

AT AUCKLAND

Appellant:	AM (Pakistan)
Before:	B A Dingle (Member)
Counsel for the Appellant:	R Chambers
Counsel for the Respondent:	No Appearance
Date of Hearing:	12 September 2012
Date of Decision:	25 January 2013

DECISION

INTRODUCTION

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

[2] The appellant claims that he is at risk of being persecuted in Pakistan because of his Ahmadi faith. In the context of past events and increasing intolerance towards religious minorities in Pakistan generally, the appellant says that he will be targeted for severe discrimination and harassment, physical harm or false criminal charges. Further, he claims that his situation will be exacerbated by family connections with Ahmadi leaders. For the reasons given below, the Tribunal finds that the appellant is entitled to be recognised as a refugee pursuant to section 129 of the Immigration Act 2009 (“the Act”).

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

THE APPELLANT'S CASE

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

[5] In the late 1970s, the appellant was born in Z village into a family of the Ahmadi faith. He has one brother and three sisters.

[6] As a result of the 1974 anti-Ahmadi violence, the appellant's paternal uncles migrated to Y town which contained a larger community of Ahmadi. The appellant's own family remained in Z village to look after the extended family's land and properties. The appellant's family were marginalised and harassed by the other village residents because of their faith. The appellant was not able to attend the local government school in Z village for the same reason and attended a school outside the village. He was constantly teased and called "*Qadiani*" (a pejorative term used by Sunni Muslims against Ahmadi) by the teachers. He and his sisters were also harassed by other Muslim pupils who had been encouraged to do so by their Islamic studies teacher.

[7] In 1987, the appellant's eldest brother, AA, was the subject of a complaint by a local *Mullah* that he had recorded his religion as Muslim on a college application form. The brother was arrested, physically mistreated and imprisoned as a result.

[8] In the late 1980s, the appellant and his family moved to Rabwah, the headquarters for the Ahmadi faith in Pakistan. Soon after they left, the family house in Z village was burned down.

[9] In 1991, the appellant's sister became engaged to the nephew of a high-ranking Ahmadi. The appellant's mother's relatives, who were not Ahmadi, were outraged by this proposed marriage and threatened to kill all of her children if the marriage went ahead. Following the marriage, all of the family's houses in Z village were bulldozed. Their farmland was occupied by workers at the direction of local *Mullahs*. When the appellant's father and brother sought protection through legal proceedings, they were physically attacked outside the court.

[10] The appellant completed his secondary school and college education in Y town. During his secondary school years, he also worked as a secretary for the National Organisation of Ahmadi Children and for the Ahmadi Youth organisation, both of which undertook community work. The appellant was unable to study at the government college of his choice because of his Ahmadi faith and so he

enrolled at a private university where he obtained a bachelor's degree in accountancy.

[11] In 1998, the appellant's brother was recognised as a refugee in Australia because he had been arrested and detained under Pakistan's blasphemy laws for stating that his religion was Islam.

[12] Between 2000 and 2005, the appellant attended a university in a European country and graduated with a Bachelor of Science. The appellant also completed master's level courses with various international accountancy associations and with the Pakistan Institute of Public Finance Accountants.

[13] In early 2005, the appellant started work at a bank in an accountancy position. During an employment review process, he recorded his address as Y town, although he had previously told his employers that he was from Z village. The address of Y town indicated that he was of the Ahmadi faith. When his workmates realised, they were angry that he had not advised them previously and began harassing him. They separated his cutlery and work area from theirs because they said he was contaminated and a bad omen for the workplace. In late 2005, the appellant's new boss was told about the appellant's religion and, following this, the appellant experienced several obstructions to his career progression.

[14] In early 2007, the appellant took work at another bank. After a few months, he was called into the chief financial officer's room and asked about his background. The appellant talked about his education and work experience. He also said that he was an Ahmadi, because he thought it would be better than hiding it as he had attempted to do at his last place of employment. The chief financial officer's response was to become silent, but nothing more happened for about three days. Then the appellant was asked to see a senior human resources officer who told him that his services were no longer required and that he could either resign or be dismissed. The officer then told the appellant that a previous employee had been severely beaten when his workmates discovered he was an Ahmadi.

[15] Soon after that, the appellant took up work with a third bank, but this time decided not to submit his identity card or mention that he was an Ahmadi. However, he found it difficult to obtain his release letters from his previous employers, which he needed to confirm his new employment. He therefore decided to look for other work.

[16] In March 2008, the appellant took up work with a government department. In late 2008, a work colleague (BB) began to suspect that the appellant was Ahmadi. Over the course of the next year, BB befriended the appellant and asked many questions about the Ahmadi faith.

