

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76346

AT AUCKLAND

<u>Before:</u>	A R Mackey (Chairman)
<u>Counsel for the Appellant:</u>	C Curtis
<u>Appearing for the Department of Labour:</u>	No appearance
<u>Date of Hearing:</u>	13 July 2009
<u>Date of Decision:</u>	31 August 2009

DECISION

[1] This is an appeal against a decision 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 appellant, a national of Pakistan, of the Muslim faith.

INTRODUCTION

[2] The appellant is in his mid-40s. He is a married man with three children. His wife and children remain in Pakistan. He arrived in this country on a false XX passport on 5 June 2008. A Confirmation of Claim for Refugee Status in New Zealand, dated 19 August 2008, was lodged with the RSB on 28 August 2008. He was interviewed by the RSB on 13 and 14 October 2008 and 20 January 2009. The RSB declined his application on 30 April 2009. The appellant then appealed to this Authority. The first hearing date scheduled for the appellant did not proceed because of health problems. A later date also did not proceed when there were potential problems with another interpreter.

[3] The appellant predicts being persecuted on return to Pakistan by members of the Taliban, or fundamental Islamists who support them, because of previous political and/or religious attitudes expressed by him and other members of his

family. The essential issues to be determined are those in relation to the appellant's credibility, then, on the facts as found, the well-foundedness of his claim and finally whether he has an internal protection alternative in other parts of Pakistan away from his home district.

[4] What follows is an outline of the evidence the appellant gave in support of his appeal and the evidence given by a witness, AA. The relevant issues are then identified and an assessment based on the facts as found follows.

THE APPELLANT'S CASE

[5] The appellant was born in the village of ZZ, Pakistan. ZZ is in the North West Frontier Province (NWF) and is a town with a population of some 4,000-5,000 people. The appellant is the eldest of three sons born to his father, SS, who was killed in an ambush by Taliban supporters in June 2007. SS was the tribal leader of the village, a position held by the appellant's family for many generations. SS was a long-term member of the Pakistan People's Party (PPP) active in the affairs of the PPP in the local and regional area, although he never was elected or appointed to any official office.

[6] The appellant has two younger brothers, RR and NN, both of whom remain in Pakistan.

[7] The appellant's father became village leader when the appellant was very young following the death of his grandfather, who had also held the traditional position. The role involved SS taking charge of local issues that affected people in the village and surrounding areas, such as water supply, land use, ownership disputes and many other local government issues. A core element of the appellant's claim relates to his position that, as the eldest son, he is obligated to undertake the traditional position of leadership of the village. Because of growing conflict and the expanding power of the Taliban in the NWF and, in particular, the areas of Swat and ZZ, this has put the appellant, as a village leader who does not agree with the objectives of the Taliban, in a position of substantial risk.

[8] The appellant completed schooling in his local area at the age of approximately 15 years, having completed about nine years of schooling.

[9] He then undertook an apprenticeship as a toolmaker in an engineering business in YY, a town some 100 kilometres from his own village. After

completing the apprenticeship in 1985, he returned to his home town and opened an engineering workshop in his own right. This was a reasonably successful business in the local context.

[10] The appellant did not assume an active political role in the PPP, apart from supporting his father.

[11] In the early 1990s, the appellant became aware of increasing problems between Islamic fundamentalists and other members of Pashtu communities in Afghanistan. This unrest and associated violence was gradually spreading into Pakistan, particularly to Pakistanis of the same Pashtu tribe to which he and his family belonged. After the withdrawal of the Russians from Afghanistan, the level of unrest and fighting in Afghanistan increased and spread to areas across the border, including the appellant's home district. As a result of this growing conflict, the appellant considered he would be better to go and live elsewhere. He had noted that a lot of people from his local area were leaving and going to live and work in XX, particularly because it was a fellow Muslim country. Accordingly, in 1991 he obtained a valid Pakistani passport and travelled to a town in XX where a number of people from his home district had already relocated. He became a trader in carpets and clothing, working on a door-to-door selling basis. He purchased the carpets locally and then on-sold them, mainly in the PP region of XX. He had taken sufficient funds for working capital with him and was also able to obtain loans, when necessary, from other members of the Pakistani community in XX. He explained there was quite a sizeable community of Pakistanis and they also tended to share rented accommodation.

[12] The appellant returned to Pakistan in 1994 for a period of approximately 16 months and then again made his way back to XX. He stayed there for another two years before again returning home in 1997. Whilst he was away, his engineering shop had been shut down. However, on return he was able to open the same business and use the same machinery. During one of his periods at home, he married. His wife was from a village some 11 to 12 kilometres away. In 1998, he again returned to Pakistan to attend the funeral of his maternal grandfather.

