

0800834 [2008] RRTA 165 (12 May 2008)

DECISION RECORD

RRT CASE NUMBER: 0800834

DIAC REFERENCE(S): CLF2007/180382

COUNTRY OF REFERENCE: Pakistan

TRIBUNAL MEMBER: Kerry-Anne Hartman

DATE DECISION SIGNED: 12 May 2008

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, first arrived in Australia on [date]. He departed Australia on [date]. He returned to Australia on [date]. He applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa on [date]. The delegate decided to refuse to grant the visa on [date] and notified the applicant of the decision and his review rights by letter dated [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 on [date] 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 Parts 785 and 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 also 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. In his statement to the Department the applicant provided the following information:
 - He is an Ahmadi.
 - He was born in India on [date] His family migrated to Pakistan in [year].
 - He could not continue his studies in [Location A] public school due to the discrimination, hatred and persecution of Ahmadi’s. He transferred to a High School in Rabwah where there were more Ahmadi students. He lived with his uncle’s family. He returned to his family in [Location A] upon completion of his matriculation.
 - He was married in [year].
 - He lived in [location] from [year].
 - In [year] he was employed as a clerk in a government Department.
 - He completed a diploma in [year] and a bachelor degree in [year].
 - He was employed as an [type of] officer in [another government office].
 - While working as an officer he suffered discrimination and persecution because of his religion. He was transferred from one office to another. His fellow workers would not cooperate with him.
 - He was promoted to [position title] in [year] He retired on [date].
 - He went to [City C] in [month, year] and [month, year] and to India in [month, year] to participate in the annual Ahmadi religious convention. The Ahmadi Association will not support a member by providing them with a membership certificate if they apply for protection while they are attending a religious convention.

- He has [number of] children. Three children are living in Australia. One child is living in [Country D].
 - One child was granted permanent residency in Australia on humanitarian grounds because of the persecution they suffered as an Ahmadi in Pakistan.
 - Two of his children's partners were granted protection visas in Australia because of the persecution they suffered as Ahmadis in Pakistan. His child's partner in [Country D] was also granted a protection visa.
 - He wanted to live in Pakistan despite the discrimination and persecution because he had lived there all of his life and still had some of his family living there. For this reason he did not apply for protection during his visit to Australia in [month, year].
 - When he returned to his family home in [Location E] in [month, year] after visiting Australia something happened that was beyond his control.
 - On [date] a group of Sunnis came to his premises while he was having dinner with his child and started shouting abusive words and physically assaulted him.
 - He was accused of converting one of the Sunni Muslim's son to the Ahmadi religion.
 - He reported the abusive behaviour to the Ahmadi Community Chief in [Location E].
 - He tried to report the attack to the police. The police informed him of the consequences he would face if he had been involved in preaching.
 - He continued to be threatened and verbally abused by Sunnis. They warned him they would take revenge against him for preaching. He feared he would be harmed if he remained in Pakistan and the police would not protect him.
21. In his letter to the Department dated [date] the applicant's advisor submitted that the applicant was a well known member of the Ahmadi community who had been falsely accused of preaching and had been abused and physically assaulted
22. The applicant submitted the following documents to the Department:
- Letter from Ahmadi Muslim Association Australia dated [date] stating the applicant was a member of the Ahmadi Muslim Community;
 - Reports about the persecution of Ahmadis in Pakistan;
 - Copy of his passport issued on [date];
 - Two letters from Ahmadi Community Chief in [Location E] advising the applicant how to protect himself;
 - Three documents from one government department where he had worked relating to his transfer to a different office because of his religion.

