

**0802462 [2008] RRTA 254 (25 June 2008)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0802462

**DIAC REFERENCE(S):** CLF2008/12019

**COUNTRY OF REFERENCE:** Pakistan

**TRIBUNAL MEMBER:** Kira Raif

**DATE DECISION SIGNED:** 25 June 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, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights
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 for review of the delegate's decision. 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

5. 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.
6. 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).
7. 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'

8. 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.
9. 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.

10. 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.
11. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.

17. 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**

18. The documentary material before the Tribunal is contained in Tribunal case file 0802462 and the Departmental case file CLF2008/12019. 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.

### *Primary application*

19. According to the protection visa application the applicant is a male born in District 1, Pakistan. He has completed fourteen years of education, including High School,
20. The applicant stated that he had not been employed in the past as he was studying. He had indicated on the application form that he had siblings living overseas. The applicant stated he speaks, reads and writes Urdu and English. He states that his religion is Muslim Ahmadi and his ethnic group is Ahmadiyya. The applicant included with the application a copy of his passport, which identifies him as an Ahmadi and he subsequently provided a statement from the Ahmadiyya Muslim Association of Australia which confirms that he is a member of the Ahmadiyya Muslim Community. He also provided evidence of his Australian qualifications.
21. When making the application, the applicant provided a statement in which he made the following claims:
  - He was born in, District 1 Pakistan. He has a number of siblings, of whom some are settled overseas. He is an Ahmadi Muslim by birth. His father was well known in the district.
  - As an Ahmadi Muslim by birth, he and his family have been discriminated in all parts of social life since as far back as he can remember. He had noticed this discrimination when he was in primary school, at that time Ordinance XX was introduced by late General Zia-ul-Haq.
  - The applicant remembers that teachers tried to isolate him from other students and punish him unnecessarily. At school he was insulted, taunted and bullied by other students because he was Ahmadi. These incidents made him depressed and tearful. He always reported these incidents to his parents but they could not resolve it and told him to compromise.
  - He also noticed discrimination during his high school and college studies. It did not stop but accelerated with time. The Mullahs incited other Muslims to take violent action against the Ahmadi Muslims. The fanatical Mullahs preach that if they kill an Ahmadi, they would be able to get blessing from God and a place in heaven.

- During his studies, the College management did not let him complete his studies in his home town. They told his parents that he could not study further because of threats from students and fanatic Mullahs and that they did not want an Ahmadi student to study at their College. He had to migrate to City 1 to complete his studies. He was mentally devastated by this because he had to live away from his family.
  - The applicant lived in City1 for two years and did not discuss his religion or practice his prayer freely in the hostel because of the fear of persecution. During this period he lived with fear that if any of his friends come to know that he was an Ahmadi, his life would be in danger.
  - On completion of his studies, the applicant's parents encouraged him to study overseas for his safety. He got admission to study in Australia and used it as a means to escape from Pakistan to settle in Australia. He has completed a course in Australia.
  - If he returns to Pakistan, he fears that he would be harmed or killed because of being an Ahmadi Muslim. There is a great fear and uncertainty for the Ahmadiyya community in Pakistan as Ordinance XX is enforced and any Ahmadi can be changed under cl. 298A, B and C of this Ordinance. Their lives are not safe and it is very difficult to know when a group of men who approach you may beat you or assassinate you like many other Ahmadi in Pakistan.
  - He also fears that if he travels back to Pakistan, he will be discriminated on the ground of religion in getting a suitable job with the government or private sector. He will never live peacefully and practise his religion as he has enjoyed living in Australia.
22. The delegate wrote to the applicant inviting him to attend an interview in relation to his protection visa application. The applicant attended that interview and had confirmed his background information and claims as set out above. He stated that there were a lot of troubles for Ahmadi in Pakistan and there was a danger to his life. He said that his study had been interrupted and whenever there was trouble, his teachers would not show any care for him, he received no support. Whenever he mentioned these things to his parents, he was told to compromise. He was not allowed to continue with his study and he had to continue while being far away from his family. There, he encountered the same problem and he was afraid that if he told people, his studies would again be interrupted. When he finished his study, his family encouraged him to go overseas and he came to Australia to complete his studies. If he goes back, he fears mistreatment. Many Ahmadi have been killed and discriminated and he fears for his life. He said that he fears harm from the Mullahs everywhere, who encourage people to kill Ahmadi and that they would be rewarded by going to heaven. The applicant said that he would be targeted because there was always violence against Ahmadi and many Ahmadi had been persecuted. If he shows that he is an Ahmadi, he fears that he would suffer the same fate and would not survive. The applicant said that he had no trouble getting his passport. He said that he was a member of an Ahmadi organisation but has not held any position. He spoke about the differences in religious beliefs between Ahmadi and Sunni Muslims. The applicant said that he practised his religion but not on a regular basis, he attends once a week. He said that he was involved in the local community in Australia. The applicant said that he had personally witnessed anti-Ahmadi violence in Pakistan. The applicant said that he has contact with his siblings in Pakistan and that