[13] During the time he was in XX, he constantly encountered problems through not having correct documentation and, as a Pakistani, he was unable to get any permanent form of residence status in XX. During his second period of time in XX, he was able to obtain a false XX identity card and then ultimately in 1997, using that identity card, was able to purchase a false XX passport from an agent. He

used the identity HH. The appellant was able to resume his life in XX under this identity on many occasions and indeed, continued to use that name until he ultimately came to New Zealand in 2008 on a false XX passport in that name.

[14] Whilst in XX in 2000, and following discussions with some Pakistani friends who were travelling to Europe, the appellant decided that he would like to travel to Europe and obtain some form of permanent status in the United Kingdom. At the end of July 2000, using the XX passport he had obtained, he and two colleagues from XX travelled to The Netherlands. After stopping one or two nights there, he and his colleagues moved on to Switzerland and France, staying a short time. They then caught a bus and ferry to Dover in the United Kingdom. His two friends, BB and CC were both XX nationals who were really travelling to the United Kingdom and Europe predominantly as tourists. The appellant withheld his real intentions of remaining in the United Kingdom from his two colleagues. CC went to stay with a cousin in Manchester; the appellant and BB went to Birmingham.

[15] After two nights, BB left the appellant and flew back to XX, where he ran a petrol station business. The appellant decided he would stay as he had a six-month entry visa on his XX passport. He soon found work as a labourer in the building industry and was able to get shared accommodation with other Pakistani or Afghani migrants. He remained in the United Kingdom for some three years and three months. During that time, he applied for refugee status, adopting a false name. He claimed that he was an Afghan national who was in fear of the Taliban in Afghanistan. He did not use his own name or nationality as he was advised by a solicitor in Birmingham that Afghani cases, at that time, were being approved whereas Pakistani cases were not.

[16] In his interview with the Home Office in the United Kingdom, he found that he was unable to answer specific questions. He was refused refugee status through lack of credibility. His solicitor then appealed the decision on his behalf. When the matter came before an immigration adjudicator in the Birmingham area, the Home Office findings were upheld and his appeal was refused. Subsequently he returned to Pakistan, taking with him funds that he had accumulated during his time in the United Kingdom.

[17] He returned to ZZ in 2003 and found that the situation in his village had changed significantly. He noted that Islamic law was largely enforced in his region and that the Taliban were now a forceful presence. His father, as a person opposed to the infiltration of the Taliban into so many aspects of life, was actively

taking steps to minimise their impact and to see what steps could be taken to dissuade young people joining or supporting the Taliban.

[18] During this time, the appellant started to take some political interest by attending PPP meetings in his region and assisting his father to a limited extent. He also attended informal local meetings at the family home.

[19] The appellant noted that the Taliban were gradually encroaching on the life of ordinary people in his district. Although he was stopped by Taliban from time to time, he was never directly harassed. He decided however that he would leave ZZ again and return to XX. In order to do this, he obtained another valid Pakistani passport from the office in Swat and departed in 2005.

[20] He discussed leaving Pakistan with his brothers and his father, and they agreed and accepted his decision to go back to XX as they did not see the situation improving.

[21] The appellant's first brother, RR, ran a homeopathic clinic in ZZ. He was actively involved in that and did not wish to leave the country. Like the appellant, he did not have a strong, active interest in politics. The appellant's younger brother, NN, had become a police officer some 80 to 90 kilometres away from their home town. He was actively pursuing his career in the police force and had no intention of returning to ZZ.

[22] The appellant remained in XX from 2005 until late 2007. During this time, he had many telephone calls with his family who kept him abreast of what was going on. He would ring them approximately every two weeks. However, in these regular communications, the appellant was not told that on 25 June 2007 his father had been shot by the Taliban when the vehicle in which he was travelling with a friend was attacked by Taliban gunfire while attempting to pass through a mountainous gorge some 15 kilometres from ZZ.

[23] In November 2007, during a telephone conversation with his young daughter, he was accidentally told by her of the death of his father (her grandfather). The appellant became annoyed by this and spoke to his brother, RR, immediately, asking why he had not been informed of the shooting. RR then explained the whole incident to him and stated that he felt he should not tell the appellant of the incident as he thought someone else would advise him of it. The appellant was then told that his father was travelling home from a regional meeting of local leaders where they were discussing how to combat the growing influence of the

Taliban. That meeting had been held in a town in a neighbouring area. After the leaders had discussed how they could stop the encroaching influence of the Taliban, and decided that they should set up a neighbourhood watch style of surveillance, working in association with the local superintendent of police (SP), his father then left to travel back to ZZ through the dangerous G Gorge. When his father and a friend had driven some short way into the gorge, they were shot at by a group, assumed to be Taliban. During this incident, his father had been killed and the friend seriously injured.

