

1100969 [2011] RRTA 273 (12 April 2011)

DECISION RECORD

RRT CASE NUMBER: 1100969

DIAC REFERENCE(S): CLF2010/109810

COUNTRY OF REFERENCE: Pakistan

TRIBUNAL MEMBER: Andrew Jacovides

DATE: 12 April 2011

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Pakistan, arrived in Australia for the first time on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] February 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] August 2010. The delegate decided to refuse to grant the visa [in] January 2011 and notified the applicant of the decision and her review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] February 2011 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any 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.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal has had regard to the material referred to in the delegate's decision and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal [in] April 2011 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's son, [name deleted]. The Tribunal hearing was conducted with the assistance of an interpreter in the Urdu and English languages.

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21. The applicant stated in her protection visa application that she was a citizen of Pakistan. She provided a copy of her Pakistani passport and other documents relating to her identity and background. She stated that she was born in Hafizabad on [date deleted]; she was fluent in Urdu, she could speak Punjabi, and she had a fair understanding of English; she was a Christian; she was married in Hafizabad [in] September 1985; she visited Australia twice in 2009 to see her children; she had two addresses in Pakistan, one in Lahore and another in Peshawar; she was studying from [years deleted] and then she worked as a teacher for three years; she stopped working to raise her children; and from 2000 until 2010 she worked voluntarily for the church.
22. The applicant provided a statement prepared by her adviser. The statement begins with a broad overview regarding the treatment of Christians in Pakistan. There are references to information from media sources, primarily Christian media sources, in support of the applicant's claim that Christians in Pakistan are commonly targeted and face "severe opposition from militant Islamic groups, including imprisonment, torture and even death".
23. The applicant claimed that she was a devout Christian. She indicated that she came from a large Christian family and that her father and grandfather were priests. She indicated that she married into another religious Christian family and members of her husband's family were in the clergy. She stated that she trained as a teacher and she worked as a teacher until her marriage. She stated that she did not work while raising her children but she was an active member of her church and she taught Bible studies.
24. The applicant claimed that she spent time in Peshawar where "many Christians were targeted by the Taliban and local militants". She stated that many young girls were abducted by Taliban militants, sexually assaulted, and then forced to convert to Islam. She stated that many girls and boys were forced to convert to Islam and her church asked for volunteers to teach Bible stories to children with a view that they could be "baptised once again to embrace Christianity" She stated that she assisted her brother, a priest, with his work. She claimed

that when they went to Peshawar the local “Peshto folks” told her brother to “stay away” She stated that she conducted the work with her sister-in-law, [Ms A], in Peshawar. She stated that when she returned to Lahore she provided information to other Christians regarding her work with a view of keeping them informed and to raise funds. She stated that her children assisted her with her religious work and they accompanied her to Peshawar during school holidays. The applicant stated that her husband assisted her to transport the “victims” they rescued in Peshawar to Lahore and other places in Pakistan. She stated that later her son, [name deleted], assumed that work. She stated that there were instances when she had to accommodate the women and children in her home until they were able to relocate to other parts of the country.