[17] In late November 2008, the appellant married CC.

[18] In 2009, the appellant's mother travelled to Australia and was granted a protection visa on grounds related to her Ahmadi faith. The appellant's father was granted an Australian humanitarian visa in 2010.

[19] In mid-2010, the appellant's daughter was born.

[20] Later in 2010, the appellant began having serious difficulties at work. The problems started in relation to an audit project in which the appellant had been involved. He and his audit team had discovered an alleged fraud between other auditors in his department and an external agency. After the investigation began into some of his colleagues, the appellant was regularly threatened during telephone calls.

[21] In approximately September 2010, one of the auditors alleged to have committed fraud tried to push the appellant into a lift shaft that was shut down for repairs. The appellant complained about the incident to his superiors, but no action was ever taken.

[22] Later in 2010, BB told the appellant that he wished to convert to the Ahmadi faith. The appellant warned him not to talk about his conversion for fear that news of it would endanger both of them. However, BB did disclose his conversion to some workmates.

[23] In late 2010, a group of five men, comprising departmental *Mullahs* and others, came to the appellant's office. He was accused of preaching and converting Muslims. When he denied trying to convert others, the *Mullahs* threatened the appellant and one of them tried to hit him. The appellant assumed the incident was related to BB. Following that, the appellant's work environment became increasingly hostile. Slogans and banners appeared on the walls at work denouncing the Ahmadi faith, and the appellant was verbally harassed. He did not complain to his superiors because he did not believe action would be taken.

[24] In early 2011, the appellant was attacked as he arrived home in a taxi. Three men were standing outside the gate of his house and they looked like

Moulvi (religious leaders). They dragged him out of the taxi and started to hit and kick him, shouting abuse. Nobody came to the appellant's assistance and the beating lasted until his landlady came down and opened the gate to the house. The attackers then released the appellant and he escaped inside. The appellant had suffered severe bruising and other injuries, but did not seek medical attention.

[25] The day following the attack, the appellants' landlady asked him if he was Ahmadi. When he confirmed it, she requested that he leave because she did not want non-Muslim tenants. At this point, the appellant determined that he should leave Pakistan because his life may be in real danger. Through friends, he contacted an agent named DD who made arrangements on the appellant's behalf for him to travel to New Zealand.

[26] After staying for a short time with friends, the appellant sent his wife and child to stay at her mother's house in another town. The appellant moved around and stayed with different friends and one of his sisters. He tried to avoid going to the office as much as he could and worked remotely. However, one day at the end of February 2011, he was in his office when his personal assistant rushed in and told him to leave immediately. The assistant had seen people at the front entrance of the building who were carrying weapons and making enquiries about the appellant. The appellant saw that his assistant was terrified and he made his way to an old record room at the rear of his part of the building. He bolted the door from the inside and it was also locked from the outside. The appellant remained in the room for some hours. While he was in there, he heard shouting and furniture breaking. Some hours later, the assistant came back and let the appellant out. He saw that the sofa, glass and other items in his office had been broken.

[27] The appellant did not return to the office from that date. In late March 2011, he applied for a transfer from his office to one in a different city (W city). The transfer was granted. However, when he appeared for work, the director general of the office was not there and another person told him to go to the employees' union office immediately. The appellant did not belong to the employees' union and felt suspicious about why he was being asked to go there and so he left the office. He tried to make other appointments with the director general but because he was never able to make direct contact with him the appellant did not officially take up a position at the new office.

[28] In June 2011, the appellant was attacked at the house he was staying at in W city. He does not know how he was located there, but assumes it was through

the contact details he left with his employer. On the day in question, people stood outside the house he was staying at, threw stones at the windows and banged on the street-side door. The attackers then broke the gate and were shouting about an infidel being in the house. After unsuccessful attempts to break the door, the attackers left the house. The owner of the house then asked the appellant to leave, in fear that his presence would cause more problems for the family. The appellant rang a friend to pick him up, but realised that he needed to leave Pakistan. He contacted the agent, DD, and asked him to arrange a flight as soon as possible. The appellant travelled to farewell his wife and child and then stayed with a friend for a few days before he departed Pakistan through Islamabad airport.

[29] Before he left, the appellant talked with a friend from the audit office who advised him that the departmental *Mullahs* had alleged that the appellant was attempting to convert Muslims in government departments. The friend told the appellant that his life was in danger and that he should depart Pakistan.

