

0903320 [2009] RRTA 702 (6 August 2009)

DECISION RECORD

RRT CASE NUMBER: 0903320

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CLF2008/30103 CLF2009/2501 CLF2009/2508
CLF2009/32496 CLF2009/37030
CLF2009/38700 CLF2009/40891 OSF00/04/0902

COUNTRY OF REFERENCE: Pakistan

TRIBUNAL MEMBER: Paul Fisher

DATE OF ORAL DECISION: 24 July 2009

DATE OF WRITTEN STATEMENT: 6 August 2009

PLACE OF DECISION: Melbourne

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, last arrived in Australia [in] March 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] April 2009. The delegate decided to refuse to grant the visa [in] May 2009 and notified the applicant of the decision and his review rights by letter dated [in] May 2009.
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] May 2009 for review of the delegate's decision.
5. The Tribunal gave its decision on the review at the conclusion of the hearing held [in] July 2009. The following are the reasons for that decision.

JURISDICTION

6. The applicant has previously applied in Australia for a protection visa in 2002 and that application was finally determined in the negative by this Tribunal, differently constituted, [in] March 2004.
7. Section 48A(1) of the Act precludes a non-citizen in the migration zone who has already made an application for a protection visa which has been refused from making any further such application while still in the migration zone.
8. Section 48B of the Act provides that the Minister may personally determine, if satisfied that it is in the public interest to do so, that s.48A does not apply to a particular non-citizen. However, there is no evidence before the Tribunal to suggest that any s.48B determination has been made by the Minister in respect of the applicant. On the contrary, when a purported further protection visa application was lodged by the applicant [in] February 2008, the Department [in] April 2008 declined to refer it to the Minister for the reason that the case was found not to fall within the relevant ministerial guidelines.
9. The questions therefore arise as to whether the present protection visa application under review was validly made in the first place, and whether, as a consequence, the Tribunal has jurisdiction to review the primary decision.
10. Departmental movement records, and file notes contained in file CLF2009/38700, indicate that the applicant was involuntarily removed from Australia shortly after midnight [in] March 2009, having been emigration cleared late [the previous day in] 2009. He was transported by air as far as Bangkok, and transferred to a connecting flight to Karachi, whereupon the removal was aborted while the connecting plane was still at Bangkok airport, the applicant having been ejected from that flight on account of his un-cooperative behaviour. He was then escorted back to Australia, arriving [in] March 2009.

11. Subsection 48A(1A) provides that in certain circumstances, a person who has been removed from the migration zone and is once again in the migration zone is taken to have been continuously in the migration zone despite that removal. The applicable circumstances are set out at subsections 42(2A)(d) and (e) of the Act. Only subsection 42(2A)(d) appears relevant to the present case. In conjunction with s.48A, it has the effect that where:
- a removee has been refused entry by a country to which he was being removed;
 - the refusal leads directly to his return to Australia; and
 - he would be an unlawful non-citizen if he were in the migration zone;
- the person is taken to have been continuously in the migration zone, and is therefore subject to the prohibition on making a further application for a protection visa.
12. In the present case, however, the evidence suggests that whereas the applicant was being removed to Pakistan, his country of nationality, he was not in fact refused entry to that country. Indeed, departmental file CLF2009/38700 indicates, at ff.19-20, that the applicant was issued with an emergency passport by that country [in] March 2009, precisely to facilitate his return, the passport with which he originally arrived in Australia having apparently been lost. Rather than being refused entry by Pakistan, the evidence suggests that the applicant was ejected from the connecting flight while in Thailand, because of his refusal to acquiesce at the attempt to return him to Pakistan. The decision appears to have been one taken by the operators of the airline concerned, and there is no evidence to suggest, for example, that the Pakistani authorities directed his removal to prevent the applicant from arriving at and entering that country, such as might amount to a constructive or indirect refusal to admit him.
13. Consequently the applicant does not, in the view of the Tribunal, come within the scope of s.424(2A)(d), and he was therefore not precluded by s.48A from applying for a Protection visa upon his return to Australia. It follows from this that the Tribunal is satisfied that the application which is the subject of this review was validly made, there being no other question arising as to its validity.
14. The Tribunal therefore 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

15. 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.
16. 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)
17. 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'

18. 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.
19. 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.
20. 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.
21. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
22. 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.
23. 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.
24. 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.