25. The applicant stated that in 2007 her son was arrested and interrogated regarding his involvement “in transporting girls and women from Peshawar to Lahore”. She stated that her husband convinced the authorities that he was assisting the church and that he never transported anyone without the authority of the church. She stated that local Muslim youths harassed her son after his release. The applicant claimed that her son was accused of “transporting Muslim girls and converting them to Christianity”. She stated that it was not safe for her son to remain in Pakistan so he left the country.
26. The applicant stated that in December 2008 she was called to the police station and asked questions regarding her involvement in converting Muslims to Christianity. She was asked to provide details regarding the persons involved and the “Christian orphanages where women and children” were “kept” after being rescued by the applicant and her associates. She stated that she subsequently fled from Pakistan and she remained in Australia for several months until interest in her activities had subsided. The applicant stated that when she returned to Pakistan she went directly to Peshawar, lived with her sister-in-law [Ms A], and continued with her religious activities. She claimed that the police interest in her was continuing so she returned to Australia and remained here until November 2009 when her husband informed her that the police had stopped making inquiries about her. She stated that she returned to Peshawar and only visited Lahore occasionally.
27. The applicant claimed that in March 2010 she, her sister-in-law [Ms A], and some other women involved in religious activities, were abducted by unknown men (at the hearing the applicant stated that the statement was incorrect and that only she and [Ms A] were detained). She stated that she was interrogated regarding her activities and asked to provide details regarding the location where the women were “sent” after they left Peshawar. The applicant stated that the persons who detained them were local Muslim militants and elderly Taliban men. She claimed she was accused of “abducting” women who had converted to Islam. The applicant stated that she denied the accusations and stated that she was only involved in religious studies with Christian children. She stated that they accused her of targeting women who had willingly “embraced Islam”.
28. The applicant stated that her group admitted that they took a “few orphan women out of Peshawar” but never took anyone who had family. She stated that the “elderly men demanded that” the applicant and the other women “convert to Islam for the wrong doings”. She stated that they were threatened with serious harm if they did not comply. She stated that they pretended to convert and agreed to all their demands, including giving an undertaking that they would assist the men in locating the women who had fled from their husbands. The applicant claimed that as soon as they were released they fled from Peshawar. She stated that her husband arranged for her return to Australia and her sister-in-law went to the Middle East with her husband.

29. The applicant claimed that after she arrived in Australia, her husband in Lahore was approached by “men” who were looking for her. She stated that her husband told them that she was still in Peshawar. She claimed that they told him that he will not be seeing her alive again. She stated that her daughter in Pakistan was sent to live with relatives and her husband was living with a friend. She claimed that she cannot return to Pakistan as she will be prevented from practicing her religion freely and safely.
30. The applicant submitted information from external sources relating to Pakistan’s poor human rights record and the targeting of Christians. Most of the information submitted was obtained from Christian groups in America and Canada.
31. The applicant was interviewed by the delegate [in] November 2010. The Tribunal has listened to the interview. The applicant repeated her claims relating to her religious activities in Pakistan and the difficulties she had in Peshawar because of her religious work. She stated that since 2004 she assisted more than 50 women to leave Peshawar and relocate within Pakistan. She stated that some of the women were married but others were single girls. She stated that some had children and others were virgins. The applicant stated that they were placed in homes away from Peshawar and some worked as housekeepers. She stated that her son assisted her with her religious work. She indicated that her husband remained in Lahore and looked after their daughters. The delegate asked the applicant what happened to the 50 women she relocated. The applicant stated she did not maintain contact with the women after they were relocated. She stated that she asked her priest to find work for them in the parish. She stated that after she attracted the adverse interest of Muslims and the authorities she had to save herself and she did not know what happened to the women.
32. The applicant described the incident in March 2010 when she and [Ms A] were abducted in Peshawar. She stated that four men were involved in the kidnapping. She stated that she did not know the men or if they were involved with the authorities. She stated that she and her sister-in-law were accused of converting Muslim women to Christianity. The applicant stated that she and [Ms A] conducted their religious activities openly and many in the community were aware of the work they were doing. She stated that the men who abducted her wanted to know what had happened to some of the women she had assisted. She stated that she co-operated with them because they threatened to harm her.
33. The delegate asked the applicant for more details regarding the applicant’s religious work. The applicant provided some information regarding the churches and orphanages she used to place the women and girls from Peshawar. She was asked if any of the other women who did similar religious work were targeted by the police. The applicant stated she did not know. She stated that she was afraid to return to Pakistan because she anticipated that she will be arrested and killed because of her religious work.
34. The delegate was not satisfied that the applicant provided a credible account of her circumstances in Pakistan. The delegate accepted that the applicant was a Christian but she was not satisfied that the applicant will face persecution for this reason if she returns to Pakistan.