[30] In recent years, the appellant's two sisters, who are married to close relatives of past and present high-ranking Ahmadi, have also faced increasing hostility and threats. The appellant understands that both of his brothers-in-law (who are directly involved in the Ahmadi organisation) have received threats, including that their children will be kidnapped. The families take various security precautions in relation to the children attending school and do not leave the house on days when anti-Ahmadi conferences or other protests are taking place in their home city. They fear for their security but because of their intimate involvement with the Ahmadi organisation they would find it difficult to leave Pakistan.

[31] The appellant says that if he returned to Pakistan, his life would be in danger because his identity as an Ahmadi will eventually become known by his workmates. This is because his passport names him as an Ahmadi and his identity card gives his place of residence as Rabwah, a fact which also indicates his faith. Because of the danger inherent in expressing one's Ahmadi faith, the appellant would be unable to freely practise his faith or participate in the Ahmadi religious community in any meaningful way.

Material and Submissions Received

[32] On 7 September 2012 counsel provided opening written submissions, country information and a bundle of documents (marked A to J) produced by the

appellant. Further documents and country information were provided on 12 September, 19 September, 25 October and 10 December 2012.

ASSESSMENT

[33] 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).

[34] 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

[35] The Tribunal accepts the appellant’s account of his past experiences in Pakistan. His detailed evidence to the Tribunal was consistent both with the evidence he had previously given, the documents he provided on appeal (including receipts from the agent, affidavits from associates in Pakistan and employment documents) and the general situation summarised in the country information.

[36] The appellant is a married man with one young child whose wife and child remain in Pakistan. He is a young professional who has encountered difficulties in all of his positions of employment following the disclosure or discovery that he is Ahmadi. In the most recent incident, he was accused by public service *Mullahs* of blasphemy and trying to convert Muslims to the Ahmadi faith. As a result he suffered harassment, verbal threats, serious physical attacks and was pursued when he relocated to a new city. Two of his sisters live in Pakistan and are married to Ahmadi adherents who are close relatives to the Ahmadi leader (past

and present). The brothers-in-law also work for the Ahmadi organisation and they and their families have difficulties for that reason.

The Refugee Convention

[37] 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.”

[38] 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.”

[39] 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

[40] 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].

[41] 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].

[42] Before considering the specific predicament of the appellant, a summary of relevant country information is provided.

Country information

[43] The Ahmadi faith was officially established in 1889 in India as a reform movement within Islam. Ahmadi consider themselves Muslims but hold some beliefs that are different from mainstream Sunni interpretations of Islam. Sunni Muslims consider the interpretations to be blasphemous. In Pakistan, in 1974, Ahmadis were declared to be a non-Muslim minority. Since then, they have been subject to severe discrimination and harassment within an atmosphere of religious intolerance, community violence and impunity for perpetrators. The headquarters of the Ahmadi community is in Rabwah in the Punjab Province where Ahmadi represent over 97 per cent of the population.

[44] Summarising the legal situation for Ahmadis, the United States Department of State, *2011 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.”

[45] Country information establishes that the actual mistreatment faced by the Ahmadi community has significantly intensified in recent years. Particularly notable are the attacks in May 2010 against two Ahmadi mosques in Lahore in which 85 people were killed and at least 150 were injured. Despite condemnation of the attacks by the United Nations and the National Assembly of Pakistan, no comprehensive state or police investigation of the attacks has yet been completed. Further attacks against Ahmadi places of worship and community have continued in 2012. At times, these attacks are actively condoned and supervised by police officers; see: Zofeen Ebrahim “Ahmadis Lose Hope This Ramadan” *Inter Press Service* (6 August 2012). There are numerous reports of Ahmadi mosque

entrances being blocked by Sunni Muslim leaders who encourage their followers to hostility and violence against Ahmadi and are not held to account for their actions or even reprimanded by the authorities. See, for example, “Persecution of Ahmadiyya Muslim Community, Annual Report 2011” (31 December 2011) at www.thepersecution.org.

[46] In addition to targeted attacks against places of worship, attacks against individuals also appear to have increased, including against those who are not Ahmadi but who speak in support of religious minorities. Two high-profile assassinations in 2011 were those of the Punjab Governor, Salman Taseer, who was killed by his bodyguard for publicly criticising the blasphemy laws and Federal Minister for Minorities, Shahbaz Bhatti, who was shot and killed in Islamabad, having also been accused of blasphemy; see United States Department of State, *Report on International Religious Freedom: Pakistan* (30 July 2012). Many other attacks against less high-profile Ahmadi are recorded in the country information: See, for example, “Persecution of Ahmadiyya Muslim Community, Annual Report 2011”(31 December 2011).