25. 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.
26. 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.
27. 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

28. The Tribunal has before it the Department's files 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.

Background

29. The applicant is a 26 year old national of Pakistan, who has a long and complicated immigration history, having first arrived in Australia [in] February 2001, and made numerous visa applications or purported applications since that time.
30. Although much of the applicant's immigration history is not relevant to the present proceedings, it is worth setting out some of that history as summarised in a decision of the Migration Review Tribunal (differently constituted) dated [in] January 2009, made in respect of an application for a Bridging E (Class WE) visa, as follows:
 18. The review applicant applied for a Protection Visa (PV) [in] September 2002 and was granted an associated Bridging A visa on the same day.
 19. The PV was refused [in] October 2002 and the review applicant applied to the Refugee Review Tribunal (RRT) [in] October 2002 for a review of the refusal.
 20. The RRT affirmed the Department's decision [in] April 2004 and notwithstanding the review applicant was the holder of a valid Bridging Visa A, the Department granted the review applicant his first BVE [in] April 2004 for a period of one month to facilitate his departure from Australia.
 21. The review applicant was an unlawful non-citizen from [date deleted in accordance with s.431(2) of the Migration Act as it may identify the applicant] August 2004 until [date deleted: s.431(2)] August 2004.
 22. [in] August 2004, the review applicant applied for judicial review to the Federal Magistrates Court of Australia (FMC) of the RRT's decision to affirm the PV refusal.
 23. The outcome of the judicial review was delivered [in] April 2005, with the result being the dismissal of the application by the FMC.

24. From the initial BVE grant [in] April 2004 until the outcome of the judicial review, the review applicant was granted a total of six BVEs pursuant to subclause 050.212(2) – ‘arrangements to depart’, the last during that period ceasing [in] May 2005.
25. The review applicant was then an unlawful non-citizen from [date deleted: s.431(2)] May 2005 until the next BVE grant [in] August 2006, granted to facilitate his departure from Australia.
26. The review applicant has made two applications for Ministerial Intervention pursuant to s48B and has made one application for Ministerial Intervention under s417 during 2004, 2006 and 2007 respectively. All three applications were lodged subsequent to the Department refusing to grant the applicant a Protection Visa. In each application, the Minister decided not to consider intervening in the applicant's case.
27. [In] August 2007 the Department imposed condition 8510 (present valid passport) on the review applicant’s BVE to ensure that he took steps to arrange his departure from Australia. The Department granted the review applicant BVEs to facilitate his removal from Australia on several occasions however according to the Department’s records, the review applicant refused to lodge a passport application with the Pakistani High Commission in Australia.
28. The Department notes that the review applicant has been granted 18 BVEs to depart since [date deleted: s.431(2)] September 2007 and that he has repeatedly refused to apply for a travel document until all his litigation avenues are exhausted.
29. The review applicant applied for leave to appeal to the Full Federal Court of Australia (FFC) [in] October 2008 from an interlocutory decision handed down [in] September 2008 by [name deleted: s.431(2)] FM of the FMC The leave application is currently open and according to Commonwealth Courts databases, the case has been scheduled for hearing [in] February 2009.
30. [In] November 2008, the Department granted the review applicant a BVE for a period of two weeks to allow him further time to apply for a travel document. This was the review applicant’s last BVE and it ceased [in] November 2008.
31. The Department wrote to the review applicant [in] December 2008 requesting that he approach the Compliance Counter to regularise his visa status in Australia The review applicant presented voluntarily at the Department’s Melbourne office [in] December 2008 and was detained under section 189 of the Act.
32. The review applicant was placed in Immigration Detention in the Maribyrnong Immigration Detention Centre (MIDC) [in] December 2008 and applied [in] December 2008 for a BVE in association with his application for leave to appeal to the FFC.
33. The Department refused the review applicant’s BVE [in] December 2008 based on his previous non-compliance with visa conditions and the application not meeting the time of application criteria in 050.212(4), that is, relating to an application for judicial review relating to a migration decision.
34. The review applicant then applied to the MRT for a review of the BVE refusal [in] December 2008.
35. [In] December 2008, the applicant lodged another BVE stating that he would like his application considered on financial grounds. He claimed that he had incurred a debt during the 8 years he has been in Australia and would like the opportunity to pay it back and further stated that he intends to depart Australia and return to Pakistan [in] January 2010. He continued to state that he was appointed as a member of [university name deleted: s.431(2)] council and would like the opportunity to fulfil this role within the council.
36. [In] December 2008 the Department deemed the application invalid as the applicant had lodged another application for a bridging visa within the 30 day period as stipulated in

subsection (2) of section 74 (the exception being prescribed circumstances, Regulation 2.23 which was not applicable).