the situation remained the same. He confirmed being fearful of being caught up in violence by virtue of being an Ahmadi.

23. The delegate refused to grant the visa. The delegate acknowledged the country information about the situation of Ahmadis in Pakistan, but noted that the incidents of harm were small in number considering the Ahmadi population in Pakistan. The delegate was not satisfied that there was a real chance that the applicant will be persecuted for a Convention reason in Pakistan.

*Application for review*

24. The applicants sought review of the delegate's decision. When applying for review the applicant's representative noted that different dates appeared on the decision record and the notification of the decision which made it difficult to ascertain the date of the decision. The representative noted that further submissions, additional claims, relevant documentation and supporting materials would be furnished at the earliest convenience.
25. The Tribunal wrote to the review applicant pursuant to s. 424A of the Act inviting his comments on, and response to the information which the Tribunal considered may be a reason or part of the reason for affirming the decision under review. The Tribunal referred to the two months delay from the time when the applicant was granted his visa to the time when he entered Australia and also the fact that he did not apply for the Protection visa for almost one year after entering Australia and that he had only applied shortly before his visa had expired. The Tribunal also noted that the applicant has had previous contact with DIAC with respect to his visa application and that there was no evidence that he had raised any concerns about his fear of returning to Pakistan. These matters were said to be relevant as they may indicate that the applicant did not have a genuine fear of persecution in Pakistan.
26. The applicant replied through his representative. The representative submits that the applicant is a Pakistani national of Ahmadiyya faith, who arrived in Australia on a visa. It is noted that the applicant provided the Ahmadiyya membership certificate from the Ahmadiyya missionary. The representative submits that the applicant and his family members had been persecuted in Pakistan because of their religious background, for his father's profile assisting persecuted Ahmadis It is stated that the applicant was discriminated, assaulted, denied admission to an educational institution and expelled from an establishment due to his religion. He had to study privately at home to attend the Bachelor degree examinations as he was fearful of attending classes as a regular student and it took him one extra year to complete the degree. It is stated that the applicant's father suffered persecution, and as his son, the applicant had been disadvantaged and jeopardised and he became the target of persecution. The applicant's brother could not find employment in Pakistan due to his religion and had to find employment at an establishment owned and managed by an Ahmadiyya community member. It is stated that the applicant had been in constant fear for his life in Pakistan since primary school. He had to escape Pakistan to avoid persecution and used the student visa to escape but he had the intention of applying for the protection visa soon after arriving in Australia He endeavoured to apply for the protection visa soon after the arrival but it was revealed by the Ahmadiyya association that as he arrived on a visa, he had to complete his course of study otherwise the Association would not support the protection visa application. Therefore the applicant could not make his protection visa application. The representative refers to paragraph 51 of the UNHCR handbook and

professor Hathaway's discussion on what constitutes persecution. He states that Ordinance XX 1984 prohibits Ahmadis to practise their religion in Pakistan and s 295C of the Blasphemy law is a violation of the UN Charter of human rights. It is submitted that the applicant has an ongoing fear for life [sic] in Pakistan with the allegation against his father and he has been discriminated, assaulted, denied admission and expelled from the establishment while in Pakistan and he is fearful that he would face similar situation and serious harm if he were to return to Pakistan.

