

0908316 [2010] RRTA 126 (26 February 2010)

DECISION RECORD

RRT CASE NUMBER: 0908316

DIAC REFERENCE(S): CLF2009/61065

COUNTRY OF REFERENCE: Pakistan

TRIBUNAL MEMBER: Margret Holmes

DATE: 26 February 2010

PLACE OF DECISION: Melbourne

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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 (the Minister) 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 is a citizen of Pakistan, arrived in Australia [in] October 2006 and applied to the Department of Immigration and Citizenship (the Department) for a Protection (Class XA) visa [in] May 2009. The delegate decided to refuse to grant the visa [in] September 2009 and on the same day notified the applicant of the decision and his review rights by letter.
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] October 2009 for review of the delegate's decision.
5. The delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act and 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.
13. First, an applicant must be outside his or her country.
14. 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 although 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.
15. 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 but the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
16. 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.
17. 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.

18. 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.
19. 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.
20. It is generally accepted that a person can acquire refugee status *sur place* where he or she has a well-founded fear of persecution as a consequence of events that have happened since he or she left his or her country. However this is subject to s.91R(3) of the Act which provides that any conduct engaged in by the applicant in Australia must be disregarded in determining whether he or she has a well-founded fear of being persecuted for one or more of the Convention reasons unless the applicant satisfies the decision maker that he or she engaged in the conduct otherwise than for the purpose of strengthening his or her claim to be a refugee within the meaning of the Convention.

CLAIMS AND EVIDENCE

21. 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.
22. The applicant appeared before the Tribunal [in] December 2009 to give evidence and present arguments.
23. The applicant was represented in relation to the review and his representative provided comprehensive submissions, including one after the hearing.

The applicant's background

24. The applicant is a [age deleted: s.431(2)] man from Lahore. He states in his protection visa application form that he is of Punjabi ethnicity and that he has no religion. He came to Australia on a higher education student visa in October 2006 when he was [age deleted: s.431(2)]. He has not completed his studies and withdrew from the last course in which he was enrolled in October 2008; his student visa was cancelled on [in] August 2009. His passport expired in April 2009. His mother and older sister, who is divorced, remain in Pakistan. The applicant's father died shortly before he was born.
25. The applicant's family had lived in [Suburb 1], Lahore, in a house inherited from his grandfather and owned by his late father and other relatives but in 2008 the house was sold. The applicant's family had lived there with a widowed aunt and her children. Others who had inherited the property wanted their share of the money. The applicant's mother then moved to an area named [Suburb 2] into a basic house, nearby [details deleted: s.431(2)]. The applicant's mother had used money she received to fund the applicant's education here.
26. The applicant states that his mother supports the PML(Q) of Sikander Malhi, [details deleted: s.431(2)]. His mother also liked the Pakistan People's Party Parliamentarian

(PPPP) because she admired Benazhir Bhutto, the leader who was assassinated on 27 December 2007.

27. The applicant attended some meetings of the [Organisation A] and he helped put up some banners around the city and took part in two protest marches about women's rights.

The applicant's fears

28. The applicant states in his protection visa application that he came to Australia to study but also 'to escape [Relative A] and extremists in Pakistan because (he) had a different opinion to them' He states that he fears he will be 'beaten and tortured by (his) [Relative A] and possibly killed' and 'physically harmed by other extremists' in Muthida Majlise-Ammal (MMA).
29. In response to the question in the protection visa application form about why the applicant thinks he will be harmed, he states that he believes [Relative A] would harm him because he (the applicant) has 'denounced Islam and no longer practises' In the statutory declaration dated [in] June 2009 which was submitted in support of the protection visa application, the applicant states that he had never followed Islam very strictly although 'was forced to pray 5 times a day' and to observe Ramadan to 'avoid being hurt by [Relative A] and other religious extremists' He does not have a religion and told the delegate that he thought religion led to conflict and extremism.
30. From the age of six, [details about the applicant's schooling deleted: s.431(2)], for 13 years where he claims he was forced to pray and observe Ramadan The school was [distance deleted: s.431(2)] kms from home. The applicant's representative's submission noted that the [school deleted: s.431(2)] prided itself on teaching a broad curriculum and encouraging critical thinking but Islamic studies were compulsory for all students and the applicant 'was forced to pray' five times a day. The applicant said at the hearing that the school provided an all-round education and that only a handful of the students were other than Muslim. He said that prayer at sunset had been compulsory. I advised the applicant that he had claimed in written statements that he had been forced to pray five times a day and he explained that he had meant that it was the norm to do so and so he did for that reason. From the age of eight, he fasted for Ramadan at school but generally only a few days of Ramadan were in the school term and he did not fast when he went home for holidays. He had done well at school and had no problems gaining admission to [Australian education provider deleted: s.431(2)]. His sister had also attended a [school details deleted: s.431(2)] in Lahore.
31. I explored with the applicant at the hearing other details about his religious practice in Pakistan. He said that his mother had been quite liberal and had not made him practise. When his [Relative A] was at their home, he would ask everyone (men and boys) to pray at the mosque and the applicant said that he felt forced to comply. He said that he had not been to mosque for some years before he came to Australia.
32. I asked the applicant about his [Relative A], of whom the applicant is afraid, at the hearing. The applicant said that he was in his late fifties or early sixties and that he was [family details deleted: s.431(2)]. [Relative A]'s wife had died a few years ago. They had four children. [Relative A] and his family had lived a long way away [relatives'

details deleted: s.431(2)]. [Relative A] had money from his inheritance and his late wife had property.

33. [Relative A] had attended a Mudrassa, a religious school, and still gives money to support that school according to the applicant. Unlike the applicant's father who was a moderate and educated man, [Relative A] believes in Sharia law and works with MMA. The applicant said at the hearing that the MMA-linked group with which [Relative A] was associated was Jamiat-e-Ulema or something like that. The applicant states [details pertaining to Relative A's association with the MMA deleted: s.431(2)]. [Relative A's] role is to get votes for the MMA in elections and the MMA does so by using violence and torture to frighten people who oppose them. The applicant claims that [Relative A] had a bodyguard who had an AK-47 gun and that he usually travelled with three or four other men as well. He had contacts and influence. The applicant's mother found this frightening.
34. The applicant states that his mother has said that that [Relative A] told her that he 'has ties' with [details deleted: s.431(2)] 'banned political party called TTP' which has links with the MMA. [Details pertaining to Relative A's association with the TTP and MMA deleted: s.431(2)].
35. At the hearing I asked the applicant how he knew of [Relative A]'s activities. He said that [Relative A] tries to organise [details deleted: s.431(2)] votes for MMA. His mother had told him about this. I asked the applicant if what he had submitted was all he knew about [Relative A]'s activities and he said that as well he had heard from people from his village that in the late 1980s [Relative A] had been involved in a political kidnapping. He said that [Relative A] was more active around election times, that he had demonstrated against the military government and advocated for an Islamic state and Sharia law. The applicant was aware that the MMA had not polled well in the last election and said that he thought that was because people thought the MMA was behind the assassination of Benazhir Bhutto. The applicant did not have information about [Relative A]'s particular activities including at the time of the last election (before the applicant came to Australia) but he knew he had been busy at that time and the applicant said that [Relative A] had gone to rallies. The applicant told me that he had been very young and so was not aware of the details but the way [Relative A] acted made him (the applicant) believe what people said about him.
36. The applicant states that after his father's death, [Relative A] exercised a lot of control over the applicant's family. He refused to allow his mother to remarry nor to leave the house; he took control of the family's assets and would not recognise her and her children's inheritance of the family property in [Village A], land [location deleted: s.431(2)] where rice and wheat are cultivated, which had been left by the applicant's grandfather to family members; and he beat the applicant's mother when she complained and made her strictly observe Islam. The applicant states that when he was nine, [Relative A] hit him across the face for not observing Ramadan; other times he would abuse the applicant and he pushed him hard once when the applicant was about thirteen when he wore jeans instead of the traditional pyjama-style outfit. [Relative A] was against music, television and paintings and he shouted a lot and was also verbally abusive.
37. The applicant states that his mother has tried to go to the family's home village of [Village A] to sell land but [Relative A] has said that if she returns there or tries to sell