37. The MRT affirmed the decision under review [in] December 2008, finding that the applicant was not entitled to the grant of a Bridging E (Class WE) subclass 050 Bridging (General) visa.
 38. [In] December 2008, the applicant lodged a fourth request for Ministerial Intervention under s.417. The applicant claimed that he is a member of the [deleted: s.431(2)] University council, the Managing Director of [Organisation A] and was the [university deleted: s.431(2)] student union activities officer. In his claims he stated that he has provided many services to the Australian community, he has contributed financially, physically and mentally. Lastly he reiterated his claims of having a well founded fear of persecution as he had incurred a number of debts in Pakistan and states that those people determined to get the money back by any means ie; torture.
 39. [In] January 2009, the applicant lodged another application for a BVE visa which is the subject of this review. In his application the applicant stated that his grounds for seeking a Bridging visa, was the same as what was written his last Bridging visa application which was deemed to be invalid.
 40. The BVE application was refused [in] January 2009 as the delegate stated that due to the applicant's past history with the Department, non-compliance with the conditions on previous Bridging visas, he did not meet the time of decision criteria 050.223 – abide by conditions. The delegate further stated that the applicant was granted 18 Bridging E visas on the proviso that he would make acceptable arrangements to depart Australia since [date deleted: s.431(2)] July 2007 and has failed to do so. The Delegate also mentioned in her decision that information obtained by the International Organisation for Migration (IOM) from the High Commission in Pakistan indicates that applicant was advised that he could obtain a 5 year passport which required the applicant to apply for a new identity card or obtain a 1 year travel document without the identity card. The applicant chose to apply for the 5 year passport and has since not applied for an identity card.
 41. [In] January 2009 the applicant applied to the Tribunal for a review of the decision to refuse a BVE made [in] January 2009 by the delegate.
31. That application was refused by the Migration Review Tribunal [in] January 2009 and, as indicated above, the applicant was removed from Australia [in] March 2009 before returning here two days later.
 32. In the present case, the Tribunal has had regard to the various claims and evidence the applicant has made in support of his previous applications, including the first protection visa application lodged in 2002, the purported further protection visa application lodged in 2008, and the various requests for ministerial intervention pursuant to s.417 of the Act as outlined above.
 33. The Protection visa application which is the subject of the present review was lodged [in] April 2009. In response to question 40 of part B of the application form, the applicant states that he is seeking protection in Australia so that he does not have to return to Pakistan. In response to questions 41-45, the applicant refers to the following statement which accompanied the PVA:

Background

I am a 26 year old single male from Pakistan. I left Pakistan to come to Australia to study.

I used that reason to enter Australia. The reason I desired to leave Pakistan was that there was political differences and violence arising in my country and in my area between the Sunni and the Shi'aa.

The Sunni were in power with a majority and the Shi'aa were seeking to take control.

The Angamam Sipah Sahaba were known in our area and linked with the Sunni giving a stronger control and more violent action, they targeted Shi'aa. This group was also under influence from Taliban and received funding from the Saudi's

The Shi'aa were following the movement of Iran .

The Shi'aa to achieve their mission they formed an organisation known as Tehreek-e-Jafferia with the assistance of Iranian authorities.

This party then divided into another group known as Tehreek-e-Nifaz Fiqh Jafferia (TNFJ) both working for same outcome but with different leaders which led to different methods.

In Multan where I lived, I was a member of the Tehreek-e-Jafferia, the name means movement and Jafferia comes from the name of the sixth Imam, he was a Jurist and he gave jurisdiction for Islam.

Our group wanted our Imam's jurisdiction in Pakistan, namely power in sense.

Whereas the Sunni have other jurisdictions using other Imam's such as Abu Hanifa.

I joined the group in 1998, and working for the local mission, attending and organising meetings on a weekly basis. The agenda would be to discuss the plans and happenings of the local area. My role was to ensure that the new followers would know of the upcoming date and venue. I was also responsible to recruit new members.

I would use the residency roll for guidance, each week my plan would be to visit new residents and suggest they come to our meeting. I would also attend any religious services so as to meet other new prospective members.

I also worked voluntary for Imamia Student Organisation, (ISO) where I was [Position A], the purpose of the organisation was to enlighten Shi'aa students of their religious responsibilities and jurisdiction and teachings of the Prophet and Imam's. We were involved with all the local schools, we would have them come to our headquarters for workshops on Islam. It was important to teach them the Shi'aa teachings.

I was also a [position deleted: s.431(2)] for the Ghulaman-e-Al Muntazar, this organisation focused on Darbar Sag hi Sultan.

The area I lived in had mostly Shi'aa but had surrounding areas containing Sunni. The differences erupted into violence between the parties and members were being targeted and killed. In my area Ayoub Siddiqi, he was a founding member of Tehreek-e-Jafferia, he was killed by Sunni demonstrators, oppositions to our party, it is suspected possibly even authorities were involved.

Dildar Hussain an active and leading role of ISO was also killed. The killings stirred up demonstrations, which then led to further targeting of prominent people such as Doctors and Financiers.

I worked closely with Dildar Hussain, my Uncle was a political leader and [position deleted: s.431(2)] for the local Council so he had involvement with Ayoub Siddiqi thus flowing on to me.

Ayoub Siddiqi quite often visited my Uncles office for discussions and meetings. Many times I would accompany my Uncle to Ayoub's meeting place.

Shortly after this the Iranian Consulate was attacked with the Consular being killed.

Why I left my country:

It was from the above killings and violence that I decided to leave Pakistan, other active members had fled Pakistan to Iran. As I was a member, I believed that it would only be time before I would be targeted.

I chose Australia as I thought it would be the safest place.

Who I think will harm or mistreat me if I go back:

The Sunni authorities arrested and detained many of the Shi'aa activists and the Anjamam Sipah Sahaba who specifically targeted Shi'aa would consider me as a target.

However as I am now a Rashidi, I will be targeted by all sides. I have studied the faith and since 2006 being devoted.