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35. The Tribunal received a submission from the applicant [in] March 2011. She submitted witness statements from her Priest at [church deleted] which indicated that she and her children had been active members of the church since 2008. The applicant submitted an

undated letter from her Priest at [church deleted] in Lahore who stated that the applicant was “living in Pakistan under the protection of the priests after she received threat to her life from Muslim fanatics for her services to the Christian community” She submitted a letter from a person who stated that for the past year and a half she has been conducting Bible study classes with the applicant and her daughter in Sydney. The applicant submitted two Catholic publications in Urdu. She indicated that she had [contributed] to those publications.

The hearing

36. The applicant attended the hearing accompanied by her son. They each provided evidence in support of their own application and each other’s application. The Tribunal discussed with both applicants the claims they provided with their protection visa application. They provided details regarding their religious activities in Pakistan and explained how those activities attracted the adverse interest of the authorities and the Taliban. The applicants repeated and expanded on the information they provided to the Department. The evidence they provided was consistent with the evidence they provided to the Department and with the claims they presented to the Tribunal. They indicated that they assisted women in Peshawar, who were forced to convert to Islam, to flee from the area and then revert to Christianity. They indicated that more than 50 women were assisted in this way. The applicants indicated that the women, some of whom were married to Muslims and had children, were placed in Catholic institutions such as convents. The applicants stated that some of the women moved to other places but most stayed in the church institutions and worked for the church. The applicant stated that the women wanted to be there and they were grateful for the assistance and security they received. The Tribunal commented that the Catholic Church did not commonly endorse proselytising and similar activities. The applicants agreed that the Catholic Church did not encourage proselytising. They stated that the work they did was not proselytising but rather it was “rescuing” poor Christian girls and women who had been exploited and abused by Muslim men. The applicant stated that the women they rescued were Christians, who were forced to live as Muslims, so they were only assisting them to practice their religion and not to adopt another religion. The applicants claimed that in Pakistan they will face life-threatening harm by the authorities and religious extremists because of the work they did for the Catholic Church. They claimed that they will be prevented from practicing their religion freely and safely in Pakistan.
37. The Tribunal discussed with the applicants their decision to return to Pakistan, after initially fleeing the country; whether they can be safe from the harm they anticipate in Lahore by relocating within the country; why they did not apply for protection visas when they first arrived in Australia; and, how they intended to express their religious beliefs in the future.
38. The applicant stated that she did not want to apply for a protection visa because her home, family, and religious community, were in Pakistan. She stated that she only decided to seek protection when it became apparent to her that she may be killed if she remained in Pakistan. The applicant stated that her husband insisted that she cease to be involved in religious activities in Pakistan and to leave the country. She claimed that her husband was initially supportive of her religious activities in Peshawar but he became increasingly agitated regarding her work and the danger associated with that work. The applicant stated that after her abduction there was considerable hostility between her husband and [Ms A]’s family. She stated that her husband blamed his sister for all the difficulties they were having with the authorities and religious extremists in Pakistan. The applicant stated that she did not know where [Ms A] was living but she assumed that it was not in Pakistan.

39. Both applicants stated that they will be targeted wherever they settle in Pakistan because of their religious activities and the community work they wanted to undertake for the church. The applicants stated that they were active and devoted Catholics and they will engage in religious activities in the future as they have in the past.