27. In a further submission to the Tribunal, the representative addresses his concerns with the delegate's decision. He states that the applicant applied for protection visa with the support of the Ahmadiyya Missionary and that the delegate was satisfied of certain elements but was not satisfied that the applicant had a Convention-based genuine fear of persecution or that there was a real chance that the applicant would be persecuted in the future. The representative submits that the applicant is a member of the Ahmadiyya community, as evidenced by the provision of the Ahmadiyya membership certificate, and he stated in his application that his father used to be a renowned Ahmadiyya personality for the Ahmadiyya community in Pakistan and there had been an allegation against him. The representative states that there can be no doubt that the applicant is an Ahmadiyya from Pakistan and that there is persecution for Ahmadis in Pakistan and the applicant faced a worse level of persecution for his father's profile. The representative refers to country information which he enclosed, relating to the level of persecution faced by Ahmadis in Pakistan and submits that the harm feared by the applicant amounts to persecution.
28. With respect to the concerns raised by the Tribunal in its correspondence, the representative submits that although the applicant was granted a visa, the orientation class was scheduled to commence three months later and the applicant was definite 12 months later when his visa was granted that he was going to Australia as a student. He also needed extra money to support himself during his study and he had to spend a few weeks to organise everything before coming to Australia. It also took him a few weeks to get his ticket confirmation during the peak season, so that the applicant arrived in Australia, one week before the orientation class. The representative notes that the primary student visa [sic] did not allow the applicant to work and after attending classes, he was entitled to apply for work rights, which the applicant did 2 months later. The representative states that the applicant intended to apply for the protection visa shortly after arriving in Australia and he made inquiries through the Ahmadiyya Association in Australia as he needed the support of the Association. The Association advised the applicant that as he arrived on a Student visa, he needed to complete the course before obtaining support for his protection visa. The applicant therefore applied for the protection visa a year later with the support of the Ahmadiyya Association upon completion of the course. It is noted that as the applicant had already found out from the Ahmadiyya Association that he would have to complete the course of study before applying for the protection visa to obtain the membership certificate, it was not relevant to mention his intention to apply for the protection visa to DIAC while he was in a safe country on a Student visa.
29. The applicant also provided an 'amended additional statement of claim' in support of his application. In it, he notes that some important and relevant information with respect to his claim was missed out. He outlines his family background. He notes that his brother could not find employment and eventually found employment with a

company owned by an Ahmadiyya. He states that his father used to be renowned in his field in District 1 and as a result, he and his family had been targeted and persecuted. He had been insulted and assaulted many times openly and finally he had been charged with an allegation. The applicant refers to the treatment of Ahmadis in Pakistan, but notes that, he had witnessed and experienced greater persecution, including hatred, discrimination, non-cooperation, boycott and physical assaults by fellow students. He was insulted and bullied by fellow students, which made him depressed and tearful and the teachers isolated him, instead of resolving the problem. The applicant states that he had similar problems at high school and college, where he was prohibited from attending various activities and assaulted. He was not allowed to be enrolled in College for the course and he relocated to City 1 where he kept his religion secret and did not pray, while living in fear. When his religion became known, he was expelled from the establishment and due to the disruption he could not attend final examinations and had to study at home, completing his bachelor degree one year later. After he completed his course, his family suggested that he should leave Pakistan and he took admission to TAFE. The applicant states that he sought to apply for the protection visa after arriving in Australia but having contacted the Ahmadiyya Missionary, he was advised that he had to complete the course, which he had done. The applicant states that if he returns to Pakistan, he fears that he would be harmed or killed as a member of the Ahmadiyya community given the level of persecution he previously experienced and the allegation against his father. He could be charged under the Pakistani penal code.