land he will kill her. The applicant has claimed that [Relative A] did not recognise his mother's inheritance. The applicant said at the hearing that [Relative A] gave her money derived from the family property in [Village A] from time to time but the applicant's mother had told the applicant that it was less than what had been provided when her husband (the applicant's father) was alive. She is trying to sell jewellery to pay for the applicant's fees but it is not worth very much. Because of his actions in respect of the family property and the sharing of money, [Relative A] has interfered with the provision of money to support the applicant here.

38. The Department's file includes a record of interview by a Departmental officer with the applicant in connection with the proposed cancellation of his student visa. It records that there had been difficulties on the farm which had led to reduced income.

The applicant's views of Islam and the consequences

39. It was the [Relative A]'s treatment of his mother that the applicant feels led him to turn away from Islam. The applicant is against religious extremism and supports the separation of religion from the state, equal rights for women, democracy and freedoms. He also writes about another incident which occurred when he was a child: a goat had been purchased by his family before Eid and the applicant had been upset when he saw it killed by a butcher. The incident led him to become a vegetarian. The applicant has also been concerned about acts of terror committed by extremists.
40. The applicant has not been to a mosque since coming to Australia in 2006. He has liked the freedoms evident here and has explored broader thinking.
41. He states that he 'used to share (his) views and somehow it got back to Pakistan and (his) village' that he had stopped practising and denounced Islam. He did not ever think that his denouncing of the religion would be known in Pakistan. His intention was to complete his studies and apply for permanent residence and only return to Pakistan for short visits. However, because of the troubles in Pakistan and the fact that the applicant's mother has not been able to sell her rice for 'the same price', he has not been able to afford to pay student fees and did not enrol in 2009.
42. The applicant states that he is not sure how the news got back to people in Pakistan but believes it might have been through an old school friend [Person B] who also studied in Australia and who became concerned about the applicant's failure to follow the religion here. The applicant told the delegate at the interview that he had been drinking one night and talked with his friend about his opposition to much of Islam. [Person 1], the applicant states, told one of the applicant's [relatives] in Pakistan, [name deleted: s.431(2)], and the applicant believes that this is how news got around. Previously only his mother knew his views but news later spread.
43. The applicant states that [Relative A] found out and telephoned him in November 2008, called him an infidel and threatened that if he returned to Pakistan he [Relative A] would physically hurt him (the applicant). This places him in serious danger.
44. The applicant told me at the hearing that he had spoken to [Relative A] twice since coming to Australia in October 2006. The first conversation was just a day or so after he arrived. The second time was in November 2008. [Relative A] called and called the applicant a shame and an infidel and said that he would physically harm the applicant

and the applicant had hung up. While the applicant has not heard from [Relative A] since, [Relative A] has been threatening his mother saying that if her son returns he ([Relative A]) will physically harm him and that her son is a shame. The applicant said that [Relative A] had not called again because the applicant had changed his SIM.

45. It has been submitted that the applicant's fear is not only because he does not practise as a Muslim. He has strong views about how Islam is bad. His representative's submission to the Tribunal states that while 'he would try not to speak out against Islam if he returned to Pakistan, for fear of being persecuted, that he could not rule out the chance that he might become so upset and incensed by the religious extremists, that he could lash out and let his views regarding Islam be known publicly'
46. The applicant said at the hearing that there was a lot of anti-western sentiment in Pakistan because of the war in Afghanistan and the leadership of the United States in trying to eliminate the Taliban. The applicant said that he thought the United States was helping and supported what it was doing.
47. The applicant states that he has 'heard about the bad things [Relative A] has done to other people on behalf of MMA' and he has no doubt that [Relative A] would do so to him. [Relative A] 'has links with MMA and the capacity to' hurt or kill the applicant.
48. The applicant's mother has told him that [Relative A] and religious extremists have been 'constantly threatening her and she is very scared' for the applicant's safety if he returns. The applicant said more than once at the hearing that [Relative A] would not harm his mother. Later in the hearing he said that [Relative A] had said that he would kill her in connection with disputes over land; he said that if his mother tried to interfere then [Relative A] would kill her.
49. Whether there was a real chance that the applicant would face persecution of account of his denouncing of Islam was a focus of my questions at the hearing. The applicant said that [Relative A] thinks it is his duty to rectify Muslims who have turned away from their religion and that punishing the applicant would make [Relative A] a hero in his circles. He also said that he feared that he could be charged with blasphemy. I put to the applicant information about the number of blasphemy charges which had been laid and the kinds of people who had been charged (that is religious minorities) He is of the view that it could happen to him.

The applicant's views on circumstances in Pakistan

50. The applicant states in the application form that the authorities cannot protect him 'because religion is involved'. He states that Pakistan is an Islamic country and everyone is Muslim; because he is no longer a Muslim, the police would not protect him and would do nothing if he went to them. He states that the police would ask for money and they would not protect him if he did not have any money. He states that if he was killed [Relative A] might be prosecuted but that would be too late for the applicant. He states that there is now so much trouble in Pakistan, including a war in Swat where the authorities are not protecting those people. The Government's response to the activities of extremists had not been effective in curtailing their activities.
51. In his statutory declaration, at the interview with the delegate and at the hearing, the applicant claimed that there are major consequences in Pakistan for people who do not

follow religious rules: people can be charged with blasphemy and jailed or killed. He states that while there are no actual laws against apostasy, according to Islam if you change your religion and do not change back in three days the punishment is beheading or being stoned to death. The applicant claims to fear that he will be killed if he were to return to Pakistan because the Koran teaches fundamentalist Muslims to kill people who change their religion. He is afraid that [Relative A] will influence police to charge him or to hurt him.