Information from external sources

40. The Tribunal considered information from external sources relating to the applicant's claims, particularly their claim that Christians are targeted by the authorities and Muslims in Pakistan.
41. The US Department of State (USDOS) has reported that there has been an increase in organised violence against religious minorities in Pakistan. The US Commission on International Religious Freedom also reported that religious minorities experience an "eroded social and legal status" in Pakistan.¹ Amnesty International referred to discrimination against Christians and reported that some Christians have been killed "for their faith". Amnesty International stated that religious minorities including Christians "suffered increasing abuses, including abduction, murder, intimidation, and harassment, as state officials failed to protect them and adequately prosecute perpetrators" in Pakistan.²
42. Sources report that the Pakistan government places limits on prescribed freedoms to practice minority religions.³ The US Commission on International Religious Freedom reported that "serious religious freedom concerns persist in Pakistan, where religiously discriminatory legislation has fostered an atmosphere of intolerance".⁴ There is also evidence that the state has been complicit in such intolerance.⁵ Islamic decrees provide for punishment for violations of Islamic law by both Muslims and Non-Muslims.⁶ Children of Muslim couples, both of whom have converted to another religion, are deemed illegitimate and the state has the right to take custody of these children.⁷ Pakistan's blasphemy laws, which make insulting the Prophet Mohammed a capital offence, have been used against religious minorities.⁸
43. These laws have reportedly often been used to intimidate religious minority groups and sometimes the authorities have used them to settle personal scores.⁹ In November 2010 a Christian woman from Punjab became the first person to be sentenced to death in Pakistan for blasphemy.¹⁰ A man sentenced to life imprisonment under these provisions was recently found dead in his Karachi cell after reportedly receiving death threats.¹¹ Other high profile cases involving Christians include a Peace Worldwide Worker in Rawalpindi being arrested for allegedly sending a blasphemous text message,¹² and a case whereby five Christian boys

¹ USCIR 2010, *US Commission on International Religious Freedom Annual Report*, p. 92

² Amnesty International 2010 *Annual Report – Pakistan*, 28 May

³ US Department of State, 2010 *International Religious Freedom Report – Pakistan*, 17 November, Section II

⁴ USCIR 2010, *US Commission on International Religious Freedom Annual Report*, p. 11

⁵ US Department of State, 2010 *International Religious Freedom Report – Pakistan*, 17 November, Section II

⁶ USCIR 2010, *US Commission on International Religious Freedom Annual Report*, p. 91

⁷ US Department of State, 2010 *International Religious Freedom Report – Pakistan*, 17 November, Section II

⁸ UK Home Office 2009, *Country of Origin information report: Pakistan*, 16 April, p. 67

⁹ US Department of State, 2010 *International Religious Freedom Report – Pakistan*, 17 November, Section II

¹⁰ Human Rights Watch 2011, *World Report – Pakistan*, 31 January

¹¹ 'Pakistan Christian Found Dead in Prison' 2011, Worthy News website, 16 March –

<http://www.worthynews.com/10076-breaking-news-pakistan-christian-found-dead-in-prison> – Accessed 24 March 2011

¹² 'Hector Aleem arrested under blasphemy' 2009, *Pakistan Christian Post*, 27 January

<http://www.pakistanchristianpost.com/viewnews.php?newsid=1311> – Accessed 9 September 2009

fled their homes in Lahore after being accused of “desecrating a banner inscribed with Qur’anic verses”. In the former case, the US Department of State reported that whilst cleared of blasphemy, the defendant remained in prison on fraud and smuggling charges after religious extremists informed the judge that they would kill the defendant if he is released.¹³

44. Blasphemy laws are under review by the Parliamentary Standing Committee on Minorities, following attacks on Christians in the Punjabi town of Gojra in 2009.¹⁴ However, Members of Parliament who advocate amendments to the laws have received death threats.¹⁵ In early 2011, two high profile politicians who criticised the blasphemy law were assassinated, including the Minister responsible for minority affairs, Shahbaz Bhatti.¹⁶
45. The US Department of State reported that in blasphemy cases, defendants are often refused bail and may be detained for a matter of years while waiting for higher courts to hear their appeals. Police have reportedly been ineffective in preventing violence and harassment against religious minorities, and have often refused to charge perpetrators. There are also reported incidences of police refusing to file complaints of crimes such as rape against Christian individuals. The USDOS further reported that according to Compass Direct News, the police filed trumped up charges in March 2010 of alcohol possession against 47 Christians in an extortion attempt.¹⁷ More generally, it is also reported by USDOS that Christians may face difficulty in finding employment beyond menial labour, and that Christian workers are disproportionate victims of debt bondage.¹⁸ Minority groups can face bureaucratic difficulty in obtaining land and constructing religious buildings and corruption is reportedly an issue in this regard.¹⁹
46. Reports of forced conversions of Christians were found.²⁰ Forced conversions in general are reported to be on the rise in Pakistan, with 20 Christians reportedly forced to convert in 2009 and with some cases also involving forced marriage.²¹ One report indicated that an 86 year old Christian woman was forced to convert by local Islamic leaders whilst her husband was detained on blasphemy charges.²²
47. The UK Home Office reports that at least 8 Christians died in August 2009 when approximately 800 Muslims attacked Christians in the Punjab town of Gojra. The violence occurred following rumours that a copy of the Quran had been desecrated during a Christian wedding in Gojra.²³ Forty Christian homes were also allegedly burned in the attacks. Thirteen Muslims, including radical clerics, were reportedly detained following the violence but were released on bail in early September. The releases sparked an assertion from the *Pakistan Christian Post* that Muslims and Christians have unequal influence over the