[47] Against the backdrop of the growing ‘Islamisation’ of many sectors in Pakistan, the social space in which the Ahmadi community can retain and practise their beliefs without interference is being seriously eroded. The use of blasphemy laws as a pretext for the issue of First Information Reports (the first step in the laying of criminal charges) against Ahmadis is becoming commonplace and is reported to lead to prolonged detention, interrogation and torture, unfair trials and physical mistreatment. The targeting of individuals within workplaces, villages and educational facilities is also reported. Country information indicates that once an individual has been identified or targeted, harassment is likely to continue indefinitely. A website detailing incidents against Ahmadi (which is internationally accepted to be an accurate record), “Persecution of Ahmadiyya Muslim Community, noted in its Annual Report 2011”(31 December 2011) that:

“In Faisalabad, the Aalami Majlis Tahafuz Khatme Nabuwat published pamphlets in which they gave the fatwa of Ahmadis being *Wajib-ul-Qatl* (who must be killed as a religious duty). They published addresses of approximately 50 well-known Ahmadis in the same pamphlet. The authorities took little action against the publishers of this call for massacre despite the fact that they identified themselves on the cover and provided contact details. 2011 also saw a surge in the intensity of the mulla-led hate campaign against Ahmadis. It came in the form of pamphlets, posters, stickers, sermons, rallies, news and op-eds. This was a countrywide campaign which reached small towns and even remote villages. In the mullas’ version of Sharia, Ahmadis must be killed and to do so would be a pious act. The Aalami Majlis Tahafuz Khatme Nabuwat is openly involved in this incitement to violence and calls it Jihad. The result: murders, assaults, kidnappings, false criminal charges, desecration of mosques, numerous incidents of harassment and

intimidation, and a pervasive sense of insecurity and great concern among Ahmadis in general.”

[48] The increasing harassment of the Ahmadi community was also highlighted in the UNHCR World Report 2012: Pakistan which states:

“Pakistan had a disastrous year in 2011, with increasing attacks on civilians by militant groups, skyrocketing food and fuel prices, and the assumption of near-total control of foreign and security policy by a military that operated with complete impunity. Religious minorities faced unprecedented insecurity and persecution. Freedom of belief and expression came under severe threat as Islamist militant groups murdered Punjab Governor Salmaan Taseer and Federal Minorities’ Minister Shahbaz Bhatti over their public support for amending the country’s often abused blasphemy laws. Pakistan’s elected government notably failed to provide protection to those threatened by extremists, or to hold the extremists accountable.

....

Members of the Ahmadi religious community also continue to be a major target for blasphemy prosecutions and are subjected to specific anti-Ahmadi laws across Pakistan. They also face increasing social discrimination, as illustrated by the October expulsion of 10 students from a school in Hafizabad, Punjab province, for being Ahmadi.”

[49] There is no meaningful or effective state protection against the violence and harassment suffered by Ahmadi. As noted above, the legislative marginalisation of Ahmadi as a non-Muslim minority and the criminal offences aimed at repressing the expression of the Ahmadi faith are all products of the state itself. Furthermore, the state response to incidents of violence and harassment varies from official indifference to tacit support for the perpetrators of the violence. The Asian Human Rights Commission reported on 12 March 2012 that:

“The situation in Pakistan grows worse for the religious minority groups on a daily basis.

The security and law and order situation has become so chaotic that the authorities seem to have no control over providing protection to these minorities. The fundamentalist Muslim leaders (Mullahs) have a free rein and relentlessly exploit the blasphemy laws for their personal interests and these laws were legislated to debilitate and undermine universal human rights. Members of all faiths have been victims of these merciless violations of human rights including Christians, Hindus and even Shiites. However, the main focus of this brutality is the Ahmadi and the killing of Ahmadis is not considered a crime by the state and the law of the land.”

[50] As to the extent of reported attacks against Ahmadis, a recent United Kingdom decision of the Upper Tribunal of the Asylum and Immigration Tribunal, *MN and others (Ahmadis - country conditions - risk) Pakistan Pakistan v. the Secretary of State for the Home Department*, CG [2012] UKUT 00389(IAC) (13 November 2012) made the following comment:

“In the context of the number of incidents recorded in the past 24 years, it may be thought that the risk to Ahmadis is not as great as has been urged in these appeals. We accept however the explanation in the submissions from the

appellants' representatives that this is in part due to the way in which Ahmadis in general deal with their difficulties in Pakistan by self denial, civil obedience and by keeping a low profile. Although some of the incidents reported on *www.thepersecution.org* and its sister site might suggest otherwise, on the whole, it appears to have been a successful approach. With this moderation of the ways in which Ahmadis express and practise their faith including its propagation, we accept that there have been fewer prosecutions and complaints made than might otherwise have been the case. We accept the evidence of Dr W about the increasing Islamisation in Pakistan which undoubtedly would heighten the risks for Ahmadis who chose to flout the law and we accept that the need to keep a low profile is likely to have increased."