52. The applicant claims that he cannot move to live in another part of Pakistan because [Relative A] and MMA people would find him. Even if they did not, his non-practice of Islam, as well as his speaking against the Taliban and extremists, would lead him to be harmed by other fundamentalist Muslims. The applicant said at the hearing that he would not change his views about Islam and the prophet Mohammed. He would be looked down on wherever he was in Pakistan because of his religious and political beliefs, including having been westernised, and claims to feel at real risk of being physically harmed. The applicant has a girlfriend here and he drinks (although he told the delegate that he stopped drinking in 2008), likes music and western clothes and the sense of freedom he has here. The applicant has had [piercings, details deleted: s.431(2)]. He said he would have an emotional breakdown if he were to return to Pakistan and already has sleeping difficulties and suicidal thoughts. He said he was taking antidepressants and he did not think he could cope with having to hide from [Relative A].
53. The applicant said at the hearing that if he were to return to Pakistan he would be doing so without an educational qualification and would have difficulty securing employment, especially if he were to move from Lahore. He would have limited funds and could not afford a body guard as richer people can have. The applicant said that he had a feeling that [Relative A] was looking for him, that he knew he was doing so. [Relative A] would pressure the applicant's mother to tell of the applicant's whereabouts and this could be dangerous for her. The unemployment rate is high and accommodation would be a problem because he would have no money and no family support. Religious extremists are active across the whole country.

The applicant's representative's submissions

54. The applicant's representative provided submissions in support of the application to the Department and to the Tribunal. It was submitted that the reasons for the harm feared by the applicant were religion (rejection of Islam/apostate), social group (young able bodied males who it is submitted are at risk of recruitment by the Taliban; young men with western liberal ideas and/or failed asylum seeker with western liberal ideas) and actual and imputed political opinion (anti Taliban/anti Islamic state). These reasons can be considered singly or cumulatively. It is also submitted that :
- the applicant is westernised and liberal which will increase the chance that he would be persecuted in Pakistan;
 - his claims for asylum demonstrate his political opinion; and
 - the Pakistan government assists the actions of fundamentalists in some areas.

55. The submission states that return to Pakistan as a failed asylum seeker from Australia increases the risk that the applicant would face persecution. It states that the applicant has quickly adopted Western dress and behaviours while in Australia thus adding to the risk he already faced on account of his liberal attitudes and [Relative A]'s disapproval.
56. At the hearing the applicant's representative explained the basis on which young able bodied men had been included as a particular social group to which the applicant could be seen to belong and which could give rise to a well-founded fear of persecution. She explained that the Taliban was growing in strength across Pakistan, particularly in rural areas, and that if the applicant were to relocate to such an area he could be a Taliban target for recruitment, both because he was young and able bodied and a good recruit for fighting the Taliban's war, and because [Relative A] might point the Taliban in his direction to take revenge on the applicant for his lack of interest in Islam.
57. In her submission to the Tribunal, the applicant's representative expanded on the reasons for the persecution feared by the applicant. As before, it was submitted that him being able bodied, young and male would place him at risk if he were to return to live in a rural area where he had no family or social supports. As well, he is at risk because he is a young male with western liberal ideas and western appearance and suspected of not being a good Muslim. The Convention reasons of religion, membership of a particular social group and imputed political opinion arise from his circumstances.
58. Further grounds were raised in the submission to the Tribunal which will, it is submitted, increase the risk that he will be persecuted for denouncing his religion: he is a young man who has been living in a western country for more than three years and has developed western ways of life; he has a girlfriend who is not a Muslim; he is a vegetarian; he drinks; he listens to music and he has denounced Islam. His wearing of western clothing has become part of his identity. 'He chooses to have his [body parts] pierced and sees this as an expression of who he is'.
59. The delegate drew parallels between the treatment of some members of religious minorities in Pakistan, specifically Shia and the Ahmadis, which demonstrates profound intolerance of anyone with different religious views. It is submitted that the applicant is at risk of being harmed by vigilante groups and of being charged with blasphemy. The Government's response to this conduct has failed to protect those targeted.
60. Concerning relocation, the applicant's representative pointed to the serious security situation across Pakistan. She refers to broad public support for severe penalties for leaving Islam and for committing certain crimes which had been proposed. The applicant would be at risk of being charged with blasphemy wherever he was in Pakistan. The submission also points to factors which indicate that relocation would not be reasonable in the applicant's circumstances: he would be at risk of persecution in the same way as he would be in Lahore. Moreover, he would be without family links and would have difficulty getting a job and so accommodation. He now has to live in reduced circumstances and his mental health has deteriorated including because he is terrified of returning to Pakistan.
61. The representative's submission goes on to make a further claim: that the applicant's poor mental health, said likely to deteriorate if he were to return to his country, would

make him vulnerable to ‘becoming destitute and possibly homeless’ and so at even greater risk of coming to serious harm. She submits that the harassment, threats, abuse and intimidation may not amount to persecution when directed to a healthy person but may when directed to a person with a mental illness.

Independent country information

General overview

62. The United Kingdom Border Agency periodically issues Country of Origin Information Reports compiled from a wide range of sources. Its latest assessment on Pakistan (*Country of Origin Information Report: Pakistan*, referred to in this decision as the UK Report) was issued on 18 January 2010 and includes the following account of political events in 2008 and 2009 (Sections 3 and 4). It cites sources which record that:

... civilian democratic rule was restored in the country in 2008 President Asif Ali Zardari, widower of assassinated Pakistan People's Party (PPP) leader Benazir Bhutto, became head of state on September 6 (2008), replacing former President Pervez Musharraf, who resigned on August 18... The PPP and its coalition partners at year's end controlled the executive and legislative branches of the national government and three of the four provincial assemblies ...

... parliamentary elections on February 18 (2008), while flawed, were competitive and reflected the will of the people. The election brought to power former opposition parties, led by the PPP, in a coalition government; the national parliament elected Yousuf Gilani as prime minister and head of government on March 24 (2008)...

... the coalition government agreed to reinstate the judges who were sacked when President Musharraf declared a state of emergency in November 2007. The Awami National Party (ANP) also formed part of the coalition in the National Assembly (Dawn, 13 March 2008) and joined the PPP in the NWFP Assembly. The Jamiat Ulema-e-Islam, also decided to join the PPP to form part of coalition governments both in the National Assembly and the provincial Balochistan Assembly.

... on 25 August 2008, the Pakistan Muslim League – Nawaz (PML-N) pulled out of the five-month old coalition government.

63. Reporting on events in Pakistan during 2008, the Human Rights Watch *World Report 2009* noted that:

Since the civilian government came to power [in February 2008], civil and political rights protections have improved. Media restrictions have been revoked, opposition rallies and demonstrations have been allowed to proceed without government hindrance or violence, and military personnel have been withdrawn from civilian administrative and political positions. The government has emphasized dialogue to resolve the political dispute between the federal government and Balochistan province and to extend meaningful political rights to the troubled tribal areas bordering Afghanistan.

While the new government has been keen to promote civil liberties and human rights, its rhetoric has not always been matched by action. Ongoing structural concerns include lack of an independent judiciary and fair trials; mistreatment, torture, and unresolved enforced disappearance of terrorism suspects and opponents of the previous military government; military abuses in operations in the tribal areas; the

failure to commute death sentences; and legal discrimination against and mistreatment of religious minorities and women.