Why I believe they will harm or mistreat me if I go back:

I cannot return to Pakistan as the Sunni will target me, I left via Karachi, I did not have trouble as the officer was only young, it was risky usually they are older and ask questions and then would have reported me. I was very active in the Shi'aa movement. It will be expected that I am still active politically and religiously.

However now I am converted to a new faith and If I go back it will be discovered that I am now Rashidi and do not follow Sunni or Shi'aa.

I believe that the faith of Sunni and Shi'aa has been corrupted, Rashidi is purified, I want to start a following, here in Australia it is open and accepting and a religious tolerant society, but in Pakistan it is not.

This will not be accepted, I must be a member of one or the other, I cannot be a member of Sunni, it is against my family, yet my own personal belief now is that Rashidi is the true pure faith.

I cannot live in Pakistan without being an active leader I would preach and lead followers in the Rashidi religion.

Pakistan is well documented for its mistreatment against minority groups of religion.

Why I believe that the authorities in my country will not protect me if I go back:

The authorities cannot protect me as they are not stable, they themselves get attacked by sectarian groups. The courts have failed to protect religious minorities in the past.

My leadership of a minority group will not be favourably considered therefore no protection will be given.

I also fear that the authorities are infested with corruption which will flow on to having my leadership eliminated.

Freedom of religion and practice is very limited in Pakistan, I cannot be there and practice my religion as I want to. I am not a quiet person, I am active and want to openly share and preach my religion.

34. [In] April 2009, the applicant also submitted the following brief additional statement:

I was forced to flee Pakistan due to the situation in which I was. The Shi'aa to achieve their mission, Tehreek-a-Nifaz Fiqh Jafferia (TNFJ) was formed with the assistance of Iranian authorities. This group over time took a shape of another form Tehreek-e-Jafferia both working for same outcome however leadership is different which led to different methods.

I chose Australia as it would be the safest place and it will give me opportunity to learn my counterpart Sunni teachings and to decide where the truth is and that I found in Rashidi.

The Iranian Consulate was basically Iranian cultural centre with the provision of consulate services.

35. The statement was accompanied by two pieces of country information. The first, concerning the organisation Tehreek-e-Jaferia Pakistan, comes from the from the South Asian Terrorism Portal located at <http://www.satp.org/satporgtp/countries/pakistan/terroristoutfits/TJP.htm>:

Tehreek-e-Jaferia Pakistan (TJP) meaning 'movement of the followers of Fiqah-e-Jaferia', the dominant Shia outfit in Pakistan was formed in 1992. The origin of TJP can be traced to the Tehreek Nifaz Fiqah-e-Jafria (TNFJ) meaning 'movement for the implementation of Fiqah-e-Jafreia' (a school of Islamic jurisprudence which is traced back to its founder Imam Jafar Sadiq) which was formed in 1979 to protect the interests of the Shiite minority and to spread the ideas of Ayatollah Khomeini, the Iranian leader who led the successful Islamic Revolution that overthrew the Shah of Iran in 1979. It is widely believed that the Sunni clergy considered the name of Tehreek Nifaz-e-Fiqah-e-Jaferia as being offensive and opposed the Shias, a minority sect demanding the imposition of their *fiqah* (a school of Islamic jurisprudence) in a Sunni majority Pakistan. Following this backlash, the Shia leadership is reported to have changed the name from TNFJ to Tehreek-e-Jaferia Pakistan (TJP) in 1994. It is also believed that the outfit changed its nomenclature because the party, under Allama Arif Husseini, wanted to extend its membership to the non-Shias also.

An ideological split divided the movement into two groups: one headed by Hamid Musawi, the follower of Ayatollah Sheriate-Madari; the other headed by Arif Husseini, the follower of Khomeini's teachings. Allama Hamid Ali Musawi's group continues to function under the old nomenclature of TNFJ. The TJP had, during the period of Allama Arif Husseini, undertaken upon itself to change the party's complexion from a religious organisation to a progressive political party acceptable to non-Shias as well. Towards this goal, a political committee was constituted to work out the future strategy in a given situation and negotiate with political leaders of standing to join hands to achieve the objective. But the leadership, predominantly religious scholars, dispensed with the committee to signal that the TJP was and will remain a religious organisation.

Allama Husseini was killed on August 6, 1988 in Peshawar. Amongst others, Captain Majid Raza Gilani, who belonged to Jhang, was accused of the incident. As he was one of the former staff members of President Zia, the TNFJ blamed Zia-ul-Haq for his murder and launched vigorous protests.

The objectives projected by the TJP are: the creation of a society based on 'pure Islam', the protection of social, political and religious rights of Shiites, the propaganda of Shiite ideas, coordination of all Pakistani Shiite organisations and the fight against imperialism. It also believes in Islamic egalitarianism and social justice. Two TJP members are also members of the Pakistani Parliament. The TJP is reported to have links with the Iranian clergy. The outfit source its finances from the Shiite community in Pakistan, Iran as well as certain commercial groups.