¹³ US Department of State 2010, *International Religious Freedom Report – Pakistan*, 17 November, Section II

¹⁴ US Department of State 2010, *International Religious Freedom Report – Pakistan*, 17 November Section II

¹⁵ ‘Pakistan blasphemy law reformers’ death threats’ 2011, *BBC News*, 14 January
<http://www.bbc.co.uk/news/world-south-asia-12191082#> – Accessed 11 February 2011

¹⁶ ‘Militants Kill Christian Minister in Pakistan’ 2011, *The Korea Herald*, 4 March

¹⁷ US Department of State 2010, *International Religious Freedom Report – Pakistan*, 17 November, Section II

¹⁸ US Department of State 2010, *International Religious Freedom Report – Pakistan*, 17 November – Sections II and III

¹⁹ US Department of State 2008, *International Religious Freedom Report: Pakistan*, 19 September, Section II

²⁰ DIAC Country Information Service 2009, *Country Information Report No. 09/ 72 – CISQuest PAK9803 – Persecution of Christians and Dawat-e-Islami*, 1 October

²¹ US Department of State 2010, *International Religious Freedom Report – Pakistan*, 17 November, Section II

²² US Department of State 2008, *International Religious Freedom Report: Pakistan*, 19 September, Section II

²³ UK Home Office 2011, *Country of Origin Information Report – Pakistan*, 17 January, p. 108

judiciary in Pakistan.²⁴ Minister for Religious Minorities, Shahbaz Bhatti²⁵, is said to have criticised the police's slow response to the violence at the time.²⁶ Freedom House reported that a "wave of attacks on Christians in August 2009, particularly in Punjab...attributed to the spread of Sunni extremist ideology".²⁷ *Time* reported suspicions that the 2009 attacks against Christians in Gojra were linked to a sectarian militant group whose membership includes a former Taliban commander.²⁸

48. The Tribunal considered other reports of Christians being targeted in Punjab by Muslim gangs and extremists/militants. In Lahore, a July 2010 suicide bombing at the shrine of the city's patron saint reportedly killed 40 people.²⁹ In March 2010 it was reported that a Christian man in Rawalpindi was killed by a Muslim mob after he allegedly refused to convert to Islam. The man was allegedly set on fire by the mob. Christian organisations held protests in the city after his death.³⁰ In Islamabad in March 2010 suspected Islamist militants killed six Pakistani Christian aid workers and subsequently bombed the agency's building.³¹ USDOS reported extremist mob attacks and forced evictions of Christian communities in Punjab.³²
49. Human Rights Watch reported that suicide bombings, armed attacks and killings by extremists, including the Taliban and al-Qaida, have "targeted nearly every sector of Pakistani society, including religious minorities...resulting in hundreds of deaths".³³ For example, a recent petrol station bombing in the city of Faisalabad, Punjab, killed at least 32 people and injured in excess of 120 others. The petrol station that was bombed is located near a government intelligence building. The Taliban claimed responsibility for the bombing but claimed the motive to be revenge for the killing of a militant last year rather than intended harm to any particular social group.³⁴ Such reports indicate that state security may generally be weak in Punjab. Human Rights Watch further reported that militant activity in conflict areas in Pakistan has reached the scale of war crimes.³⁵ The Economist Intelligence Unit (EIU) stated that "Taliban ideology has...underpinned an upsurge in attacks against Christians in Pakistan...Demands for sharia law to be applied in Pakistan are linked to the idea that Christians should be expelled from the country".³⁶