64. In its introduction on human rights in Pakistan in 2008, the United States Department of State paints a grim picture (*Country Report on Human Rights Practices 2008 for Pakistan*, published 25 February 2009):

Despite some improvements after the state of emergency at the end of the previous year, the human rights situation remained poor. Major problems included extrajudicial killings, torture, and disappearances. There were also instances in which local police acted independently of government authority. Collective punishment was a problem particularly in the Federally Administered Tribal Areas (FATA), which falls under the legal framework of the Frontier Crimes Regulation (FCR). Lengthy trial delays and failures to discipline and prosecute those responsible for abuses consistently contributed to a culture of impunity. Poor prison conditions, arbitrary arrest, and lengthy pretrial detention remained problems, as did a lack of judicial independence. Corruption was widespread within the government and police forces, and the government made few attempts to combat the problem. Although implementation of the 2006 Women's Protection Act somewhat improved women's rights, rape, domestic violence, and abuse against women remained serious problems. Honor crimes and discriminatory legislation affected women and religious minorities respectively. Religious freedom violations and inter-sectarian religious conflict continued. Widespread trafficking in persons, child labor, and exploitation of indentured and bonded children were ongoing problems. Child abuse, commercial sexual exploitation of children, discrimination against persons with disabilities, and worker rights remained concerns.

Religious freedom and the place of Islam

65. The United States Department of State's *International Religious Freedom Report 2009: Pakistan*, published on 26 October 2009, covering the period 1 July 2008 to 30 June 2009, stated in its introduction:

Pakistan is an Islamic republic. Islam is the state religion, and the Constitution requires that laws be consistent with Islam. The Constitution states that 'subject to law, public order, and morality, every citizen shall have the right to profess, practice, and propagate his religion'; in practice the Government imposes limits on freedom of religion. ... The Government took some steps to improve its treatment of religious minorities during the reporting period... [but] serious problems remained. Law enforcement personnel abused religious minorities in custody. Security forces and other government agencies did not adequately prevent or address societal abuse against minorities. Discriminatory legislation and the Government's failure to take action against societal forces hostile to those who practice a different religious belief fostered religious intolerance, acts of violence, and intimidation against religious minorities. Specific laws that discriminate against religious minorities include anti-Ahmadi and blasphemy laws that provide the death penalty for defiling Islam or its prophets. The Ahmadiyya community continued to face governmental and societal discrimination and legal bars to the practice of its religious beliefs. Members of other Islamic sects also claimed governmental discrimination. Relations between religious communities were tense. Societal discrimination against religious minorities was widespread, and societal violence against such groups occurred. Non-governmental actors, including terrorist and extremist groups and individuals, targeted religious congregations.

66. The Human Rights Commission of Pakistan issues an annual assessment. Its *State of Human Rights 2008*, issued in April 2009, stated that it remained concerned:
- .. at the high level of religious persecution by religious zealots and rising threats as well as violence perpetrated by religious militant groups. The authorities, by and large, remain unconcerned and law enforcement staff is most reluctant to take any action against religious groups or militants. While women and religious minorities bear the worst brunt of religious extremist groups, men and Muslims are not spared either. Artists, musicians and those affiliated with performing arts are at risk in all parts of the country but particularly vulnerable in the province of NWFP [North West Frontier Province]. Sectarian violence and victimisation under the blasphemy law continues. The Ahmadi community was targeted throughout but they saw worse times after a popular television station, in a talk show, declared that killing them was permissible under Islamic norms. This was followed by the killing of three Ahmadis in Sindh in the month of September... Many minorities were forced to switch to Muslim names and even hide their religion to avoid harassment.
67. The UK Report, in Section 8, records that in December 2007 an umbrella group, Tehrik-e-Taliban Pakistan (TTP), was formed representing some 40 Pakistani Taliban groups. The TTP was banned on 25 August 2008 under the Anti-Terrorism Act. It quotes from Jane's Sentinel Country Risk Assessment of Pakistan, Executive Summary; Security Threats which was updated 8 September 2009 as follows about an organisation active earlier and whose leader, Maulana Fazlullah led the formation of the TTP:
- The TNSM rose to prominence in the mid-1990s following Swat's merger with Pakistan in 1969, after which its judicial system broke down due to corruption and lengthy trial procedures. Prior to the merger Swat's judicial system was a mixture of tribal and Sharia laws, allowing for swift dispensation of justice. Sufi Mohammed's son-in-law, Maulana Fazlullah, heads a breakaway faction of the TNSM that is the main threat to government control in Swat and the Makaland division. Fazlullah's group, which belongs to the umbrella Tehrik-e-Taliban Pakistan (TTP) organisation, has led an insurgency in Swat since 2007. Fazlullah's group '...has set up parallel administrative structures in some of the districts of the former Malakand division, has burnt down numerous girls' schools and killed (often by beheading) artists, teachers, government officials, policemen, paramilitary soldiers and army troops.'
68. [Information deleted: s.431(2)]
69. The UK Report (Section 8) notes a series of militant attacks during 2009 including five major attacks in ten days in October in northern parts of the country but also against the United Nations relief body in Islamabad, against the army headquarters in Rawalpindi and against police centres in Lahore. Other attacks reported include the destruction of schools and clinics in the northwest of the country, attacks in residential areas of Peshawar located in the north west, an attack against an Islamic University in Islamabad, and attacks against military personnel and installations.
70. The UK Report (Section 4) reports on the introduction of Sharia law in 2009 in the Swat Valley:
- ... on April 13, 2009, President Asif Ali Zardari signed an ordinance (known as the NAR) imposing Sharia law in the Swat valley and effectively empowering the Taliban and other groups, there and in surrounding areas of the Provincially Administered Tribal Areas... after Pakistan's parliament unanimously passed a resolution recommending the measure. The ordinance followed the peace deal signed

by the government of Pakistan's North West Frontier Province (NWFP) with the Taliban to end hostilities in the area between Pakistan and the Tehreek-e-Taliban Pakistan (TTP), the Pakistani Taliban, which have been ongoing since the summer of 2007 ...

... the Parliamentary vote for the ordinance... took place in a tense atmosphere, with members of parliament having been threatened openly and covertly by the Taliban and TNSM. The only national party to take a stand against the regulation was the Karachi-based United National Movement (Muttahida Quami Movement: MQM).

The United States Department of State's *International Religious Freedom Report 2009* published 26 October 2009 observed that:

The deal was signed with the expectation that local militants would disarm in return for the implementation of Shari'a through the NAR. After the President signed the NAR, however, the militants refused to disarm, and extended their patrols to Buner District of the Malakand Division. Amid growing incidents of violence by the militants, the army launched a military operation on April 26 2009, resulting in the largest mass migration in the country's history since partition and clearing much of the territory claimed by the Taliban.