The Tehreek-e-Jaferia Pakistan, led by Allama Syed Sajid Ali Naqvi, is a well-organised outfit, which effectively represents the interests of the Shia community in Pakistan with a significant following in Jhang. In recent years, as a result of increased pressure from the Sunnis, the TJP has preferred to adopt a more reconciliatory and accommodating posture than in the past when it appeared more assertive and threatening vis-à-vis the government and Sunnis. The TJP has several affiliated organisations, including Sipah-e-Abbas, Sipah-e-Ahl-Bait and youth bodies like the

Imamia Students Organisation and the Imamia Organisation, which are reported to play an active role. Since 1994, the Sipah-e-Muhammad Pakistan (SMP), a splinter group of the TJP with a significant following in Jhang has emerged as a prominent Shia terrorist outfit involved in anti-SSP campaigns, violence and target killings. The TJP is one of the five outfits that have been proscribed by President Pervez Musharraf on January 12, 2002.

The current violent phase between the two communities, who had lived in relative harmony for many centuries, is traced to the 1980s when a group of Deobandi militants formed the Anjuman Sipah-e-Sahaba (ASS), to wage 'war' against the Shia landholders in Jhang. The ASS, later re-named as the Sipah-e-Sahaba Pakistan (SSP), was established during the Islamisation campaign of the then President Gen. Zia-ul-Haq, and coincided with the Iranian revolution led by Ayatollah Khomeini. The Shiite Ulemas (religious scholars) perceived his measures as an attempt to spread Sunnite norms of Hanifite type in the Shiite community. According to analysts, sectarian violence among the rival outfits intensified in the wake of the '*jihad*' in Afghanistan as Pakistan, particularly the central and southern Punjab, served as a base for 'mujahideen' recruits. Most of these 'mujahideen' returned to Pakistan after the Russian forces pulled out in the late 1980s, and brought with them a sizeable supply of arms, ammunition and a proclivity for violence. They joined the extremist sectarian outfits and since then, sectarian rivalry was largely expressed through extreme violence. Rivalry between the two outfits intensified when the SSP founder Haq Nawaz Jhangvi was killed in March 1990. The same year also witnessed the killing of an Iranian diplomat, Sadiq Ganji in Lahore. In 1997, Jhangvi's successor Zia-ur-Rehman Farooqi and 26 others were killed in a bomb blast at the Lahore Sessions Court. In the aftermath, Iranian diplomat Muhammad Ali Rahimi and six locals were killed in an attack on the Iranian Cultural Centre in Multan. On April 12, 2000 three hand grenades were lobbed at a gathering in a Shia mosque in Mulawali, the hometown of Syed Sajid Naqvi, killing 13 persons, including five members of the family of Syed Sajid Naqvi. The grenade was reportedly hurled from an adjacent Sunni mosque. Shortly thereafter, a TJP leader, Syed Farrukh Barjees was killed at Khanewal near Multan on April 26. On November 23 2000, Anwar Ali Akhunzada, the central general secretary of TJP in Peshawar was assassinated by the Lashkar-e-Jhangvi (LeJ).

To counter the Sunni militancy, the Shias formed Sipah-e-Muhammad Pakistan (SMP) in 1993. It is generally believed that Maulana Mureed Abbas Yazdani created it in 1993 after he was convinced that the TJP would not allow its young cadres to physically counter the SSP. The Shia youth had been asking the TJP to take notice of what they called excesses of the SSP whose members were alleged to be targeting some of the Shia's beliefs. Allama Hamid Ali Musawi did not endorse the move. Subsequently, the Sipah-e-Muhammad Pakistan (SMP), headquartered at Thokar Niaz Beg, was created out of the TJP reportedly by Maulana Mureed Abbas Yazdani in 1993 and it adopted a more militant stance against the SSP than the TJP would allow.

36. The second report, entitled *The Sipah-e-Sahaba Dossier*, was published by the Manhattan Institute's Center for Policing Terrorism on 4 May 2005, and is available from <http://www.cpt-mi.org/pdf/SSPdossier.pdf>. It relevantly includes the following:

Executive Summary

The Sipah-e-Sahaba Pakistan (SSP) and its militant offshoot, the Lashkar-e-Jhangvi (LeJ), are sectarian organizations aiming to establish Pakistan as an exclusively Sunni state. Toward this end, the groups press politically for Shiites to be declared non-Muslims, and they back up their disdain for Shia by targeting their community in terrorist attacks. Though the SSP has been in existence for twenty years, when the

LeJ split off from it in the mid-1990s, the pace and scale of the violence increased; in the last ten years, terrorists have killed more than 3,600 Shia.

Both the SSP and the LeJ espouse violently anti-American and anti-Western rhetoric, and both are members of Osama bin Laden's International Islamic Front and close associates of Al Qaeda. Since 2001, they have targeted Americans and symbols of the West (including Pakistani Christians) in bombings and rifle attacks, often with the assistance of other Pakistani militant groups....