²⁴ 'LHC grants bail to Muslims accused of Gojra violence: Killers of Robert Danish will be reinstated' 2009, *Pakistan Christian Post*, 18 September <http://www.pakistanchristianpost.com/viewnews.php?newsid=1499> – Accessed 15 October 2009

²⁵ Shahbaz Bhatti is the same Minister for Religious Minorities, referred to elsewhere in this response, who was assassinated in March 2011.

²⁶ 'Pakistani Christians: Police did not stop carnage' 2009 *The Associated Press*, 3 August – Accessed 30 March 2011

²⁷ Freedom House 2010, *Freedom in the World – Pakistan*, June <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7893> – Accessed 10 September 2010

²⁸ 'Who's attacking the Christians?' 2009, *Time Magazine*, 5 August

<http://www.time.com/time/world/article/0,8599,1914750,00.html> – Accessed 18 August 2009

²⁹ Human Rights Watch, 2011, 'Pakistan: A Year of Abuses', source: *The Friday Times*, 28 January

³⁰ 'Italy summons Pak diplomat over attacks on Christians' 2010, *Daily The Pak Banker*,

26 March

³¹ 'Pakistani militants may be down, but not out' 2010, *Reuters*, 11 March

³² US Department of State 2010, *International Religious Freedom Report – Pakistan*, 17 November, Section II

³³ Human Rights Watch, 2011, 'Pakistan: A Year of Abuses', source: *The Friday Times*, 28 January

³⁴ 'Faisalabad: 32 dead in Civil Lines blast' 2011, *PakTribune*, 8 March

<http://www.paktribune.com/news/index.shtml?236977> – Accessed 10 March 2011

³⁵ Human Rights Watch, 2011, 'Pakistan: A Year of Abuses', source: *The Friday Times*, 28 January

³⁶ UK Home Office 2010, *Country of Origin Information Report – Pakistan*, 18 January, p. 112

50. The Tribunal noted reports in Christian media outlets that Christians have been targeted in other parts of Pakistan. The Tribunal noted a report that a Muslim police officer in Karachi and Muslim gang members had been kidnapping and assaulting young Christian males and forcing Christian women to convert to Islam.³⁷ Another attack by Muslim extremists occurred in December 2010, following the conversion to Islam by a Christian youth in order to marry a Muslim girl³⁸ while in May 2010, a Christian church in Karachi was attacked by around 40 Muslim extremists who threatened to kill Christians in the area. After the church pastor reported the attack to police, a report was filed against four Christians for allegedly threatening the Muslims group's leader, a convert from Christianity to Islam.³⁹ *Compass Direct* reported that in April 2009, Christians in a town near Karachi, faced calls to convert to Islam or pay tax for protection. Islamic militants in the town opened fire on Christians attempting to remove graffiti reading "Long Live the Taliban", resulting in the death of a young boy.⁴⁰

FINDINGS AND REASONS

51. The applicant claims to be a citizen of Pakistan. The Tribunal has considered the evidence she provided in support of the claim, including her passport, and it accepts that the applicant is a citizen of Pakistan.
52. The applicant claims that she is a committed and active member of the Catholic Church. She claims that her religious activities attracted the adverse interest of the authorities and religious extremists in Pakistan. The applicant claims that she has been harassed by the authorities since 2008, and detained by religious extremists in March 2010, after she was accused of converting Muslims to Christianity. She claims that she will be targeted by the authorities and the Taliban for her previous religious activities. The applicant further claims that she will not be able to practice her religion freely and safely in Pakistan.
53. The Tribunal is satisfied that the applicant is a credible witness and finds that she provided a truthful account of her circumstances in Pakistan. The Tribunal accepts her claim that she and her son suffered adverse attention from the authorities because of their religious activities. The Tribunal accepts the applicant's claim that she and her son have been accused of proselytising activities by the authorities in Pakistan.
54. The Tribunal has considered information from external sources relating to the circumstances and treatment of Christians in Pakistan. The information indicates that Christians implicated in proselytising activities have been subjected to serious harm by the authorities and religious extremists. The Tribunal has noted that the state in Pakistan has been implicated in the targeting of Christians and it has failed to provide meaningful protection to members of the Christian community who are implicated in proselytising activities.
55. Section 91R(1) of the Act requires that persecution must involve "serious harm" to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression "serious harm" includes, for example, a threat to life or liberty, significant