71. The United States Department of State's 2008 Human Rights Report on Pakistan states that citizens generally were free to discuss public issues (Section 2(a)) but that freedom of speech is constitutionally subject to 'any reasonable restrictions imposed by law in the interest of the glory of Islam' (Section 2 c). 'The penal code calls for the death sentence or life imprisonment for anyone who blasphemes the Prophet Muhammad. The law provides for life imprisonment for desecrating the Koran and as long as 10 years in prison for insulting another's religious beliefs with the intent to offend religious feelings. The latter was used only against those who allegedly insulted the Prophet Muhammad'.
72. The United States Department of State Human Rights Report 2008 stated:

Complaints under the blasphemy laws were used in business or personal disputes to harass religious minorities or other Muslims, but most complaints were filed against the majority Sunni Muslim community. Many blasphemy complaints were lodged by Sunnis against fellow Sunnis. The appellate courts dismissed most blasphemy cases; the accused, however, often remained in jail for years awaiting the court's decision. Trial courts were reluctant to release on bail or acquit blasphemy defendants for fear of violence from extremist religious groups. In 2005 the President signed a bill into law revising the complaint process and requiring senior police officials to review such cases in an effort to eliminate spurious charges. According to human rights and religious freedom groups, however, this process was not effective because senior police officers did not have the resources to review the cases. In 2007 courts convicted two individuals and acquitted two others under the blasphemy laws; 71 cases were ongoing at the end of the year.
73. The United States Department of State's 2009 International Religious Freedom Report on Pakistan Section II) reported as follows in its detailed survey of the application of blasphemy laws:

Any speech or conduct that injures another's religious feelings, including those of minority religious groups, is prohibited and punishable by imprisonment. In cases in which a minority group claimed its religious feelings were insulted, however, the blasphemy laws were rarely enforced, and cases were rarely brought to the legal

system. A 2005 law requires that a senior police official investigate any blasphemy charge before a complaint is filed. According to nongovernmental organizations (NGOs), this law was not uniformly enforced ...

Authorities routinely used blasphemy laws to harass religious minorities and vulnerable Muslims and to settle personal scores or business rivalries. Authorities detained and convicted individuals on spurious charges. Judges and magistrates, seeking to avoid confrontation with or violence from extremists, often continued trials indefinitely.

According to the National Commission for Justice and Peace (NCJP), in 2008 at least 75 persons were victimized in 24 cases registered under the blasphemy laws. Punjab had the largest share, with 67 per cent of the blasphemy allegations and cases registered; 21 per cent of the cases were reported in Sindh. Of the 75 persons, 26 were identified as Muslims, six Christians, and two Hindus. The number of Ahmadis is unknown. In addition to the Ahmadis charged in 2008, police charged the entire Ahmadi populations in Rabwah and Kotli with blasphemy in June 2008 for celebrating 100 years of Caliph-ship and constructing a mosque for the community. The NCJP stated: 'Generally we do not request bail because of security. Blasphemy suspects are often safest in prison under police protection.'

On June 18, 2008, Mohammad Shafeeq Latif was sentenced to death for blasphemy after he allegedly defiled the Qur'an and used derogatory language to refer to the Prophet Mohammad. Shafeeq was arrested in 2006. He remained jailed in Sialkot, Punjab.

In June 2008 six Ahmadis were arrested and charged with blasphemy in Kotri, Sindh. The arrests took place after a dispute over construction of an Ahmadiyya prayer centre and protests from mullahs of Tahaffuz Khatam-e-Nabuwwat, an anti-Ahmadiyya religious clerical group.

According to Compass Direct News, in May 2008 police arrested Robin Sardar, a Christian, after a mob attacked his home in Punjab because he had allegedly committed blasphemy. Sardar, who denied the charges, was held in Punjab's Gujranwala Central Jail. His wife and six children abandoned their home for fear of new attacks. According to reports, local Islamist groups threatened to kill Sardar if he was acquitted. On November 4, 2008, Sardar was released after his accuser indicated there had been a misunderstanding.

In May 2008 Muslims filed a blasphemy case against Pastor Frank John when he was conducting a religious convention at Green Town Christian Colony, Lahore, Punjab. When Christians gathered for the convention, local Muslims stated that no one would be allowed to use the speakers for prayers. The police filed a first information report (FIR) against the pastor on May 3, 2008. Pastor John was not arrested, although tensions between the Christian and Muslim communities remained.

In April 2008 in the Karachi Korangi Industrial Area, employees beat to death Jagdesh Kumar, a Hindu employee, after he allegedly made blasphemous comments against Islam. Factory guards attempted to save Jagdesh by taking him into protective custody, and a small contingent of police was called. The Karachi police superintendent later suspended the police officers after it was determined they did not take the appropriate actions to save the employee's life.

By the end of the reporting period, a case had been registered against Abdul Malik, a resident of Burewala, Punjab, for making derogatory remarks against the Prophet

Muhammad in September 2007, but he had not been arrested. Islamic organizations staged several protests throughout Lahore, demanding that Malik be arrested and punished for the alleged blasphemy.

Younis Masih, a Christian, remained under a death sentence on blasphemy charges for allegedly insulting the Prophet Muhammad during a dispute with a Muslim cleric about loud music accompanying a nighttime religious ceremony. In May 2007, the district court in Lahore sentenced Masih to death. The case was on appeal at the end of the reporting period.

At the end of the reporting period, Sattar Masih, a Catholic Christian beaten by a mob and arrested by police in 2007 for allegedly writing blasphemous words against the Prophet Muhammad, remained in prison. Police reportedly tortured him in prison to obtain a confession.

At the end of the reporting period, Salamat Masih remained in prison and his family in hiding after officials accused him and four members of his family, all Christians from Toba Tek Singh, of desecrating papers bearing the Prophet Muhammad's name in 2007.

In March 2007 a mob of Muslims attacked Amanat Masih, a Christian, for allegedly desecrating the Qur'an. Police arrested Masih for blasphemy. At the end of the reporting period, he remained in prison.

In September 2006 police arrested five Ahmadis working for an Ahmadiyya publication, Al Fazl, on blasphemy charges. According to Jamaat-e-Ahmadiya, all were released but police gave them strict warnings to stop publishing. The provincial and district governments were pressured to shut down the publication activities of all Punjabi Ahmadis after this case.

In July 2006 courts released on bail Hafiz Afzal Rehman and Haji Latif, who had been held in a Lahore prison on blasphemy charges since 2004. Their trials were pending, and both men were on bail with no hearings set at the end of the reporting period.

74. The UK Report quotes the Asian Human Rights Commission in its the State of Human Rights in Pakistan: 2008 issued in December 2008:

Despite calls for the abolition of blasphemy laws from inside and outside of the country, the Pakistan government has yet to take any genuine steps to do so. Meanwhile, many citizens are being arrested, prosecuted and even killed under the law. In many cases it is used to settle personal vendettas or to grab land. Just as it continues to cause destructive tension between the country's mainstream Muslims and Pakistanis of other faiths, the law is also being used to stoke the power of religious conservatives, who can wield it against liberals.

75. It is noted that the applicant's representative submitted to the Tribunal that the very existence of such laws gives rise to a real chance that those who violate them will be persecuted.

Treatment of returnees who have unsuccessfully sought asylum

76. The UK report includes the following sourced from the Canadian Immigration and Refugee Board. The advice dates from 2003 but no later information contradicts it:

Information provided by the UNHCR office in Islamabad on the possibility of punitive measures against returning Pakistani nationals is as follows ‘... Generally, there is no punitive action for failed refugee claimants... If a person returns to Pakistan quietly after being denied refugee status, nothing is expected to happen. If such a person is deported and handed over to Pakistani authorities, the person will face preliminary inquiry to determine if he has violated Pakistani laws. If a person's refugee status case gets a lot of media publicity, the government will inquire into it. However, there is no law that can be invoked against a person for applying for refugee status elsewhere.