30. An officer of the Tribunal contacted a representative of the Ahmadiyya Association in Australia, who confirmed that the Association advises students to complete their course of study before making an application for the Protection visa.

*Oral evidence*

31. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Urdu and English languages. The applicant was represented in relation to the review by his registered migration agent.
32. The applicant confirmed that the information he provided with the application was correct and that he did not wish to change anything.
33. The applicant said that his parents were deceased. His siblings were residing in Pakistan and overseas.
34. The applicant confirmed that he has completed a course before coming to Australia. He travelled to Australia and completed a Course. He has never worked and has been supported in his studies by a relative
35. The Tribunal asked the applicant why he feared returning to Pakistan. He said that he belongs to the Ahmadi community and they are regarded as non-Muslims, there is a law in Pakistan that they should be killed. The applicant said that he was harassed when he was in the primary school and he was also scolded at school. The teachers used to separate him from other students because he was an Ahmadi and they used to punish him. This continued when he was in high school. The students said that he was an Ahmadi and should be killed. He was not allowed to eat in the canteen and he could not enter the prayer room or participate in sporting events. They used to scold him all the



time and the teachers punished him because he was an Ahmadi. When he was doing his HSC, two or three students attacked him when he was entering the prayer room. He sustained injuries at the time and had to get first aid. He told the story to his mother and his brother and they asked him to reconcile with the students but it could not happen because the attitude of the students and the teacher was hostile. The mullahs were also angry because he was not allowed to enter the prayer room.

36. The applicant said that he passed his HSC examination with many difficulties and after discussions with his family, he tried to get admission to a Bachelor course. The College committee did not allow him admission to college because he was an Ahmadi. His family members then suggested that he should try to get admission in City 1. After being admitted in City 1, he kept his religion and his belonging to the Ahmadi community secret so that nobody could harm him. There was another person at his lodgings, who had a visitor from the applicant's city who revealed his secret. He faced a lot of problems as an Ahmadi and the visitor reported him as an Ahmadi. As a result, he was thrown out of his accommodation. He could not continue his studies and had to return home and sit for examinations at a private institution. He then started making efforts to get out of the country because he used to be insulted and discriminated. He started making efforts to get admission in Australia in order to save his life and also to continue his studies peacefully. When he arrived in Australia, he sought advice regarding a protection visa but the Ahmadiyya missionary in Australia suggested that he should complete the course before applying for the protection visa and that is what he did. He does not wish to return to Pakistan because his life would be in danger and if he returns, he would be killed.
37. The Tribunal asked the applicant why his siblings remain in Pakistan. He said that they are also in danger and they have been trying to get out of the country. For example, one is qualified but he could not get a job in his profession and he managed to find a job in a business owned by an Ahmadi. The applicant said that his family members are being harassed and such harassment had happened several times in the past. The Tribunal noted that despite that, some of his siblings had left the country but others remain in Pakistan. The applicant said that they are trying their best to get out but it is difficult for them to get the visas. The Tribunal asked the applicant why he thought it was easier for him to get the visa. He said that he had already completed an English course and he had the financial support of a family member, that is why he was able to get admission in Australia. His siblings do not have a good command of English and have not yet done the English test. That is why they could not get their visas so far.
38. The Tribunal asked the applicant if he had been practising religion in Pakistan or in Australia. He said that he attends the sermons in Australia and he also attended the sermons in Pakistan at the special Ahmadi mosque in District 1. The applicant said that the police raided the mosque many times and they had a security guard outside the mosque, so that the people inside would not be attacked.
39. The applicant described to the Tribunal the main tenets of the Ahmadi religion.
40. The Tribunal questioned the applicant about the delay in making the protection visa application. The applicant said that the Ahmadi community did not approve of this and told him that he had to complete the course and then lodge the protection visa application. The Tribunal pointed out that a one year delay in applying for the protection visa may indicate either that he did not intend to apply for the protection visa