23. The delegate accepted the applicant was an Ahmadi and that Ahmadi are persecuted in Pakistan. The delegate was not satisfied the applicant had suffered persecution for the following reasons. He had a stable work history and had been promoted to the senior position of [position title]. He had elected not to seek protection in Australia during his visit in [month, year] He had only provided scant details of the incident which led to the verbal abuse and physical assault in [month, year]. He had continued to reside at the same address after this incident and had delayed leaving Pakistan. The delegate found that the applicant's behaviour was inconsistent with his claims of persecutory harm and was not satisfied he had a genuine fear of harm.
24. In his letter to the Tribunal dated [date] the applicant's advisor made the following submissions:
 - The applicant endured the discrimination he suffered at his place of employment as he had to support his wife and [number of] children;
 - The applicant had only one promotion in his [number of] years of employment;
 - His hard work outstanding performance and extensive experience enabled him to obtain a promotion only when it was long overdue;
 - The position of [position title] is not such a senior position in Pakistan;
 - The applicant did not intentionally or deliberately have a conversation with anyone to convert them from Sunni to Ahmadi, that is why he could not provide any details about the person the extremist Mullahs claimed he converted;
 - The applicant returned to Pakistan in [month, year] after visiting Australia as he wanted to live in Pakistan where he had lived for [number of] years even though he had suffered discrimination all of his life;
 - Soon after his return he was assaulted and accused of preaching. He could not go into hiding to escape the situation as he is [age];
 - He delayed leaving Pakistan as he wanted to see if the situation was manageable.
25. The applicant appeared before the Tribunal on [date] to give evidence and present arguments.
26. The Tribunal hearing was conducted with the assistance of an interpreter in the Urdu and English languages.
27. The applicant was represented in relation to the review by his registered migration agent who attended the hearing.
28. At the hearing of the Tribunal the applicant confirmed he was an Ahmadi. He claimed that when he attended the [Location A] public school he was often abused and insulted. He also claimed that he suffered physical abuse as children would hit him because he was an Ahmadi. The applicant claimed that at the high school in Rabwah he didn't suffer any discrimination as there were more Ahmadi students in

Rabwah. He claimed that Rabwah was about [number of] kilometres from his family home and while he was in Rabwah he missed his family. The applicant claimed that he did not suffer any discrimination when he was doing his tertiary studies as he studied at home.

29. The Tribunal asked the applicant about the discrimination he suffered at his place of employment. The applicant claimed that the Mullahs hate Ahmadis and they spread hate in the community. He claimed that he was not allowed to work close to his home. He claimed that they were always moving him from one place to another. He claimed that nobody wanted to have an Ahmadi working in their office. The applicant claimed that he was put into a mobile office and had to travel long distances. He claimed that he was not accepted by the other employees. The applicant referred to the letter he had submitted to the Department from the Chairman of the Municipal Committee [Location] requesting his transfer. The letter is dated [date]. It states that the applicant is an Ahmadi and according to the khubats of various mosques and the public at large, those who do not accept Islam according to the preaching of Sunna have no place in this city. The chairman requested the applicant be transferred to another area to avoid a religious crisis. The applicant then referred to the letter he had submitted from the Provincial Director advising the Chairman of the Municipal Committee [Location] that he was on leave and would not be posted back to his office. The applicant claimed that the Sunnis would not accept him or work with him. He claimed he was often given leave so the Sunnis did not have to work with him.
30. The Tribunal asked the applicant about the incident of [date]. He claimed that he was having dinner with one of his children when he heard people knocking on his door and shouting abuse. He claimed that when he opened the door they grabbed him and started to beat him. He claimed that they were shouting he had converted someone. He claimed he shouted for help and some neighbours came. He claimed that the neighbours suggested they produce the person they alleged he converted. He claimed that the next day about 10-15 people turned up at his house shouting and threatening him. He claimed that they produced the person they claimed he had spoken to and converted but he had never seen the person. He claimed that they continued to yell and shout and threaten him He claimed that they threw stones at his house. He claimed that he was frightened because he knew the police would not protect him.
31. The applicant claimed that he spoke to his ahmeer in [Location E] who advised him to contact the police. He claimed that he went to the police station in [Location E] on [date] He claimed that he was told by one of the police that no one will listen to you if you say you are innocent. He claimed that the police then told him the penalties for preaching. He claimed that after this incident he didn't feel comfortable staying in his home as he feared that the Sunnis would return and try to harm him. He claimed he sometimes lived with his son and sometimes his brother. He claimed that sometimes he would just stay at the mosque. He claimed that he would occasionally return to his home to see what the situation was like. He claimed his neighbours told him that the Sunnis had come to his house when he wasn't there. He claimed he didn't know what would happen in the future but he felt threatened.