A Pakistani denied refugee status can get into trouble on return if there are criminal cases registered against him/her in Pakistan. The FIA/Police can arrest such a person on arrival at the port of entry (if they get prior information of his return) or later on as they come to know of his/her return.

Lahore

77. Lahore has been called the cultural heart of Pakistan, as it is the centre of Pakistani arts, films and intelligentsia. Lahore's culture, its history, institutions, food, clothing, films, music, fashion and liberal community lifestyle attract people from all over the country. ‘Lahore is a cosmopolitan city where women dress as they like and walk freely in the bazaars, where movie premieres are always well attended and where both conservative and liberal streams of Islam freely exist’. Mareesh Rahman, an Indian Express columnist, has described the people of Lahore as ‘liberal tolerant open minded and the majority don't support Taliban type interpretations of Islam’ (Rahman, M. ‘Lahore: Cultural capital to Taliban territory?’, *Indian Express* , 27 October 2008 <http://www.indianexpress.com/news/lahore-cultural-capital-to-taliban-territory/378300/0> – Accessed 9 June 2009)
78. There are numerous media reports of dance parties and drinking in Lahore especially around the spring festival of Basant. A 2007 article in *The Hindu* (an Indian newspaper) states: ‘Nothing presses the fun button in Pakistanis as Basant, the spring festival. It all happens in Lahore, though, for a month from February 15 to March 15. People dance and sing, and drink, like there is no tomorrow’. The article further notes that ‘there are some dark mumblings from some quarters about how Basant itself is un-Islamic but no one is taking that seriously’. The article also notes that, although alcohol is banned for Muslims, it ‘is widely available, you just have to know where to get it’ (Subramanian, N ‘Kite-flying in the time of high spirits’, *The Hindu* , 18 February 2007 <http://www.hindu.com/mag/2007/02/18/stories/2007021800150400.htm> – Accessed 22 July 2008).
79. There have been attacks by Islamic militants against targets in Lahore, including the police and military. There have also been attacks against civilian targets and the applicant's representative drew attention to these in her submission to the Tribunal citing a report in *The Guardian* on 15 October 2008 which describes ‘the phenomenon of moral policing’ and how fundamentalists can rally against ‘western vulgarity’
80. The applicant's representative drew attention to further more recent attacks in Lahore including gone in December 2009 at Lahore's Moon market in which some 40 people were killed. The article stated that ‘Lahore, Pakistan's cultural hub, was until recently considered the most safe of Pakistan's major cities. Over the past two years, however, the city's security forces have come under repeated fire by terrorists. In October, a

coordinated triple strike on two police academies and an intelligence agency office killed 38. In April, a commando-style raid on the visiting Sri Lankan cricket team left six police officers and two civilians dead. The city's famous theatres and concert venues have also been targeted by extremists, albeit on a much smaller scale with few casualties' ('Pakistan terror attacks dent Lahore's safest city image' *The Christian Science Monitor* 8 December 2009).

81. On 3 June 2009, *The Daily Times* reported that security was being increased in Lahore. Extracts from the article state as follows:

The security of important buildings and police offices was beefed up on Tuesday after intelligence reports of more terrorist attacks in the city. The city police has finalised a comprehensive security plan in this regard and has deployed security personnel at all the sensitive government buildings. Capital City Police Officer (CCPO) Muhammad Pervez Rathore appealed to the citizens to keep an eye on their neighbourhoods, markets, tenants and pedestrians. He said terrorists were the enemies of the state and it was incumbent upon the citizens to extend wholehearted cooperation to defeat the nefarious designs of Taliban. He called upon the citizens to immediately inform the Lahore police about any suspicious person or activity. ('Terrorist threat looming in Lahore: Security beefed up, again!' 2009, *Daily Times*, 3 June
http://www.dailytimes.com.pk/default.asp?page=2009%5C06%5C03%5Cstory_3-6-2009_pg13_1 – Accessed 13 June 2009.

82. A 31 May 2009 article by Christina Lamb of London's *Sunday Times* reports that support for the ongoing campaign against 'extremists' remains high in Lahore. The report highlights the activities of 'Abid, 35, is chief executive of a foundation providing microfinance for rural women'. The report relates that: 'twice in the past two months, she and many of her friends have gathered for rallies in the Mall in central Lahore, holding placards declaring 'No to terrorism', after spreading the word through Facebook and text messages'. (Lamb, C. 2009, 'Facebook Pakistanis unite against terror; Fightback Alarmed by the growing threat to their nation, ordinary people are rising up, reports Christina Lamb in Lahore', *Sunday Times*, 31 May).
83. On 28 May 2009 *The Washington Times* published an assessment of the mood in Lahore and Karachi following successive attacks in both cities. According to *Washington Times* reporter, Nasir Anwar Khan, both cities are home to a growing trend of public protest against the militant networks suspected of orchestrating the attacks, by bomb and gunmen, which have recently affected both cities. The report relates details of a number of liberal-minded individuals actively campaigning against what they reportedly see as 'Talibanization of their country'. Extracts from the report state as follows:

Through public meetings, Internet forums and meetings with politicians, the anti-Taliban activists hope to prompt the government to come down heavily on extremists.

In April, more than 2,000 people joined a rally in Lahore to protest Talibanisation and terrorism. The event was arranged by the Citizens of Lahore, a loose coalition of social, political and trade union organizations. Behind massive placards bearing slogans such as "No to Talibanisation" and "No to Terrorism," a crowd of mostly women and students chanted against Islamic fundamentalism. The recent criticism of the Taliban by the ruling Awami National Party in the North West Frontier Province, which had earlier signed a peace deal with the Islamists, helped strengthen the campaign. So have condemnations by mainstream Muslim groups. (Khan, N.A. 2009,

'Middle-class Pakistanis awaken to Taliban threat', Washington Times, 28 May
<http://www.washingtontimes.com/news/2009/may/28/middle-class-pakistanis-awaken-to-taliban-threat/> – Accessed 9 June 2009).