Chapter V: Operations

The form of Sipah-e-Sahaba and Lashkar-e-Jhangvi operations has broadened slowly over the last twenty years, but they largely fall into one of three categories: sectarian, political, or anti-Western attacks. The few incidents that fall outside these headings, including the 1995 vandalism of the Islamabad BBC offices (in retaliation for a negative portrayal of the SSP in a documentary), have not been central to the groups' missions. The SSP/MIP has also staged large political rallies and continued to publish the monthly paper *Khilafat-I-Rashida*, but their non-violent activities will not be addressed here.⁸⁷

While the SSP has often disavowed its violence, the LeJ shows no such shame about its activities. It often claims attacks by calling newspaper offices—a unique characteristic among Pakistani terror groups. It has also continued to publish a magazine, *Inteqame Haq* (Rightful Revenge) that frequently details its crimes and attempts to justify them.⁸⁸

Sectarian Attacks

The Sipah-e-Sahaba and the Lashkar-e-Jhangvi consider the suppression of Shia Islam to be their mission, so the vast majority of their terrorist acts have been sectarian in nature. The groups initially preferred to assassinate leaders of Shia or rival Sunni organizations; typically, militants on motorcycles rode close to the victim and fired on him with Kalashnikov assault rifles. The terrorists soon expanded their hit list to include all high-profile Shiites, targeting lawyers, doctors, government officials, intellectuals, and businessmen. Also, Iranian citizens were often attacked, since Iran was the great patron of Shia Islam. The crimes were almost always perpetrated with guns, though one Shiite politician was killed by a remote-controlled landmine detonated beneath his car.

To achieve a greater reaction from their acts of terror, the SSP and the LeJ began assaulting worshippers at Shia mosques (imambargahs) and graveyards. At first, masked gunmen would drive by a mosque or funeral procession, and militants would fire indiscriminately upon the crowd with automatic rifles. LeJ terrorists graduated to more complex methods, though, including bombings. An engineer buried a bomb beneath an imambargah in Punjab in April 2002, and its detonation killed nine women and three children. Their most deadly method of attack combined hand-held explosives, suicide bombers, and gunfire. The previously mentioned attack on July 4, 2003, in Quetta followed this formula: militants threw grenades into a mosque to create confusion, then gunmen on nearby rooftops fired on fleeing Shiites as suicide bombers blew themselves up amidst the crowd. Fifty-four Shia were killed, and sixty-five people injured. Recent reports have warned that the LeJ may be planning attacks using female suicide bombers, a practice heretofore unheard of in Pakistan, but no such incidents have yet occurred.

Political Attacks

Though the main focus of sectarian groups is on religious conflict, the Lashkar-e-Jhangvi has often clashed with the government officials. Both the SSP and LeJ militants have often targeted police officers in shootings, but the LeJ has extended its

activities to include bombings. In October of 2002, the group mailed at least ten parcel bombs to police and government officials; three exploded, injuring nine people.

Other attacks have been directed at destabilizing the Government. LeJ activists have been involved in three attempted assassinations of heads of state: Nawaz Sharif in January 1999 and Pervez Musharraf on the 14th and 25th of December in 2003. All three attempts involved explosives. The first two operations sought to blow up a bridge as the President's car crossed it (the remote triggers failed both times), and in the third effort, terrorists tried to ram cars laden with C-4 explosive into the Presidential motorcade. None of the attempts succeeded, though forty-six people were injured in the car bombing.

Anti-Western Attacks

Though anti-Americanism has long been a part of the ideology of the Sipah-e-Sahaba and the Lashkar-e-Jhangvi, it did not become a forceful enough to elicit violence until the invasion of Afghanistan in 2001. After the Taliban fell and governmental pressure began to bear down on the SSP and the LeJ, Pakistani terrorist groups reorganized into loose coalitions such as the Lashkar-e-Omar, which turned from those groups' typical targets to assault "American interests" in Pakistan. LeJ members participated in the most famous attacks on Americans, including the kidnapping and murder of Wall Street Journal reporter Daniel Pearl and the suicide car bombing outside the U.S. Consulate (which killed twelve people—all Pakistanis).

The militants defined "American interests" broadly, including all Westerners and all Christians in their reach. LeJ members attacked these stand-ins for America as brutally as they had Shia mosques, bursting into churches and opening fire on worshippers in Bahawalpur and Islamabad. LeJ gunmen also assaulted a Christian school, hospital, and charitable organization as part of LeO cells. At least thirty-nine Christians were killed in the year between October 2002 and September 2003.

