for the wife, she does not rely on any evidence under this limb beyond that which she has relied on in support of his refugee claim. For the reasons already given, the Tribunal finds that there are no substantial grounds for believing that she would be in danger of being subjected to torture if deported from New Zealand. Accordingly, the wife also is not a protected person under section 130 of the Act.

The ICCPR

[77] 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.”

Assessment of the Claim under the ICCPR

[78] By virtue of section 131(5):

“(a) treatment inherent in or incidental to lawful sanctions is not to be treated as arbitrary deprivation of life or cruel treatment, unless the sanctions are imposed in disregard of accepted international standards:

- (b) the impact on the person of the inability of a country to provide health or medical care, or health or medical care of a particular type or quality, is not to be treated as arbitrary deprivation of life or cruel treatment.”

Conclusion on Claim under ICCPR

[79] In respect of the claim under section 131, again, because the husband is recognised as a refugee, he 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 husband being deported from this country. Therefore, there are no substantial grounds for believing that the husband is in danger of being subjected to arbitrary deprivation of life or to cruel, inhuman or degrading treatment or punishment in Pakistan. Accordingly, the husband is not a person who requires recognition as a protected person under the ICCPR.

[80] As for the wife, she has adduced no evidence or information to establish the claim apart from that which she has raised in relation to her refugee claim. For the reasons explained above in relation to her refugee claim, there are no substantial grounds for believing the wife is in danger of being arbitrarily deprived of her life in Pakistan.

[81] As regard the issue of her being in danger of suffering cruel treatment as defined under the Act if returned to Pakistan, the Tribunal finds that suffering such religious discrimination would be distressing to Ahmadis. However, even taking into account the wife’s age and general poor state of health, there is no evidence before the Tribunal to establish that such discrimination and hostility as she may encounter as an Ahmadi reaches the threshold required to constitute degrading treatment or any other statutory component of cruel treatment. As to the need for such harm to be serious, see the discussion in *AC (Syria)* [2011] NZIPT 800035, at [82].

CONCLUSION

[82] For the foregoing reasons, the Tribunal finds that the husband:

- (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.

[83] For the foregoing reasons, the Tribunal finds that the wife:

- (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.

[84] The appeal of the husband is allowed. The wife's appeal is dismissed.

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