32. The Tribunal asked the applicant about the letters he had submitted to the Department from the community chief in [Location E]. He claimed that the community chief wanted to help him. The Tribunal asked the applicant if the Tribunal could contact the community chief in [Location E] to ask him about the incident on [date]. The applicant agreed to this request and provided the address and telephone number of the community chief in [Location E].
33. The Tribunal asked the applicant why he had waited several weeks before leaving Pakistan. The applicant claimed that at first he didn't know what to do. He claimed he lived for a while with his brother and then he lived with his married son. He claimed he wanted to see if he could still manage to live in Pakistan. He claimed his family in Australia wanted him to leave Pakistan and they arranged the tickets for him. He claimed that they couldn't get tickets immediately. He claimed that he was also concerned about leaving his youngest son who is studying in Lahore and he had to arrange the transfer of property to his brother.
34. The Tribunal asked the applicant why he had not applied for a protection visa when he visited Australia in [month, year]. The applicant claimed that even though he had been subjected to discrimination and persecution he had not faced a life threatening situation before. He claimed that Ahmadis receive no protection from the police and if they are attacked and falsely accused of preaching there is nothing you can do. He claimed that there is an anti Ahmadi organisation based in [Location E] who encourage violence against Ahmadis.
35. The Tribunal asked the applicant why he feared returning to Pakistan. He claimed that he has been falsely accused of preaching and converting someone to the Ahmadi faith. He claimed that he had been physically and verbally attacked. He claimed that he tried to report the incident to the police but the police would not take his report. He claimed that if he returned to Pakistan and was threatened the police would not protect him. The Tribunal asked the applicant why he couldn't move to a different area of Pakistan. He claimed that there is nowhere in Pakistan where the police will protect Ahmadis. He claimed that the treatment of Ahmadis is getting worse in Pakistan.
36. On [date] the Tribunal received a letter from the applicant's advisor in which he made a number of submissions relating to the applicant's claims. He also enclosed a letter from the Ameer of the Ahmadi Jamat in [Location E] dated [date]. The letter confirms that an incident took place on [date] between the applicant and members of the Sunni sect in which the applicant was accused of preaching.

Country information

General Situation for Ahmadis in Pakistan

37. The US Department of State's most recent report on human rights, released on 11 March 2008, reported that Ahmadi Muslims in Pakistan continue to face violence and harassment and suffer difficulties in terms of accessing police protection. The report notes that: "Police often failed to protect members of religious minorities particularly Christians, Ahmadis, and Shi'as from societal attacks"; and that: "Ahmadi communities claimed their members were more likely to be abused". The

report notes that: “Laws prohibiting blasphemy continued to be used against...Ahmadis”, listing a number of incidents in which Ahmadis were arrested in the recent year and noting that: “The Ahmadi community claimed that between July 2006 and June 30, 28 Ahmadis faced criminal charges under religious laws or because of their faith” The report highlights the finding of the National Commission for Justice and Peace (NCJP; a commission of the Pakistan Catholic Bishops’ Conference) that “51 Ahmadis...were in prison on charges for desecrating the Koran”. The NCJP also reported that “two churches, three Ahmadi mosques, and one Hindu temple were burned, attacked, or destroyed in different parts of the country, with most occurring in Punjab”. It may be of interest that US Department of State’s report also highlights a March 2007 incident in which “a retired police officer shot and killed a recent Ahmadi convert in a restaurant in Seerah, Mandi Bahauddin District” A range of other incidents occurring in 2007 are also noted in the most recent report on religious freedom, published in September 2007, including an April 2007 incident where “local extremists tortured and killed Chaudhry Habibullah Sial, an 82-year old Ahmadi man who was using his home as a prayer center for Ahmadis”. The relevant extracts from the reports state:

Police often failed to protect members of religious minorities particularly Christians, Ahmadis, and Shi’as from societal attacks.