[24] During the telephone conversations with RR, the appellant also learned that members of the village were pressuring the family to have the appellant return and take up the traditional leadership duties that his father had pursued. RR himself had refused to undertake this position and his younger brother also refused because he lived some distance away and was pursuing a separate career.

[25] The appellant was unable to return immediately as he did not have a passport. He had destroyed his valid Pakistani passport shortly after his arrival in XX some two years earlier as he considered there was no purpose in having it and he had no intention using it. The appellant thus found that he could not return home promptly to honour his father and to attend to the affairs that had arisen because of his father's death. He decided that rather than try to obtain a new Pakistani passport, he would pay an agent in XX to obtain another false XX passport, in the same name that he had used previously and which coincided with the identity card that he continued to hold in that name. It took approximately one month for him to obtain a further false XX passport. He also considered that it was better to have a XX passport as this allowed travel to other countries and was generally a good passport.

[26] On 24 December 2007, he obtained a Pakistani visa in the false XX passport and then flew to Peshawar via Karachi. He was met by his brother, RR, and an uncle who then travelled with him back to their home village.

[27] On his return, a further commemoration service for his father was held over a period of some three to four days. The appellant said he was then pressured by local people to take on the role of being the village leader and, in particular, was approached by the SP. He decided that he should take up the role and try to assist the local people. He started attending some regular weekly/fortnightly meetings with the local community. During that time, there was considerable discussion of the growing encroachment on life by the Taliban. The appellant

himself spoke out against the Taliban.

[28] In March 2008, the appellant with his brother, RR, and two other elders from ZZ, attended a meeting led by the village leader, KK, in the village of EE, some 11 kilometres away from ZZ. The meeting was to discuss how to stop Pakistani youth being attracted to the Taliban. It was resolved that they should go back to their villages and urge their people to refrain from joining the Taliban and to pass this on by word of mouth to as many households as possible.

[29] On his return, although at first busy with business activities, the appellant and the other elders spread the word to be wary of “foreigners” in the district and to report any such people and to be constantly vigilant against Taliban sympathisers.

[30] About a week to 10 days after the meeting in EE, the appellant received a letter which had been found by his son after it had been thrown into the doorway of the family home. This letter had no signature on it but was noted as being from the “Pakistani Taliban”. The letter referred to the death of the appellant's father and that the appellant should take notice of this and not support the Pakistani government, resisting the Taliban, nor should he spread propaganda against the Pakistani Taliban.

[31] The letter made the appellant very afraid as it was a direct message to him. He had a meeting with his family and also took the letter to the SP. The SP told him that a lot of other elders and leaders in the district had received similar letters and the police unfortunately could not protect themselves let alone others who got letters and therefore, all those who received letters should take particular personal care for their own protection.

[32] A meeting of local elders was then held and it was decided that they should tone down their support of the government forces and not speak out against the Taliban so as to draw attention to themselves. The appellant's brother, RR, was particularly concerned about the appellant, especially after the death of their father, and RR suggested that the appellant should again leave the country.

[33] Approximately two weeks later, a prominent local leader was killed on his way home from a meeting at a local mosque. His death increased the fears the appellant had of the Taliban and the practice they appeared to be adopting of taking out the elders and the decision-makers in villages in the ZZ area. The appellant then decided, in fear of his life, that he should leave again. He did not

consider that his wife or children would be at risk as they traditionally stayed at home and there was little danger for them. However, after the appellant left, his wife and children decided to move to her father's home. His brother, RR, also moved away, to a village some 80 to 100 kilometres away, when the Pakistani government started to come into direct conflict with the Taliban forces.

[34] The appellant returned to XX in March 2008 using the false XX passport. He resumed his old contacts and livelihood in PP for several months. While in XX, he became very concerned about the safety of his family in Pakistan and the possibility that the Taliban would discover that he had left the country. He got in touch with his friend, BB, who had travelled to the UK with him many years before and told him of his predicament. BB told him he was travelling to New Zealand to do some research and so the appellant decided to travel with him. After selling off his remaining carpets and repaying some loans, the appellant, travelling on his false XX passport and together with BB, travelled to New Zealand, arriving on 5 June 2008 and claiming that he was here on holiday with his friend. He disposed of his XX passport in July and then lodged his Confirmation of Claim for Recognition as a Refugee on 28 August 2008.