37. This report incorporates, at pp. 21-24, an extensive 'partial list' of attacks carried out by the SSP and LeJ in Pakistan, including many attacks in the applicant's home town of Multan in the years leading up to the applicant's departure from that country.
38. The applicant was interviewed by a delegate of the Minister [in] April 2009, where he reiterated and elaborated on his protection claims.
39. He explained the religious explorations he had undertaken at diverse places of worship in Melbourne. He had met [Person 1], who had been a Sunni Muslim, and they had exchanged ideas and [information about religious activities deleted: s.431(2)] [became] Rashidi, which means "rightly guided" The applicant described the tenets of this faith, including an obligation to evangelise, and explained that he has a leading role, and has engaged in evangelism with people he has met through the course of his work at [Organisation A]. He also noted that evangelism must be done in a reasonable and peaceful way, without force or compulsion. He also noted that he no longer had contact with [Person 1] due to their divergent ideas about what the Rashidi faith entailed.
40. The applicant said that he had not told his family that he had renounced Islam and embraced Rashidi, and that it would be distressing for them and potentially dangerous for him if they learned about this, because his family had introduced Shia to that area and belonged to the prophet. As the applicant had been active in Shia organisations in that area before coming to Australia, he fears that they will harm him because he is no longer Shia. He fears that he may be tortured by Shias in order to force him to return to Islam, but also continues to fear harm at

the hands of Sunnis. He no longer fears harm from Sunni groups for reason of his past involvement in Shia groups, but because he has turned away from Islam altogether. If he returned to Pakistan he would try to set up an organisation like HCFA, and would petition for the rights of Rashidis. He would also not be discrete in the practice of his religion, but would want to actively share and preach his faith. These activities would bring him into conflict with the Pakistani authorities.

41. The application was refused [in] May 2000.
42. The delegate noted that there was little information available concerning the Rashidi faith, and little evidence to suggest that had spread beyond a very small number of adherents since its inception in 2006. The delegate also noted that the applicant had appeared unable to explain what form his evangelism would take in practice, other than distributing pamphlets offering non-religious community services, and waiting until people were attracted to such services before broaching any matters of religion with them. Given that the applicant was now on his own and without followers, the delegate doubted the applicant's ability to attract any in the future.
43. The delegate considered that applicant's failure to raise the issue of his conversion with his family ran counter to his claimed evangelical impulses, but also noted that if he does fear repercussions from his family over his abandonment of the Shia faith he could relocate to a part of Pakistan out of the reach of his family.
44. The delegate noted country information indicating that there are restrictions on freedom of religion in Pakistan, and that converts from Islam are targeted by Muslim fundamentalists, but considered that there was no evidence that anyone in Pakistan was aware of the applicant's conversion, and expressed the opinion that there are many Muslims in Pakistan or are not particularly diligent in the observance of their faith, and that any such failure by the applicant would be unlikely to attract adverse attention.
45. To the extent that the applicant claimed that his commitment to the Rashidi faith incorporated a political component of advocating for people's rights, the delegate felt that the applicant's fear of adverse consequences was purely speculative as she was not persuaded of his capacity to establish a constituency to advocate on behalf of.
46. The delegate did not accept that the applicant had a well founded fear of persecution in Pakistan for a Convention reason, but also felt that if there were such a fear the threat of persecution could reasonably be avoided by the applicant relocating, having regard to his youth, qualifications in commercial cookery and business management, and English language ability.

Review Application

47. [In] May 2009 the applicant applied for review of the delegate's decision.
48. [In] June 2009, the Tribunal invited the applicant to attend a proposed hearing scheduled for [date deleted: s.431(2)] June 2009.
49. [In] June 2009, the Tribunal was advised by the applicant's representatives that they no longer acted for him.

50. [In] June 2009 the Tribunal received a request from the applicant, under cover of a letter from a person not recorded as the applicant's authorised recipient but evidently acting on his behalf, that the hearing be adjourned on medical grounds. An officer of the Tribunal then contacted the applicant to inform him that if the hearing were to be adjourned on medical grounds he would need to provide written medical evidence in support of the request.
51. [In] June 2009, the Tribunal received a further letter on behalf of the applicant raising concerns about his mental health, and noting that he had complained to DIAC about his former representatives, was currently seeking replacement legal representation, and sought an adjournment of the hearing.
52. The request was accompanied by a report from a counsellor at [organisation deleted: s.431(2)] dated [in] June 2009, based on interviews she conducted with the applicant [in] May and [in] June 2009. The report states that the applicant is displaying numerous symptoms of depression, including feelings of hopelessness and despair, poor appetite and concentration, difficulty sleeping, and intense feelings of sadness. The counsellor observes that during their interviews the applicant became easily confused, struggled to talk about past events in chronological order, and appeared sad and tearful. The report recommends psychiatric review and ongoing counselling.
53. [In] June 2009 the hearing was re-scheduled to [date deleted: s.431(2)] June 2009, with a notice that any further adjournment on medical grounds would require evidence from a medical practitioner certifying that the applicant was unable to attend for medical reasons.
54. [In] June 2009 the Tribunal received notice of an appointment of a new legal representative, along with a request for a four week adjournment to enable the representative to access the applicant's departmental files and take detailed instructions.
55. [In] June 2009 the Tribunal rescheduled the hearing to [date deleted: s.431(2)] July 2009.