when he came to Australia or that he did not have a genuine fear of persecution. The applicant said that the head of the Ahmadiyya community did not allow him to lodge the protection visa application and also unless he completed his course as a student, he could not apply for the protection visa. The Tribunal pointed out that the protection visa and the student visa were not related. The applicant said that he spoke to the head of the Ahmadiyya community who told him to complete the course before applying.

41. The Tribunal asked the applicant why it took him two months after being granted the Australian visa to travel to Australia. He said that he needed a few weeks to arrange for his books and clothes and also the air tickets. This was at the peak time when every one travelled, so it was hard to obtain the ticket and it took him some time before his ticket was confirmed.
42. The Tribunal noted that one of the reasons for the delegate's decision was that the applicant relayed some incidents of discrimination but not of serious harm and that he was able to complete his studies and remained in Pakistan for some time and that his family still remain in Pakistan. The Tribunal invited the applicant's comments. The applicant said that some of his siblings who live overseas were also threatened for the same reason and his siblings in Pakistan also face the same problems. His father was well known and suffered a lot as an Ahmadi. The Tribunal noted that there was a large Ahmadi population in Pakistan, particularly in District 2 and asked the applicant if he could live there. The applicant said that his father worked in District 1 and they did not have any other place to stay, they could not find accommodation. There is no place for the family to stay there.
43. The applicant said that if he returns to his country, his life would be threatened. If he returns, atrocities would be committed against him and most probably he would even be killed. There is a law that Ahmadis are regarded as non-Muslims and it was suggested that Ahmadis should be killed. The Tribunal noted that despite that, the applicant was able to attend sermons weekly while living in Pakistan. He said that there was a threat but they had to be very careful when attending the mosque.
44. The applicant's representative submitted that the applicant's responses have been right and consistent with the statements made in the protection visa application. The representative noted that it is not easy to get a visa to leave Pakistan and that the applicant's siblings, as Ahmadis, would like to leave Pakistan if they had a chance. For example, one of his siblings resides in Country 1 because the family could not obtain a visa for a country where they could apply for protection and as a last resort, they moved to Country 1 to avoid persecution. The representative referred to the applicant's claim that his sibling was supporting his studies while others are married and could not come to Australia to study due to their family commitments. With respect to the applicant's ability to pray in Pakistan, the representative submits that he spoke to the chief of the Ahmadiyya Association in Australia and was told that Ahmadis pray but they must be careful when attending prayers, they must not dress as Ahmadis and the mosque has no signage as the Ahmadi mosque. The venue is selected by the community and there are security people surrounding the mosque to ensure the safety of those inside. This does not constitute freedom of religion. The representative submits that the persecution against the Ahmadis in Pakistan is known, especially with the introduction of blasphemy laws, which do not allow Ahmadis to even discuss their religion. The representative spoke about the distinction between the Muslims and the Ahmadis and the causes of the persecution.