[35] After the appellant left Pakistan in March 2008, significant problems arose in the Swat and ZZ areas to the extent that much of it has been destroyed first by the Taliban and then by the government forces who have retaliated with artillery and helicopters against the occupation and influence of the Taliban in these areas. As a result of this, the appellant has been informed that a lot of the villagers from his district have evacuated their homes and run away to cities and towns such as Mingora (the main city) and other cities out of the NWF, as far away as Islamabad and even Karachi. He considered they have become refugees in their own country.

[36] His brother, RR, had relocated for some months in 2008 but since then, after the government made an agreement and ceasefire that allowed the Taliban to impose Shari'a law on the whole of the Swat and ZZ areas, he had returned to the family home to look after the property. The appellant had spoken to RR in April 2009, about the time when the Taliban had made an agreement with the Pakistani government that allowed Islamic law to be applied in return for the Taliban putting down their weapons. After that agreement, it was thought that peace would return and so people started going back to their homes. However, after a few days, the Taliban started to take control of many parts of the district. They set up communities and acted like the police. They advised the people in

Swat, ZZ and Sawabi that they were going to take control of formerly government-controlled areas. Over very recent weeks, the appellant stated, there had been significant military operations between the Taliban and government forces in the ZZ and Swat areas, resulting in the cutting of basic services such as electricity, telephones, roading and other forms of communication. Effectively, therefore, no communication can be made with the ZZ area at the present time.

[37] The appellant was asked by the Authority, after noting his statement that people from the village had moved as far away as towns such as Karachi or Islamabad, as to whether he could do likewise and thus obtain meaningful protection in other parts of Pakistan. He considered that the Taliban were not just in the Swat and ZZ districts but were all over the place and that they had sympathisers in major cities as well. When asked why, as a leader or elder from a small village, he would be at any form of particular risk, the appellant stated that if he wanted to go back to Pakistan, he would have to go back to his own village because the Taliban were everywhere and had sympathisers elsewhere. Even in a larger city, he considered there was no real peace as there were killings going on there as well.

[38] He was asked also by the Authority whether, as a resourceful person who had been able to work for many years in foreign countries such as XX and the UK, there was any reason why he should not do this in other parts of Pakistan. He considered that there were risks of targeted killings in larger cities such as Karachi. He also feared for the safety of his children if they were taken to one of the larger cities. Even in Pakistan, although it is one country, if people move outside their own provinces, there is a lack of interaction with local people. They would be suspected as being associated with the Taliban and so be rejected. Even in places such as Karachi or cities in the Punjab, people would be cautious and would ask questions. He considered they would be harassed, but not forcefully returned to his home district. He agreed that he had been a worker with the PPP for many years but did not consider they would provide him with any form of protection or assistance in other parts of Pakistan. He also considered that, not only because he was a Pashtu speaker, but also because of his distinct accent, people would readily know the district that he came from.

[39] The appellant stated that he had lost contact with his wife and children who had left the family home. He was unaware of their present whereabouts and would have to check through people in his own village to ascertain their actual situation.

[40] He was asked by the Authority why he now had a strong urge to reunite with his family, given that this was not consistent with the behaviour he had adopted for long periods in the past while he was in XX and the UK particularly. He said that in the past, his parents had been alive and his brother had been in the village so he had felt confident in leaving his family behind but now there was a war and he was not sure who was alive and who was dead so he would have to go and look for them.

[41] Since he left his home village, the leadership of the village has been taken over by DD. He had undertaken temporary responsibility from the appellant and adopted the role of only dealing with village issues and not saying anything against the Taliban. As the appellant has had no communication with the village, DD may or may not still be there.

EVIDENCE OF AA

[42] AA is a permanent resident in New Zealand. He gave his evidence in English. He adopted a statement, which had been presented to the RSB and appeared at page 219 of the file. The written statement set out:

“It is certified that I know [the appellant] family. They belong to ZZ. I visit his village and his family house I passed. His father was tribe leader of the village. His father’s name is SS. I hear the Taliban shot dead SS. I also belong to Swat valley.”

[43] AA explained that he had been born in the Swat valley where he had been involved in a family business, although he had since worked as a librarian. He came from a middle class family in Swat who had not been involved in politics and the Taliban had not harmed them until recently. Unfortunately, one of his uncles had been shot about a year ago, during a curfew.

[44] AA had met the appellant in New Zealand through a family friend and, after a chat with him, he discovered that he was from the ZZ district. Coincidentally, on a visit to the Swat district some two years ago between July and November 2007, AA had gone to see a teacher friend of his who was from ZZ and had recently returned there. At that time, he met with this friend and had also visited the appellant’s home. He met the appellant’s father, SS, and explained that he had come from New Zealand. SS informed him that his son was in England, under the misapprehension that the UK and New Zealand were the same place. AA had never met SS before that. Later during his visit, however, in conversation with his teacher friend, he heard that SS had been shot dead by the Taliban in approximately July 2007.