[51] An abundance of sources (including those already cited) indicate that increasing economic hardship in Pakistan, a growing sectarian divide between religious moderates and extremists and an unwillingness of the state authorities to curb Sunni religious leaders is leading to increasing risk of harm for religious minorities including Christians, Shi'a Muslims and Ahmadi. Much of the country information indicates that the group at the most acute risk in Pakistan is the Ahmadi. There is no realistic prospect that the situation will resolve in the foreseeable future.

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

[52] Against this background, the Tribunal finds that, in the particular circumstances of the appellant's case, he is at risk of serious harm in the form of systemic and severe discrimination and serious physical harm to the real chance threshold.

[53] While it is well-established that the occurrence of past persecution does not, on its own, establish that an individual is at risk of being persecuted in the future, past events can be highly relevant in any assessment of the predicament to which an individual will return. This is particularly so where the events were relatively recent and the country conditions and personal characteristics of the individual remain comparable.

[54] The appellant has been identified as an Ahmadi in three of his past employment positions, with negative consequences befalling him each time it has been discovered. As a result of the most recent discovery, he was physically attacked on multiple occasions, threatened and pursued to another city. Information received since then indicates that he has been accused by *Mullahs* within the public service of blasphemy, an offence which carries serious consequences should he ever be formally charged and convicted of it.

[55] It is likely that, if the appellant returned to Pakistan and took up further employment, he would again be identified as an Ahmadi. His passport identifies him as Ahmadi and his identity card gives his residence as Rabwah – which, in real terms, also identifies an individual as Ahmadi. Once identified, there is a real chance that the appellant will be threatened, severely harassed, physically attacked or have contrived criminal charges brought against him.

[56] It is accepted that, even outside the workplace, the appellant is unable to openly acknowledge his faith or participate in Ahmadi community activities without putting his safety at risk. In the context of increasing attacks against Ahmadi mosques and those who try to attend them, the Tribunal finds that the appellant could not freely practise his Ahmadi faith in any meaningful way – a breach at the core of his fundamental right to manifest his religion (Article 18 ICCPR).

[57] The Tribunal also accepts that the appellant's predicament is exacerbated by the fact that he is related through marriage to leaders of the Ahmadi faith. Various members of the family including his brother, cousins and uncles have fled Pakistan in fear of their lives on account of their faith and their known allegiance to the community. If his association with high-profile Ahmadi families is discovered by anti-Ahmadi groups or individuals, it will likely lead to heightened negative attention. It also means that he cannot seek the practical support of his remaining family in Pakistan (his two sisters and their husbands) because they too are currently having difficulties on account of their faith.

Is there a Convention reason for the persecution?

[58] The serious harm and lack of state protection faced by the appellant is by reason of his Ahmadi faith. The relevant Convention ground is therefore religion.

Conclusion on Claim to Refugee Status

[59] For the foregoing reasons, the appellant is recognised as a refugee within the meaning of Article 1A(2) of the Refugee Convention. Pursuant to section 129 of the Act, refugee status is granted to the appellant.

The Convention Against Torture

[60] 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.”

Assessment of the Claim under Convention Against Torture

[61] 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.”

[62] The appellant has been recognised as refugee (para [59] above). In accordance with New Zealand’s obligations under the Refugee Convention and by virtue of section 129(2) of the Act (the exceptions to which do not apply), he cannot be deported from New Zealand. Accordingly, the question whether there are substantial grounds for believing that he would be in danger of being subjected to torture if deported from New Zealand does not arise. He is not a person requiring protection under the Convention Against Torture. He is not a protected person within the meaning of section 130(1) of the Act.

The ICCPR

[63] 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

[64] For the reasons already given, the appellant cannot be deported from New Zealand. Accordingly, the question whether there are substantial grounds for believing that he would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand does not arise. The appellant is not a person requiring protection under the ICCPR. He is not a protected

person within the meaning of section 131(1) of the Act.

CONCLUSION

[65] 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.

[66] The appeal is allowed.

"B. A. Dingle"
B A Dingle
Member

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B A Dingle
Member