FINDINGS AND REASONS

84. At the outset, I note that the applicant has become depressed and anxious and he is taking medication, it seems in part because he is so concerned about his possible return to Pakistan. I have had regard to what has been submitted about his condition in considering the material before me.
85. I accept the applicant's account of his family background and education and that his father died before he was born. I also accept that the applicant was born into a Muslim family, long ago abandoned the religion and is very critical of many of its tenets. I accept that the applicant has grown into adulthood since he has been in Australia and that he has developed a more western lifestyle and ideas and since he has been here.
86. On his own evidence the applicant comes from a family which was well off and he attended, [school deleted: s.431(2)]. There had been little trouble for him in Pakistan. The bad things which happened to him before coming to Australia were [Relative A] being abusive and slapping him when he was nine and pushing him when he was thirteen. This might have been very frightening at the time but I find these incidents to have been isolated incidents not amounting to significant physical harassment or ill-treatment of a kind to constitute persecution.
87. However, circumstances have arisen since his arrival here in October 2006 which he claims mean that there is a real chance that he could face serious harm amounting to persecution upon his return. These circumstances are the applicant realising that he is not only not interested in Islam but he is opposed to it; [Relative A] learning that he had spoken against Islam and threatening to harm him; and the rise in the activities and influence of fundamentalist Islamic groups in Pakistan and the associated increased risk that he would be harmed because of his views. It is these factors, and what they might mean if the applicant were to return to his home in Pakistan in the reasonably foreseeable future, which have been the focus of my deliberations. In doing so, the Tribunal is necessarily required to speculate about what might occur. But such speculation needs to be well-grounded in the evidence about the applicant and conditions in the area of his country to which he might return.
88. Central to the applicant's claims of what he fears might follow his return to Pakistan is the attitude and profile of his [Relative A and his] treatment of the applicant and his family. I accept the applicant's evidence that [Relative A] is a devout Muslim.
89. The applicant claims that [Relative A] is [details pertaining to Relative A's political profile deleted: s.431(2)] and is involved with Jamiat-e-Ulema, one of the parties which forms the MMA. In respect of [Relative A]'s political and religious profile, it was apparent at the hearing that the applicant knew little about it. The only evidence about [Relative A]'s political profile which is before the Tribunal is the applicant's evidence. I recognise that the applicant was young when he lived in Pakistan (he is [age deleted: s.431(2)] now and he has been here since late 2006 having arrived when he was only [age deleted: s.431(2)]). If the applicant knew that [Relative A's association with the MMA deleted: s.431(2)] one of the major Islamic political organisations in Pakistan,

then in my view he would have known more about what he actually did. All the applicant could say was that [Relative A] gave money to a mudrassa; that he tried to mobilise students and votes for the conservative religious parties; and that he was busy at election time. The applicant had heard that [Relative A] intimidated people and was involved in a political kidnapping in the 1980s. In the context of Pakistani politics, [details pertaining to Relative A's political profile deleted: s.431(2)] would be doing rather more than what the applicant described and it is significant that the applicant, who is intelligent and well-educated, was unable to describe anything more about [Relative A]'s role. I have reached the view that the applicant has either exaggerated or constructed the profile he claims for [Relative A].

90. The applicant's claims of [Relative A]'s treatment of him and his mother, both in the past, at present and in the future, are an important part of his reasons to fear return to Pakistan. He claims that [Relative A] has never liked him, that [Relative A] has bullied his mother and the applicant especially in connection with attending mosque (to no avail it seems – the applicant said he had not been to mosque for some years before he came to Australia) and complying with other Islamic practices, and that [Relative A] has hit him twice, once when he was nine and again when he was thirteen. He said that [Relative A] continues to intimidate and control his mother, that [Relative A] learned that the applicant had told a person here that he did not support Islam and that [Relative A] called him in November 2008 to express his grave disapproval and threaten to physically harm the applicant.
91. I accept that the applicant's [Relative A] may be a tyrannical patriarch in the family and may boss others about. I have already noted that his treatment of the applicant before the applicant came to Australia does not amount to serious harm. The applicant's evidence about what [Relative A] does to the applicant's mother has not been convincing. If his mother was so controlled and her activities so limited by [Relative A] as the applicant has claimed (he said she was not allowed to remarry nor leave the house, beaten and forced to follow Islam), it is hard to see that she would have been able to allow the applicant to live as he did, dressing in western ways and not going to mosque. As well, the applicant claims that all money for his family comes through [Relative A who] would have been well aware of the direction of the applicant's lifestyle choices if he exerted the control over the applicant's family claimed by the applicant yet sufficient money was provided to enable the applicant to come to Australia to study. That support has only stopped recently and there are other reasons why that could have occurred other than [Relative A] hearing what the applicant had said about Islam once when he was drunk, including the applicant's poor academic progress and a drop in the income available from the family's farm. I consider that the applicant has exaggerated the extent of [Relative A]'s power over the applicant's family.
92. It is significant to the assessment of the applicant's claim to fear that [Relative A] will harm him upon the applicant's return to Pakistan that [Relative A] called the applicant just once to express his disapproval and, the applicant claims, threaten to harm him and that was in November 2008. The applicant has claimed that he changed his SIM but I consider that had [Relative A] been intent on pursuing the applicant it would have been possible for him to find the applicant's new number, from the applicant's mother or other people here in Australia such as the person who the applicant told what he thinks of Islam. It is also relevant to look at this threat which the applicant said was made by

[Relative A] in the context of what [Relative A] had done to him before, when the applicant was still in Pakistan not going to mosque and listening to music and so on. There had been shouting but no physical mistreatment since the applicant was pushed when he was thirteen.

93. Having regard to all of the evidence, I do not accept that there is a real chance that [Relative A] will inflict serious harm on the applicant of a kind which could amount to persecution on account of his non-compliance with Islam and his views on the religion. In coming to this conclusion I have been mindful of the applicant's mental condition. The applicant may be upset by [Relative A] but, having regard to my findings about the nature of [Relative A]'s actions against the applicant, I do not consider that what he might do or say to the applicant will constitute serious harm even with the applicant's fragile mental state.
94. Also at the heart of the applicant's claims is his fear that the rise in support for fundamentalist Islam in Pakistan will place him, as a person who has no interest in following the religion and who strongly disagrees with aspects of it, at risk of serious harm. He considers that [Relative A] might prompt such people to hurt him.
95. The applicant's representative submitted that he ought not be required to modify, to avoid persecution, his conduct in Pakistan in regard to saying what he thinks.
96. I have considered whether the applicant will say what he thinks. Until the protection visa application was prepared, the only time he appears to have said what he thinks to anyone other than his mother who would be concerned was when he was talking to a friend, also from Pakistan, when he (the applicant) was drunk and this got back to [Relative A] (presumably what he said rather than him being drunk but it could have been both).
97. The applicant is now saying what he thinks about Islam rather more often and it appears more stridently, in part probably a consequence of having to say it so many times in the course of making his protection visa application. I consider that his conduct in formulating and clarifying his personal position on Islam has been otherwise than for the purpose of strengthening his claims for recognition as a refugee. He is a young well-educated and resourceful man who has been immersed in another culture at a formative time in his life which contrasts in many significant ways to that from where he came. In such circumstances, it is not unexpected that his opinion and position on all sorts of things will develop and crystallise, including on religion. Section 91R(3) of the Act, which requires the Tribunal to disregard certain conduct, does not apply to his case.
98. To date, there have been no consequences of him saying what he said or not following Islam other than the threat of [Relative A] in November 2008 and some disapproval of at least one Muslim he knows here. It is relevant that he had not been to mosque for a number of years before he came to Australia in late 2006 and he has never been here. I accept that he will not practise as a Muslim if he returns to Pakistan.
99. It appeared from the evidence that the applicant had little idea about the extent of debate within Pakistan about the place of Islam and the kind of Islamic country Pakistan should be. A review of current issues of daily newspapers in the major cities which are available on the Internet shows the expression of a range of opinions around

such topics, consistent with country information which indicates that people are free to express their views on public issues. Elections are held and the fortunes of conservative Islamic political groups rise and fall. There is even a website www.secularpakistan.wordpress.com. It is true that there has been an increase in the power of conservative Islamists in parts of the country but their influence over what happens in Lahore is much more limited. Independent information outlined earlier shows that there are a lot of people in Lahore protesting against militant Islam. The applicant will be among many who object to the actions of militant fundamentalists and who oppose the imposition of strict Islamic rules. Lahore, where the applicant's family lives, is a modern cosmopolitan city.