...Laws prohibiting blasphemy continued to be used against Christians, Ahmadis, and members of other religious groups including Muslims. Lower courts often did not require adequate evidence in blasphemy cases, which led to some accused and convicted persons spending years in jail before higher courts eventually overturned their convictions or ordered them freed. (US Department of State 2008, *Country Reports on Human Rights Practices for 2007 – Pakistan* , 11 March –US Department of State 2007, *International Religious Freedom Report: Pakistan* , 14 September).

38. The annual report of the Ahmadiyya Muslim Community lists the various killings, arrests and other incidents which the Ahmadiyya Muslim Community suffered in 2007. (Ahmadiyya Muslim Community (undated), *Persecution of Ahmadis in Pakistan during the Year 2007: A Summary*, The Persecution.org website <http://www.thepersecution.org/nr/2007/y2007.html> – Accessed 8 April 2008). It states:

Ahmadis murdered for their faith in 2007

- Mr. Muhammad Ashraf was killed by an ex police inspector at Seerah, Mandi Bahauddin on March 1, 2007.
- Chaudhary Habibullah Sial was found murdered at his home on the morning of April 8, 2007 at Adda Nur Pur Nehr, District Qasur.
- Dr. Hameedullah of Steel Town, Karachi was abducted and killed sometimes between 20-22 September 2007.
- Professor Dr Mobashir Ahmad of Clifton, Karachi was shot dead on September 26, 2007 outside his clinic.
- Mr. Humayun Waqar was assassinated in his shop at Sheikhpura on December 7, 2007.

Ahmadis in prison on December 31, 2007

- Mr. Muhammad Iqbal was imprisoned for life in a fabricated case of blasphemy.

- Three Ahmadis namely Messrs. Basharat, Nasir Ahmad and Muhammad Idrees along with 7 others of Chak Sikandar were arrested in September 2003 on a false charge of the murder of a cleric.
- Four Ahmadis are in prison at Qambar, Sindh after their arrest in a fabricated case under religious law 298, later upgraded to PPC 298-C and 295-C.

Situation for Ahmadis in [Location E]

39. The Ahmadiyya Muslim Community's 2006 annual report for Pakistan claims that the anti-Ahmadi organisation " *Almi Majlis Khatme Nabuwwat* is based at [Location E] and Lahore". The reports notes that the movement launched anti-Ahmadi activities from [Location E] in a number of other districts in the Punjab including Rabwah in the Jhang District and Jaura in the District of Qasur (or Kasur (Ahmadiyya Muslim Community (undated), *Persecution of Ahmadis in Pakistan during the Year 2006: A Summary* , The Persecution.org website <http://www.thepersecution.org/nr/2006/y2006.html> – Accessed 8 April 2008).

The Situation for Ahmadis in 2008

40. Reports of the killing and arrest of Ahmadis in Pakistan on the basis of their identity have continued to appear in 2008. On 4 March 2008 the Asian Human Rights Commission (AHRC) reported that:

Basharat Mughal, the president of a group of minority Muslims – the Ahmadiyya Muslim Community Halqa Manzoor Colony – in Karachi, was murdered on the 24 February 2008. The forty five year old was shot on his way to Fajr, the first of the Muslim morning prayers, becoming, says the group, the 88th person from the sect to be killed in Pakistan since 1984.

Ahmadi Muslims receive no protection from the police or parliament in Pakistan Crimes against them go without investigation, and in some situations, are openly encouraged. Police are too afraid of the power held by fundamentalist Muslims to adequately investigate human rights abuses against members of the Ahmadiyya. ('Pakistan: As a member of the UN human rights council Pakistan should provide protection for minority sects' 2008, Asian Human Rights Commission website, 4 March <http://www.ahrchk.net/statements/mainfile.php/2008statements/1405/> – Accessed 8 April 2008).

41. On 25 February 2008, *Dawn* reported that: "A trader belonging to a minority community was killed by unknown persons in the Mehmoodabad area early Sunday morning"; and that: "the victim belonged to the Ahmadi sect and was headed to his place of worship in Sector B, Akhtar Colony, when gunmen targeted him" ('Karachi: Trader shot dead' 2008, *Dawn* website, 25 February <http://www.dawn.com/2008/02/25/local19.htm> –Accessed 8 April 2008).
42. On 6 March 2008 the Catholic news agency, Asia News, reported that an "[a]n 80-year-old Ahmadi man [had been] arrested for blasphemy". Police reportedly arrested the man "for desecrating the Qur'an" a claim denied by local Ahmadis (Felix, Q. 2008, 'An 80-year-old Ahmadi man arrested for blasphemy', Asia News website, 6 March <http://www.asianews.it/index.php?l=en&art=11701&size=A> – Accessed 8 April 2008).