*Evidence from other sources*

45. The Ahmadiyya sect of Islam was founded by Mirza Ghulam Ahmad in the Indian state of Punjab in the 1880s. Ghulam Ahmad named the movement after the second name of the Prophet Mohammed and rejected the Islamic doctrine of *jihad* (holy war). Ahmad claimed that he had special spiritual powers and accepted a pledge of allegiance from a number of followers, who believed that he was a prophet. Ahmad went on to enunciate a doctrine that Jesus Christ had escaped death on the cross and had attained the age of one hundred and twenty before dying in Srinagar, India. After Ahmad's death in 1908, the Ahmadiyya sect split into two groups: the *Qadianis* and the *Lahorites*. Being the larger faction, the *Qadianis* retained control of the movement and both factions became known for the energetic proselytizing through missionaries, a technique adopted from the Protestants. After the partition of Pakistan in 1947, the headquarters of the movement moved from Punjab to the Pakistani city of Rabwah. In Pakistan, the Ahmadiyyas faced increasing hostility from other Muslim religious groups.<sup>1</sup>
46. The Ahmadiyyas were attacked in Pakistan in 1949 by the Islamic *Ahrari* group, who called on the Pakistani government to declare Ahmadiyyas non Muslims. At first the government resisted calls to impose restrictions on the Ahmadiyyas but by 1953, the Sunni majority backed by the mullahs started an anti Ahmadiyya campaign. The new Pakistani constitution of 1973 included anti Ahmadiyya provisions that stipulated that holders of public office declare their belief in prophet Mohammed only.
47. In 1993 the Supreme Court of Pakistan heard a number of court cases against the Ahmadiyyas, who asserted that they were being deprived of their religious rights and freedoms, as guaranteed under Article 20 of the Pakistani constitution. The appeals were rejected because the court felt that granting the Ahmadiyyas equal rights would be against public order. The court stated that the Shiite or the Sunni Muslims consider the Ahmadiyya faith to be ideologically offensive. A majority opinion of the court stated that many Islamic phrases were, in effect, copyrighted trademarks of the Islamic faith and the use of these phrases by Ahmadiyyas was an infringement of the Pakistani Trademark Act of 1940. The courts also found that Ahmadiyyas were committing blasphemy when they spoke or wrote specific Islamic phrases.<sup>2</sup>
48. According to a Catholic organisation, National Commission for Justice and Peace, the Ahmadiyya community pointed out that there were about one thousand three hundred and thirty nine hate news reports in the Pakistani press during 2005. Amnesty International noted that the Pakistani state failed to protect members of religious minorities from abuse by private individuals. At least seventy two people were charged

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<sup>1</sup> Esposito, J.L. (ed) 1995, *The Oxford Encyclopedia of the Modern Islamic World* Oxford University Press, Oxford, pp.54 – 57; Glasse, C. 2001, *The Concise Encyclopedia of Islam*. Tien Wah Press, Singapore, pp. 33 – 34

<sup>2</sup> Parker, J.D. 2003, 'Religious Persecution in Pakistan: The Ahmadi Case at the Supreme Court', Webcom website, December <http://www.webcom.com/hrin/parker/ahmadi.html> – Accessed 22 January 2007; Khan, A.M. 2003, 'Persecution of the Ahmadiyya Community in Pakistan: An Analysis under international law and international relations', *Harvard Human Rights Journal*, vol. 16 <http://www.law.harvard.edu/students/orgs/hrj/iss16/khan.pdf> – Accessed 22 January 2007; UK Home Office 2006, *Country of Origin Information Report – Pakistan*, October

and arrested under blasphemy laws in 2005, including laws that make it a criminal offence for members of the Ahmadiyya community to practise their faith.<sup>3</sup>

49. City 2 and City 1 are two cities in Pakistan that have a large number of Ahmadiyyas. Most of the population in City 2 are followers of the Ahmadiyya religion. Nevertheless, there have been anti-Ahmadiyya activities in these cities as well.<sup>4</sup>
50. 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.
51. The Ahmadiyya Muslim Community produces its own annual report, published on the Persecution.org website, which addresses the situation in Pakistan The report lists the various killings, arrests and other incidents which the Ahmadiyya Muslim Community claims Pakistan Ahmadis suffered in 2007. Reports of the killing and arrest of Ahmadis in Pakistan on the basis of their identity have continued to appear in 2008.<sup>5</sup>
52. 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 City 2 The report makes clear the precariousness of life for Ahmadis in City 2, starved of opportunities for education and employment and menaced by the Khatme Nabuwwat. The report concludes that City 2 is not a safe haven for Ahmadis fleeing persecution elsewhere in Pakistan; it is a ghetto,