[45] As he understood it, his teacher friend remained in the Swat district but he considered that maybe he was now in an internal displacement camp although he had heard very recently that people were now moving back to their homes in the Swat and ZZ areas. Although he had wanted to attend his uncle's funeral, he decided not to, as he was scared as a New Zealand citizen that not only would it be expensive but, as a foreign citizen, he may be taken for ransom.

[46] He did keep in touch by telephone as much as he could with the events that were now going on. He had ascertained very recently that the military were now in control of the main cities and towns in the Swat and ZZ districts. He considered that the Pakistani military have control there as well, although it was not 100%. He felt that when the matters had calmed down to their former situations, he would return to the Swat valley but, in general, the situation was still terrible.

DOCUMENTS RECEIVED

[47] In addition to the documents on the appellant's file, which included his statement of 25 November 2008, the Authority received a medical report, dated 6 July 2009. This referred to a skin affliction, diabetes and the general low and anxious feelings affecting the appellant. After the hearing, the Authority received a letter, dated 20 July 2009, setting out various submissions relating to the case that had not been provided at the hearing itself. These have now been fully noted. Additionally, with a letter dated 29 July 2009, the appellant's counsel advised that the appellant has had no further news of his family and continues to fear returning to Pakistan because of the increase in activity from the Taliban. Additionally, it stated that because he has been out of Pakistan for some time now in a western country, he also fears this may be a further example to the Taliban and those who support anti-western prejudices. The same letter also provided copies of extracts from *The New York Times*. One of these, dated 28 July 2009, is "Landowners Still in Exile From Unstable Pakistan Area" by Jane Perlez and Pir Zubair Shah.

[48] The article from *The New York Times* of 28 July 2009 is a particularly relevant and useful one. It is informative to set it out in full. It states:

"Even as hundreds of thousands of people stream back to the Swat Valley after months of fighting, one important group is conspicuously absent: the wealthy landowners who fled the Taliban in fear and are the economic pillar of the rural society.

The reluctance of the landowners to return is a significant blow to the Pakistani military's campaign to restore Swat as a stable, prosperous part of Pakistan, and it presents a continuing opportunity for the Taliban to reshape the valley to their advantage.

About four dozen landlords were singled out over the past two years by the militants in a strategy intended to foment a class struggle. In some areas, the Taliban rewarded the landless peasants with profits of the crops of the landlords. Some resentful peasants even signed up as the Taliban's shock troops.

How many of those peasants stayed with the militants during the army offensive of the last several months, and how many moved to the refugee camps, was difficult to assess, Pakistani analysts said.

But reports emerging from Swat show that the Taliban still have the strength to terrorize important areas. The army continues to fight the Taliban in their strongholds, particularly in the Matta and Kabal regions of Swat, not far from the main city, Mingora, where many refugees have reclaimed their homes.

In those regions, the Taliban have razed houses, killed a civilian working for the police in Matta and kidnapped another, worrying counterinsurgency experts, who fear that the refugees may have been encouraged by the Pakistani authorities to go back too soon.

The rebuilding of Swat, a fertile area of orchards and forests, is a critical test for the government and the military as they face Taliban insurgencies across the tribal belt, particularly in Waziristan on the Afghanistan border.

In a sign of the lack of confidence that Mingora was secure, the Pakistani military declined a request by the Obama administration's special envoy to Pakistan, Richard C. Holbrooke, to visit the town last week.

There was nervousness, an American counterinsurgency expert said, that the plans by the Pakistani authorities to build new community police forces in Swat would not materialize quickly enough to protect the returning civilians, who are also starved of basic services like banks and sufficient medical care.

"There is no apparatus in place to replace the army," said an American counterinsurgency official. "The army will be the backstop."

About two million people have fled Swat and surrounding areas since the military opened its campaign to push back the Taliban at the end of April. The United Nations said Monday that 478,000 people had returned to Swat so far, but it cautioned that it was unable to verify the figure, which was provided by the government.

Assessment trips by United Nations workers to Swat scheduled for Monday and Tuesday were canceled for security reasons, and the United Nations office in Peshawar that serves as the base for Swat operations was closed Monday because of a high threat of kidnapping, a spokesman said.

The landlords, many of whom raised sizable militias to fight the Taliban themselves last year, say the army is again failing to provide enough protection if they return.

Another deterrent to returning, they say, is that the top Taliban leadership, responsible for taking aim at the landlords and spreading the spoils among the landless, remains unscathed.