43. On 6 May 2007, Human Rights Watch (HRW) called on the government of Pakistan to take action to better protect its Ahmadi population, in a statement which claimed that: “The persecution of the Ahmadiyya community is wholly legalized, even encouraged, by the Pakistani government”. (Human Rights Watch 2007, ‘Pakistan: Pandering to Extremists Fuels Persecution of Ahmadis – Government Must Repeal “Blasphemy Law” and End Persecution of Religious Minority’, 6 May <http://www.hrw.org/english/docs/2007/05/06/pakist15848.htm> – Accessed 4 March 2008).

Relocation

44. In January 2007 the UK Parliamentary Human Rights Group (PHRG) published a report on its investigation into the situation of Ahmadis in Pakistan. The PHRG report was initiated on the basis of concerns that Ahmadis were being refused Asylum in the UK on the understanding that they could re-locate to Rabwah. The report makes clear the precariousness of life for Ahmadis in Rabwah, starved of opportunities for education and employment and menaced by the Khatme Nabuwwat. The report concludes that Rabwah is not a safe haven for Ahmadis fleeing persecution elsewhere in Pakistan; it is a ghetto, at the mercy of hostile sectarian forces whipped up by hate-filled mullahs and most of the Urdu media. (UK Parliamentary Human Rights Group 2007, *Rabwah: A Place For Martyrs? Report of the Parliamentary Human Rights Group mission to Pakistan into internal flight for Ahmadis*, Ahmadiyya Muslim Community UK website, January pp.iii-iv http://www.ahmadiyya.org.uk/leaflets/PDF/Rabwah_Report.pdf – Accessed 7 April 2008).
45. The UK Parliamentary Human Rights Group report also provides a general impression of the manner in which the treatment of Ahmadis in Pakistan has degenerated in Pakistan. The report notes the advice of the Human Rights Commission of Pakistan (HRCPC) that: “The threat to Ahmadis varies from place to place: in some villages Ahmadis are able to live safely, whilst in others they have been driven out. The reports of violence fluctuate each year but the overall trend of violence against Ahmadis is worsening. The report also refers to the anti activities of the anti-Ahmadi movement known as Khatme Nabuwwat (Committee to Secure the Finality of the Prophethood). (UK Parliamentary Human Rights Group 2007, *Rabwah: A Place For Martyrs? Report of the Parliamentary Human Rights Group mission to Pakistan into internal flight for Ahmadis*, Ahmadiyya Muslim Community UK website, January, pp.6-9 http://www.ahmadiyya.org.uk/leaflets/PDF/Rabwah_Report.pdf – Accessed 7 April 2008).

Findings and Reasons

46. The applicant travelled to Australia on a Pakistani passport. The Tribunal accepts the applicant is a national of Pakistan.
47. The applicant claims he is a member of the Ahmadi Community. The applicant submitted a letter from the Ahmadi Muslim Association Australia dated [date] that states “ we hereby verify that the applicant is a member of the Ahmadi Muslim Community”. The Tribunal accepts the applicant is a member of the Ahmadi Community.
48. The applicant claims he has suffered discrimination and persecution in Pakistan because he is an Ahmadi. He claims he suffered discrimination at school and at his

place of employment. The applicant claims in [month, year] he was falsely accused of preaching and converting someone to the Ahmadi faith. He claimed that he was verbally abused and physically attacked. The applicant claimed he tried to report the incident to the police. He claimed that the police advised him of the penalties for preaching. The applicant claims that the police do not protect Ahmadis in Pakistan and if he returned to Pakistan he could be killed.