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<sup>3</sup> Waqar, A. 2006, 'Hate mongering worries minorities', *Daily Times* website, 25 April [http://www.dailytimes.com.pk/default.asp?page=2006%5C04%5C25%5Cstory\\_25-4-2006\\_pg7\\_26](http://www.dailytimes.com.pk/default.asp?page=2006%5C04%5C25%5Cstory_25-4-2006_pg7_26) – Accessed 19 January 2007; Amnesty International 2006, *Amnesty International Annual Report 2006 – Pakistan*, May ; Human Rights Watch 2007, *World Report – Pakistan*, January

<sup>4</sup> Rabwah' 2005, All About All website <http://www.allaboutall.info/article/Rabwah> – Accessed 22 January 2007; 'The Lahore Ahmadiyya Movement' (undated), The Lahore Ahmadiyya Movement website – <http://www.lahore-ahmadiyya.org/> – Accessed 22 January 2007; US Department of State 2006, *International Religious Freedom Report for 2006 – Pakistan*, September; 'Enlightened Musharraf And Bigoted Masses', Countercurrents website, 3 October <http://www.countercurrents.org/pak-faiz031006.htm> – Accessed 19 January 2007

<sup>5</sup> see, for example, '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; Karachi: Trader shot dead' 2008, *Dawn* website, 25 February <http://www.dawn.com/2008/02/25/local19.htm> – Accessed 8 April 2008; 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

at the mercy of hostile sectarian forces whipped up by hate-filled mullahs and most of the Urdu media.<sup>6</sup>

## FINDINGS AND REASONS

53. The applicant travelled to Australia on a valid Pakistani passport and claims to be a national of Pakistan. The Tribunal accepts that the applicant is a national of Pakistan and has assessed his claims against Pakistan as his country of nationality.
54. The applicant claims he is a member of the Ahmadi Community. The applicant submitted a letter from the Ahmadiyya Muslim Association of Australia that states “we hereby verify that [the applicant] is a member of the Ahmadiyya Muslim Community”. The applicant’s passport, a copy of which was provided to the Tribunal, also states that he is an Ahmadi. The Tribunal finds on the basis of these records that the applicant is a member of the Ahmadiyya Community.
55. The applicant claims that he has been discriminated and harmed in Pakistan, that he was unable to attend to his studies, that he was harassed and physically assaulted. He claims that he would also be harmed if he were to return to Pakistan due to his religion. The Tribunal found the applicant to be a credible witness and considers his evidence to be consistent with the independent information available to the Tribunal.
56. Country information from a wide range of reliable sources, cited above, indicates long-term widespread intolerance towards, and harassment of, Ahmadis in Pakistan. This has included physical violence, threats as well as various restrictions on their religious practice. Reports also refer to attacks on members of the Ahmadiyya community. Of particular note are the specific government policies of discrimination entrenched in the 1974 constitutional amendment and 1984 changes to the Penal Code Section 298(c), the so-called ‘anti-Ahmadi laws’, that single out Ahmadis on the basis of their religion – prohibiting them from calling themselves Muslim or posing as Muslims; from referring to their faith as Islam; from preaching or propagating their faith; from inviting others to accept the Ahmadi faith; and from insulting the religious feelings of Muslims. The reports indicate the use of such laws to bring religion-motivated criminal charges against Ahmadis.
57. The Tribunal accepts the applicant’s evidence that he had experienced discrimination and harassment throughout his schooling, that he had difficulty attending the educational institution of his choice and that he was physically assaulted due to his religion. The Tribunal also accepts the applicant’s evidence that he was restricted in his practice of religion and, although he had attended the sermons weekly, that there was a need for security and secrecy during his practice of religion. The applicant’s claims concerning the past mistreatment appear to be broadly consistent with the available country information, which also supports the applicant’s claims of a real chance of future harm.
58. The Tribunal accepts the applicant’s explanation about the delay in making the application for the protection visa. The Tribunal accepts the advice from a

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<sup>6</sup> 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](http://www.ahmadiyya.org.uk/leaflets/PDF/Rabwah_Report.pdf) – Accessed 7 April 2008

representative of the Ahmadiyya Association in Australia of which confirms that the Association encourages students to complete the course before applying for a protection visa. The Tribunal accepts that the applicant has done so in reliance on the advice from the Association.