If it continues, the landlords' absence will have lasting ramifications not only for Swat, but also for Pakistan's most populated province, Punjab, where the landholdings are vast, and the militants are gaining power, said Vali Nasr, a senior adviser to Mr. Holbrooke, the American envoy.

"If the large landowners are kept out by the Taliban, the result will in effect be property redistribution," Mr. Nasr said. "That will create a vested community of

support for the Taliban that will see benefit in the absence of landlords.”

At two major meetings with the landlords, the Pakistani military and civilian authorities requested that they return in the vanguard of the refugees. None have agreed to do so, according to several of the landowners and a senior army officer.

“We have sacrificed so much; what has the government and the military done for us?” asked Sher Shah Khan, a landholder in the Kuz Bandai area of Swat. He is now living with 50 family members in a rented house about 60 miles from Swat. Four family members and eight servants were killed trying to fight off the Taliban, he said.

At one of the meetings, Mr. Khan said he had asked the army commanders to provide weapons so the landlords could protect themselves, as the landowners had in the past.

The military refused the request, he said, saying it would fight the Taliban. Yet Pakistani soldiers had failed to protect his lands, he said. Twenty of his houses were blown up by the Taliban after the army ordered him and his family to leave their lands on two hours’ notice last September, he said.

A letter he sent last month to Gen. Ashfaq Parvez Kayani, the head of the Pakistani military, asking for compensation has gone unanswered, he said. In the meantime, one of his tenants called asking if he could plant crops on Mr. Khan’s property. He refused but had little idea what was happening back home, Mr. Khan said.

Other landlords are equally frustrated. The mayor of Swat, Jamal Nasir, fled after his father, Shujaat Ali Khan, regarded as the biggest landlord in Swat, narrowly avoided being killed by the Taliban. Mr. Nasir, a major landowner himself, now stays in his house in Islamabad.

The top guns of the Taliban are still in Swat, or perhaps in neighboring Dir, Mr. Nasir said. “These people should be arrested,” he said. “If they are not arrested, they are going to come back.”

Another landlord, Sher Mohammad, said he was still bitter that the army refused to help as he, his brother and his nephew fought off the Taliban last year for 13 hours, even though soldiers were stationed less than a mile away. Mr. Mohammad was hit in the groin by a bullet and lost a finger in the fight.

At one of the meetings with the military in Peshawar, Mr. Mohammad, a prominent politician with the Pakistan Peoples Party, said he told the officers that he was not impressed with their performance.

“They said, ‘We will protect you,’ ” he recalled. “I said, ‘We don’t trust you.’ ”

[49] In addition to the above documentation and submissions, the Authority has noted the oral submissions made by counsel at the conclusion of the hearing, which covered the profile of the appellant and the risks to him on return to his home district and also her submission that an internal relocation or protection alternative could not be accessed by this appellant in other parts of Pakistan.

THE ISSUES

[50] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly 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, is unable or, owing to such fear, is unwilling to return to it."

[51] 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 appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

[52] In this case, on its particular facts, the issue of the appellant having a potential internal protection alternative as a possible "antidote" to the risk of being persecuted in his home district appears to arise and therefore is considered. The details of the tests to be applied have been adopted from the Authority's decision in *Refugee Appeal No 76044* (11 September 2008) and are set out later in this decision.

ASSESSMENT OF THE APPELLANT'S CASE

[53] At the outset, it is necessary to establish the appellant's credibility on all aspects of his claim as presented. The Authority partially accepts his credibility but with some notable exceptions.

[54] The exceptions noted and reasoning for reaching such conclusions follow.

ROLE AS A VILLAGE LEADER

[55] The Authority does not accept, on the evidence as presented, that the appellant is or has been under any significant pressure, at any time, to take up the role of the village leader. The Authority considers that the appellant's claim that his brother, RR, refused to inform him of their father's death and that it was only by accident some five months later that he found out his father had been killed, is a fabricated story that does not have the ring of truth. If there had been a real interest in the appellant returning to be the leader of the village and taking up the

traditional role as a serious and compelling obligation upon the appellant, notification to him would have taken place far sooner than by accident, as described, after some five months. The Authority considers that the appellant, in all likelihood, was informed of his father's death but, as he was under no urgency or compelling circumstances to return, he stayed on in XX, pursuing his activities there and taking steps to obtain another XX passport for its perceived usefulness to him. The Authority does not consider that the appellant actually destroyed his genuine Pakistani passport that he had obtained to return to XX. It is perverse and illogical that the appellant would destroy such a passport even if he did want a XX passport as well, as that would leave him without any form of genuine identification or travel documentation. He would be in a position where his wife, children and all of his family were remaining in Pakistan in a generally unsettled situation and yet, of his volition, he would not be able to return to them on short notice. The appellant professes real interest in his home and family. He is a well-travelled and informed man. It is thus utterly illogical that he would destroy a genuine document in such a situation when there was simply no necessity for him to do so.