³⁷ 'Christian boy shot dead in Karachi' 2011, *Pakistan Christian Post*, 12 January

<http://www.pakistanchristianpost.com/headlinenews.php?hnewsid=2556> – Accessed 13 January 2011

³⁸ 'Christians In Karachi Comes Under Attack From Islamists' 2010, ReligionNewsBlog website, 15 December <http://www.religionnewsblog.com/25507/christians-in-karachi-comes-under-attack-from-islamists> – Accessed 13 January 2011

³⁹ US Department of State 2010, *International Religious Freedom Report – Pakistan*, 17 November, Section II

⁴⁰ 'Lawyer threatens to kill Christian charged with blasphemy' 2009, *Compass Direct*, 6 May

physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. The Tribunal finds that the applicant's circumstances satisfy these requirements. The applicant's religious beliefs and the way those beliefs have been expressed in Pakistan place the applicant at risk of serious harm in Pakistan by religious extremists and the authorities.

56. The Tribunal has considered the applicant's delay in applying for a protection visa. She claims that she did not apply for protection during her previous visits to Australia because she was not willing to leave her home, family, and community, in Pakistan. She claims that she decided to apply for protection when it became apparent to her that she may be killed if she remains in Pakistan. The Tribunal is satisfied that the applicant has been truthful in this regard and accepts her claim that she only reluctantly applied for a protection visa when she began to face life-threatening harm in Pakistan.
57. The Tribunal has noted that the applicant's son returned to Pakistan in 2010. He claims that during the visit he was able to avoid the harm he now anticipates by being discreet. The Tribunal accepts his claim that he was only able to avoid harm by being discreet during the visit. The Tribunal accepts his claim that he returned to Pakistan for a specific purpose and that for the duration of that visit he was willing to maintain a low profile to avoid harm. However, the Tribunal finds that this was only a temporary measure rather than a possible long term solution for the applicant.
58. The Tribunal was guided by the Handbook on Procedures and Criteria for Determining Refugee Status which states,

[The] Universal Declaration of Human Rights and the Human Rights Covenant proclaim the right to freedom of thought, conscience and religion, which right includes the freedom of a person to change his religion and his freedom to manifest it in public or private, in teaching, practice, worship and observance (Handbook on Procedures and Criteria for Determining Refugee Status, United Nations High Commissioner for Refugees, Geneva, 1992, in paragraph 71).
59. The Tribunal finds that if a person is forced to conceal their religious beliefs to avoid serious harm from sections of the community and the authorities it is a situation which amounts to persecution for Convention purposes.
60. The Tribunal is mindful that the *International Covenant on Civil and Political Rights* (1976) qualifies "freedom of thought, conscience and religion" by stating that freedom to "manifest one's religion or beliefs may be subject" to "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" (Article 18(3)). However, the Tribunal has formed the view that the applicant's religious activities did not and will not impinge on the fundamental rights or freedoms of others. The Tribunal is satisfied that the applicant has participated and will continue to participate in peaceful religious activities.
61. Accordingly, the Tribunal is satisfied that the applicant is at risk of being subjected to circumstances amounting to persecution in Pakistan by religious extremists and the authorities because of her previous proselytising activities and her intention to pursue similar

activities in the future. The Tribunal finds that there is a real chance that the applicant will suffer persecution in Pakistan for reasons of religion.

CONCLUSIONS

62. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

DECISION

63. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.