59. Having regard to the entirety of evidence before it and placing significant weight on the country information cited above, the Tribunal finds that there is a real chance that the applicants will face persecution for the reason of his religion if he were to return to Pakistan now or in the reasonably foreseeable future. In reaching this finding, the Tribunal accepts the evidence of the applicant and also relies on the country information which points to a high degree of volatility in both societal and official attitudes and actions toward Ahmadis. The Tribunal acknowledges the delegate's reasoning that the incidence of harm toward Ahmadis is small when considering the size of the Ahmadi population. However, the Tribunal is of the view that the country information indicates that the chance of future harm is not remote or insubstantial or far-fetched but is a real chance.
60. The Tribunal has considered whether the authorities or the government of Pakistan would be able to provide the applicant with effective protection. As noted above, the authorities have failed in some instances to protect members of the Ahmadiyya community. The US State Department report suggests that there have been instances in which the Government has failed to intervene in cases of societal violence directed at minority religious groups including the Ahmadis and that the lack of adequate government response has contributed to an atmosphere of impunity for acts of violence and intimidation against religious minorities including the Ahmadis. Further, the State's involvement in devising and implementing harsh discriminatory anti-Ahmadi laws raises serious questions about the willingness of the State to protect Ahmadis from harm inflicted by others. Having regard to this evidence, the Tribunal is satisfied that the State would not provide adequate and effective protection from such harm. The Tribunal finds that the applicant's fear of persecution is therefore well-founded.
61. For this reason also, the Tribunal finds that the harm feared by the applicant is not localised. The Tribunal is mindful of the information, cited above, concerning the treatment of Ahmadis in City 2 and notes that, despite the large population of Ahmadis in that city, there are instances of harassment and assaults. The Tribunal finds that the harm would not be avoided by the applicant relocating to City 2 or to another part of Pakistan.
62. The Tribunal accepts that if the applicant returns to Pakistan now or in the reasonably foreseeable future, there is a real chance that he will face discrimination, intimidation, threat to life, significant physical harassment or ill-treatment and serious restrictions on religious practice and that such treatment amounts to serious harm. The Tribunal finds that there is a real chance that the applicant will face persecution involving 'serious harm' as required by s 91R(1)(b) of the Migration Act. The Tribunal finds that the applicant's religion is the essential and significant reason for such persecution, as required by s 91R(1)(a), and that the persecution involves systematic and discriminatory conduct, as required by s 91R(1)(c), in that it is deliberate or intentional and involves selective harassment for a Convention reason, namely religion.
63. There is no evidence that the applicant has a legally enforceable right to enter and reside in any country other than his country of nationality, Pakistan. The Tribunal

therefore finds that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act.

64. The Tribunal finds that the applicant is outside of his country of nationality, Pakistan. For reasons given above, the Tribunal finds that the applicant has a well-founded fear of being persecuted for reason of his religion if he returns to Pakistan now or in the reasonably foreseeable future. The Tribunal finds that the applicant is unwilling, owing to his fear of persecution, to avail himself of the protection of the Government of Pakistan and that he is not excluded from Australia's protection by subsection 36(3) of the Act. It follows that the Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Consequently the applicant satisfies the criterion set out in paragraph 36(2)(a) of the Migration Act for the grant of a protection visa.

### **CONCLUSIONS**

65. 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**

66. 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.

<p>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 <i>Migration Act 1958</i>. Sealing Officer's I.D. PRDRSC</p>
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