[56] Additionally, it is clear that the appellant came and went from his home district, both before and after his father's death, without feeling any pressures or obligations upon him. A replacement leader was appointed in the past and again, after his most recent departure, without any problems. It appears the replacement leader has continued the role and that it is generally accepted that the appellant could leave when he wished. Accordingly, the importance which the appellant purports to attach to his traditional leadership position is found to be of much lesser significance than he claims. The Authority accepts that while there may have been problems and threats from the Taliban to all of the family because they were known PPP and government supporters and from a middle class family, the profile of the appellant, and his brother, RR, do not approach anywhere near the level of apparent significance that may have attached to their father, SS, who had been a significant PPP and tribal leader over some 35 years.

[57] Based on the above findings, the Authority also considers that the risk profile of this appellant is one that would, at most, equate with that of his brother, RR, who has returned to the family home to protect the property without apparent problems. RR, by necessity of having lived virtually at all times in the home village of ZZ, must be a far better known figure than the appellant himself. Indeed, RR attended, it appears, some of the same meetings as the appellant, particularly one in March 2008 which appeared to be the only one of significance attended by the

appellant. On the evidence, it appears that RR has returned, after a short period some 90 kilometres from ZZ, to the family home, despite the considerable internal disruptions over recent months as the government has retaliated and tried to eliminate the influence of the Taliban in both the Swat and ZZ districts.

[58] The Authority finds that the profile of this appellant, on return to his home district, would be that of a middle class village elder. There is no evidence of him being a significant land-owner, although they own their own property. This property has clearly been insufficient for the appellant and his family members to sustain a living from, as all three of the brothers have either taken up alternative employment or, like the appellant, have begun a business in their home district but then moved away to obtain a better economic situation in XX or the UK. It is against this profile that his risks on return must be assessed at the present time.

[59] There are several significant factors from *The New York Times* report set out above. Firstly, it is clear that hundreds of thousands of people have moved back to the Swat and adjacent districts (as was confirmed by AA). Secondly, there is clearly a reluctance of significant landowners to return at the present time. Thirdly, the situation cannot yet be stated as being a settled one, particularly noting the Pakistani authorities have not yet built new community police forces and there is no apparatus to replace the army. Finally, as noted later in this decision, it is relevant to note that the mayor of Swat, a major landowner himself, while frustrated with the situation, appears to remain in his home in Islamabad.

[60] The appellant, set against this useful country information, does not fall into the category of being an important landlord although, as a middle class government supporter, if the Taliban are able to re-establish themselves, it would be consistent with this country information that the appellant would have a real chance of being targeted as opposed to a landless peasant. The reality of the appellant's brother, RR, returning and remaining in the home village and family home, however, also must be taken into account, along with the return of hundreds of thousands, who had been displaced, from the Swat and ZZ districts after the Pakistan army intervention and the substantive reduction in Taliban presence and influence in this district.

[61] On the evidence accepted from the appellant by the Authority, and the country information, the Authority finds that if the appellant were at this time to be returned to his home district, given the similarity of his profile to that of his brother RR, there is less than a real chance of him being persecuted by the Taliban or

Taliban supporters.

[62] However, given that the situation in Swat and ZZ has been hugely disruptive and recent, and that the removal of the Taliban presence and influence cannot, with assurance, be stated to be of a well-settled nature at this time, the Authority has gone on, in the alternative, to consider a potential protection alternative for this appellant. This is done on the assumption that, due to the lack of stability in the appellant's home region, there is a chance the Taliban will re-establish in his home area, increasing his risk of being persecuted by them to the level of a real chance. In these circumstances, he would be recognised as a refugee unless he can access meaningful protection elsewhere in Pakistan.

INTERNAL PROTECTION ALTERNATIVE

[63] At the outset, the Authority notes the provisions of [178] in *Refugee Appeal No 76044* and the requirements for the assessment of an internal protection alternative. *Refugee Appeal No 76044* at [178] states:

"[178] In these circumstances the Authority affirms the "Hathaway/New Zealand rule", namely that once a refugee claimant has established a well-founded fear of being persecuted for a Convention reason, recognition of that person as a Convention refugee can only be withheld if that person can genuinely access in his or her home country domestic protection which is meaningful. Such protection is to be understood as requiring:

- (a) That the proposed internal protection alternative is accessible to the individual. This requires that the access be practical, safe and legal.
- (b) That in the proposed site of internal protection there is no risk of being persecuted for a Convention reason.
- (c) That in the proposed site of internal protection there are no new risks of being persecuted or of being exposed to other forms of serious harm or of *refoulement*,
- (d) That in the proposed site of internal protection basic norms of civil, political and socio-economic rights will be provided by the State. In this inquiry reference is to be made to the human rights standards suggested by the Refugee Convention itself."