100. I do not accept that there is a real chance that the applicant would be persecuted in the reasonably foreseeable future for such conduct in opposing the actions of fundamentalist Islamic militants
101. I recognise that objecting to fundamentalism is not the same as blasphemy. Blasphemy laws include very heavy penalties. I do not accept that the very existence of the laws in Pakistan gives rise to a well-founded fear of persecution of all who do not follow Islam. What actually happens, and what it can be reasonably predicted might happen, in relation to the laws is the relevant consideration. Independent information from the United States Department of State set out above indicates that the laws can be brought into play in disputes between individuals. Most blasphemy cases have been against Sunni Muslims but members of minority religious groups have also been charged. While those charged can be convicted and held in custody, most charges are dismissed by the appellate courts. Based on the available country information, there are no cases of which the Tribunal is aware against people who do not have a religion but that does not mean it will never occur. The number of blasphemy cases which occur is relevant: in my view there are relatively few given the existence of the laws and the profile of Islam in Pakistan.
102. I have also considered the claim that the applicant will be at risk for saying what he thinks about Islam and that he might not do so because of a fear of persecution. In doing so, I have had regard to the applicant's actions to date where he appears to have said what he thinks only once to a person who was concerned about it, and this was here in Australia where his views have developed (and at a time when he had been drinking). While he is now more articulate being three years older, I do not consider that the applicant will express his views about Islam in any materially different way than he did when he was in Pakistan before and than he has here already. The reason in my view is not because of a fear of persecution, rather because the matter is of limited significance to him in the context of the whole of his circumstances. Overall, the applicant's evidence indicated to me that he wanted to be left alone in relation to religion and not practise as a Muslim or attend mosque. This is what occurred when he lived in Pakistan apart from compliance with some limited requirements of his school while he was a student and some efforts by [Relative A] to press him to comply with Islamic norms (which he resisted).
103. Having regard to all of the evidence and the applicant's circumstances, I consider that the chance of the applicant being accused of blasphemy and charged under those laws, and coming to serious harm because of his views of Islam, is remote. I do not accept that the reason he may limit what he says about Islam will be to avoid persecution.

104. The applicant's adviser has submitted that [Relative A] is in a position to direct the attention of the rogue vigilantes to the applicant to harm him for his lack of belief in Islam. It is not necessary for a person wishing to activate such criminal behaviour to be someone with a profile. One of the frightening things about such activity is that it can be sparked in very capricious and unpredictable ways. For reasons stated already, I have found that there is not a real chance that [Relative A] would subject the applicant to serious harm upon the applicant's return home. It follows that I do not consider that [Relative A] would arrange for the applicant to be harmed by others.
105. Militant Islamists have staged attacks in Lahore on places where behaviour which could be described as westernised is manifested. There may well be more such attacks in future reflecting anger about the lifestyles evident as well as about the involvement of western countries in the fight against the Taliban. The Department of Foreign Affairs and Trade's Travel Advice on Pakistan, to which the applicant's representative referred me, confirms that there are serious security concerns including in the major cities. There is no doubt that the applicant has adopted a western lifestyle and appearance and I accept that he supports the military actions of western countries in the region where the Taliban operates. The applicant may, upon his return to Pakistan, frequent places such as bars and cafes, cinemas and so on which could be targeted for attack in future. While the security presence in Lahore has been increased, the effectiveness of the security authorities has been uneven. While I can understand that the applicant is afraid of being harmed in such an attack, I have had regard to the number which have occurred in Lahore and have concluded that the chance of the applicant being harmed as a result of an attack on such places as he may go to socialise is remote.
106. A further claim made concerns the profile he may have upon return as a failed asylum seeker. The very act of seeking asylum, it is submitted, points to a political opinion. That the applicant has sought Australia's protection as a refugee and that it has been declined is not a matter which would ordinarily come to the attention of the Pakistani authorities through any actions of the Australian authorities. Information in the UK report indicates that the circumstances of deportation can indicate to the authorities in Pakistan that the applicant may have failed in his bid to remain in Australia. Generally, there is no punitive action against people for claiming asylum although there may be inquiries into whether they have any charges against them. The applicant himself may choose to tell people that he has sought asylum but there is nothing before me which would indicate that he would do so or, more importantly, that if he did it would be a matter of concern to the authorities or to groups in the community of a kind which could lead, or contribute to, him facing a real chance of persecution for this reason (even if failed asylum seekers with western liberal ideas could constitute a particular social group within the meaning of the Refugees Convention)
107. It has been submitted that the applicant's mental illness will increase his vulnerability. I accept that he will be very unhappy about returning to Pakistan and that this may exacerbate the depression he has been suffering. He will be returning having been away for more than three years at a formative time in his life and without the university qualification he hoped to gain here. He may need to part from his girlfriend and he has said that his family's circumstances are reduced and they have moved into smaller accommodation. I consider that the assertion that the applicant's mental state would make him vulnerable to becoming destitute and possibly homeless to be highly speculative in the context of his family's circumstances. There is no doubt that his

family has the resources, even if less than they once had, which could fund the provision of food and shelter and continuing treatment for his condition.

108. I have not considered whether the applicant could avoid the harm he fears by relocating to another part of the country. Because I have found that his fear of persecution in Lahore is not well-founded, it is not necessary to consider this matter. I note that the applicant feared recruitment by the Taliban as an able bodied young man in the event that he had to relocate in order to avoid the harm he claims to fear in Lahore, a fear which I have found is not well-founded. Whether or not able bodied young men may constitute a particular social group in particular parts of Pakistan, it will not be necessary for the applicant to relocate from Lahore unless he chooses to do so. There is no reason at all why he would do so to a remote or troubled area where the Taliban may be sufficiently active so as to be seeking recruits.
109. There were a number of aspects of the applicant's circumstances which in my view have no bearing on the chance of the applicant coming to harm upon returning to Pakistan. These include being horrified about seeing a goat killed when he was a child and becoming a vegetarian, wearing western clothes and having body piercings. I have searched the Internet and am aware of nothing which indicates that being vegetarian and having piercings are issues of concern to people in Pakistan in a way which could lead to, or contribute to, the applicant facing persecution and no specific evidence has been submitted in relation to these aspects of the applicant's claims. Moreover, my review of major daily newspapers published in the major cities and available on-line show photographs of men in western and traditional dress [Details relating to the applicant's schooling deleted: s.431(2)].
110. No claims were made in respect of the political views of the applicant's mother who has supported the PML (Q) and the PPP nor in respect of the applicant's own political activity in support of the [Organisation A] and in marches in support of women's rights. From the evidence before me, I do not consider that these matters will give rise to a risk of coming to serious harm upon the applicant's return to Pakistan.
111. I have concluded that there is not a real chance that the applicant would face harm amounting to persecution for the Convention reasons of religion, political opinion or his membership of a particular social group and I find that his fear of what might happen to him upon return is not well-founded.

CONCLUSION

112. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

113. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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 Officer's I.D. AGIBSO