49. In assessing the applicant's Convention claims I am required to consider whether his fear is well founded and whether the treatment he fears amounts to persecution for a Convention reason.
50. The Tribunal found the applicant to be a credible and truthful witness as the evidence he provided to the Tribunal was consistent with the country information.
51. The Tribunal accepts that when the applicant attended [Location A] public school he suffered discrimination because of his religion. The Tribunal accepts that the applicant was often abused and insulted. The Tribunal accepts that the applicant moved from his family home to live with his uncle so he could complete his high school education in Rabwah where there were more Ahmadi Students.
52. The Tribunal accepts that while working as an audit officer he suffered discrimination because of his religion. The Tribunal accepts that the applicant was transferred from one office to another, forced to work long distances from home and that his fellow workers would not cooperate with him.
53. The Tribunal does not accept that the treatment the applicant suffered during his time at primary school or at his place of employment while distressing amounted to "serious harm" as required by s.91R(1)(b).
54. The Tribunal accepts that on [date] the applicant was verbally abused and physically assaulted by a group of Sunnis at his place of residence. The Tribunal accepts that the applicant was falsely accused of preaching and converting a Sunni to the Ahmadi faith. The Tribunal accepts that this incident occurred as the applicant submitted to the Tribunal a letter from the Ameer of the Ahmadiyya Jamat in [Location E] which states that he was aware the incident that took place. The applicant's claims are also consistent with the country information that indicates that mobs occasionally attack individuals and accuse them of blasphemy. Discriminatory laws and the teaching of religious intolerance by the mullahs have created a permissive environment for such attacks. The Tribunal accepts that the applicant was attacked and threatened because of his religion.
55. The Tribunal accepts that the applicant tried to report this incident to the police. The Tribunal accepts that the police were not interested in what had happened to him and advised him of the penalties for preaching. The Tribunal accepts these claims as they are consistent with the country information.
56. The Tribunal accepts the country information that indicates that the police often fail to protect Ahmadis. The Tribunal accepts that the police have often been complicit in harassment and the framing of false charges against Ahmadis or have stood by in the face of anti Ahmadi violence.

57. The Tribunal has considered what would happen if the applicant returned to Pakistan. The applicant is [age] years old. His family home is in [Location E]. The applicant is well known in his area as an Ahmadi. The latest Human Rights Watch Report states that “The persecution of the Ahmadiyya community is wholly legalized, even encouraged, by the Pakistani government”. The anti-Ahmadi movement known as Khatme Nabuwwat is operating in [Location E] and encouraging violence against the Ahmadi community. Recent reports also indicate that violence against Ahmadis is worsening. The Tribunal finds that if the applicant returned to Pakistan there is a real chance that he could be threatened and harmed by Muslims who have falsely accused him of preaching. The Tribunal finds that there is a real chance that the police would not protect him. The Tribunal finds that there is a real chance that the applicant would face treatment amounting to persecution because he is an Ahmadi.
58. The Tribunal has considered whether the applicant could relocate to another area of Pakistan to be free from the risk of persecution.
59. The independent information before the Tribunal indicates that the majority of Ahmadis in Pakistan live in Rabwah. In January 2007 the UK Parliamentary Human Rights Group (PHRG) published a report on the situation for Ahmadis in Rabwah. The report states that Ahmadis in Rabwah are deprived of the right to manifest their religion in worship, observance, practice and teaching. They are constantly under threat of prosecution under the infamous blasphemy laws. Rabwah is not a safe haven for Ahmadis fleeing persecution elsewhere in Pakistan; it is a ghetto, at the mercy of hostile sectarian forces whipped up by hate-filled mullahs and most of the Urdu media. The Tribunal finds that the applicant would not be safe anywhere in Pakistan because he is an Ahmadi. The Tribunal finds that the applicant’s fear of Convention related harm in Pakistan is therefore well founded.
60. Taking into account all of the evidence, in particular the documents the applicant has submitted to the Department and to the Tribunal to support his claims and the country information the Tribunal is satisfied that the applicant has a well founded fear of persecution should he return to Pakistan now or in the reasonably foreseeable future for reason of his Ahmadi religion.
61. 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) for a protection visa.

DECISION

62. 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.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act* 1958.

Sealing Officers ID: PRRTIR