[64] In this alternative assessment, based on the presumption noted above, the Authority has considered all of the four requirements in [178] and has reached the conclusion, for the reasons set out, that recognition of the appellant's status as a Convention refugee can properly be withheld in this case on the basis that he has an internal protection alternative.

[65] The Authority considers that this appellant could obtain an internal protection alternative in many other parts of Pakistan away from the Swat/ZZ

districts. These could include major cities such as Islamabad, Karachi or indeed smaller towns or cities throughout Pakistan away from the North West Frontier area.

[66] Turning to the four requirements:

IS THE PROPOSED INTERNAL PROTECTION ALTERNATIVE ACCESSIBLE TO THE APPELLANT AND IS THAT ACCESS PRACTICAL, SAFE AND LEGAL?

[67] As is clear from the country information, thousands recently fled from the Swat and ZZ districts when the Pakistani government forces acted to sweep out the Taliban fighters, supporters and influence in those areas. It was noted that while many of them had to find alternative protection in camps, many others, particularly those with sufficient means, relocated to major cities with safety and the legality attached to their rights as fellow Pakistani citizens. For example, the mayor of Swat, Jamal Nasir, has apparently relocated with safety to his home in Islamabad. The appellant also gave evidence of members of his village actually moving to Karachi to avoid the problems in the ZZ district. The fact that in the past the appellant chose to relocate, principally for economic reasons, to XX, is not evidence that he could not have moved to other parts of Pakistan with legality and safety.

IS THE PROPOSED SITE OF INTERNAL PROTECTION ONE WHERE THERE IS NO RISK OF BEING PERSECUTED FOR A CONVENTION REASON?

[68] As stated, in major cities and towns outside of the NWF, there is no evidence from the appellant, or the country information, that he would be at a risk of being persecuted for one or more of the five Refugee Convention reasons. His profile is certainly that of the Pashtu, “middle-class”, middle-aged man from the NWF. While that may be readily apparent in a site of relocation, and may lead to minor discrimination, the country information does not in any way indicate a risk of being persecuted.

IN THE PROPOSED SITE OF INTERNAL PROTECTION, ARE THERE ANY NEW RISKS OF BEING PERSECUTED OR EXPOSED TO OTHER FORMS OF SERIOUS HARM OR OF *REFOULEMENT*?

[69] Again, an assessment of the country information and this appellant’s profile, as assessed above, indicates that there would be no new risks of being persecuted or of him being exposed to other forms of serious harm or of *refoulement* to his home district. He is from a family of well-known supporters of the PPP, which is the leading party in the current government coalition. He is a resourceful man who could re-establish himself, and his family, if required, without any new risks or impediment from the Pakistani state or non-state actors.

FINALLY, IN THE PROPOSED SITE OF INTERNAL PROTECTION ARE BASIS NORMS OF CIVIL, POLITICAL AND SOCIO-ECONOMIC RIGHTS PROVIDED BY THE STATE OF PAKISTAN, BY REFERENCE TO HUMAN RIGHTS STANDARDS SUGGESTED IN THE REFUGEE CONVENTION ITSELF?

[70] In respect of this requirement, country information indicates that as a citizen of Pakistan with no significant core profile, apart from past personal and family support of the PPP, the appellant would be able to access the same civil, political and socio-economic rights as any other citizen of Pakistan. The country information indicates no restriction on movements of citizens within the country.

[71] The Authority is therefore satisfied that this appellant, as a middle-aged, middle-class (in Pakistani terms) male who has been able to conduct his life successfully in other countries, let alone in other parts of his own country, will have available to him an antidote to any risk of being persecuted in his home district. He can access meaningful state protection in many parts of Pakistan away from his home district. It follows therefore that an internal protection alternative is available to this appellant.

CONCLUSION

[72] For the reasons given, the Authority considers the appellant does not currently have a well-founded fear of being persecuted should he be returned to his home district in Pakistan. Should country conditions change and the Taliban re-establish in his home area, he will have an internal protection alternative. There are thus proper grounds for considering that recognition of the status as a Convention refugee to the appellant should be withheld. Accordingly the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. The appeal is dismissed.

"A R Mackey"
A R Mackey
Chairman