Tribunal Hearing

56. The applicant appeared before the Tribunal [in] July 2009 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's father, [name deleted: s.431(2)], via the telephone from Pakistan, in respect of which the Tribunal was assisted by an interpreter accredited in the Urdu and English languages.
57. The applicant was represented in relation to the review by his lawyer and registered migration agent, who was present at the hearing. Also present with the applicant's consent were two observers, [names deleted: s.431(2)].

Evidence of the Applicant

58. The Tribunal noted that the applicant appeared to have made a number of discreet, but overlapping sets of claims as follows:
59. With respect to his first application he had claimed to have been at risk of persecution because he was Shia, a member of Tehreek-e-Jafferia, the [Position A] of the Imamia Student Association, and the [position deleted: s.431(2)] of Ghulaman-e-Al Muntazar.
60. With respect to his second Protection Visa application the applicant claimed to have adopted the Rashidi religion, and asserts that he will proselytise if returned to Pakistan as required by

the Rashidi faith and, consequently, that he is now an apostate in that he has renounced Shia and Islam.

61. The Tribunal also noted that the applicant had claimed to be at risk because he has debts in Pakistan, and also because he will be perceived as being westernised because he has been in Australia for so long.
62. The Tribunal noted that it was concerned about whether the applicant's claimed beliefs were, in fact, genuinely held, including the claim that he would, in fact, feel bound to proselytise in Pakistan, and also it expressed its concern that the claimed fear arising from debts owed in Pakistan had any Convention basis.
63. The applicant stated that if he goes back and starts to evangelise, which is a tenet of his faith, he will be attacked and risk death or trauma. He also noted that religious extremists go against foreigners, or people, who have stayed outside Pakistan for a long time. In relation to his debt, however, he observed that he could repay that by taking another loan and that it is not a major reason for his claim.
64. The Tribunal also added that it understood that there were three discreet groups from which he claimed to be at risk of persecution; namely the state itself, his own Shia community and Sunni Muslims. The applicant agreed that was the case. He said he had been tortured in the past and still bears the scars of that, and if it happens again he could lose his life. The Tribunal asked the applicant, precisely, what scars he has, and what incidents of torture or ill-treatment resulted in those scars. The applicant displayed a number of visible scars reflecting injuries to his forehead and eye, his face and his leg. He explained that there were three occasions when he was physically attacked in the late 1990s. He recalls that it was approximately 1996 when he was bashed and hit in the face, 1997 when he received an eye injury, and he also received injuries when he was kidnapped in 1998. Asked if that was the occasion he was tortured, he said that it was. The applicant was asked if he was confident about the dates and he replied that he wasn't entirely sure and he may have made some mistakes at the first hearing when giving evidence; however, he recalls that he was only 13 years of age when he was first attacked. This happened after school, and people with beards struck him and said to tell his parents to stop supporting Shia as they are not Muslims. He was near school on his way home when this happened and he confirmed that this was in 1996.
65. Asked about the incident in 1997, the applicant said it was after he had been playing sport at the college grounds and he was again coming home. Asked if it was the same people who attacked him, he said that they were different people but they were also bearded and he thinks they were from Anjeman Sepah.
66. The applicant added that he had been the [Position A] for the ISO. Another [Position A] was, in fact, shot. Asked when he became the ISO [Position A], he said it was in 1998. Asked what he had said at the first Tribunal hearing, he said he may have given the wrong date then. The Tribunal expressed the concern as to how a 15 year old would become [Position A] of a student organisation. He replied that he had a leading role in his local area, [location deleted: s.431(2)], but also his family was an important family [information deleted: s.431(2)]. The ISO is a nationwide organisation, but [location deleted: s.431(2)] is only a local branch and he was the [Position A] for that branch. They helped poor Shia people who needed assistance with education and did welfare work.

67. The applicant was asked about the incident in 1998 when he was kidnapped. He said he was coming back from a TJP meeting when he was grabbed and blindfolded. He was kidnapped and detained and warned that he would be killed, but paradoxically also forced to eat. He was bashed severely on the ear and this has damaged his hearing ever since. The applicant was asked whether he ever had any medical assessment hearing and he said that he did have a medical test here in respect of his visa application. The Tribunal noted that no special mention of any hearing loss had been made in that report. The applicant replied that he had also had motor bike accidents and that he had had counselling for his trauma.
68. The applicant was asked why he came to Australia in the first place. He said it was because of the violence and killing, and he was in fear and could not lead a normal life. He was looking for ways to find a solution to that problem.
69. The applicant was asked what steps he took after the period from 1996 to 1998 in order to get around the problem, the Tribunal noting that according to his Protection visa application he appeared to have maintained just the one address until he departed for Australia. The applicant replied that he only wrote down the permanent parental address. Asked where else he had stayed, he said he had stayed in a number of different locations around Multan.
70. The Tribunal asked the applicant about the reference to his father having been attacked and beaten and having had his property destroyed, and asked when it was that this occurred. He said that that had happened in 1999. His uncle was also attacked, and the president of the TFY, his uncle's best friend, was shot.
71. The applicant was asked about the information contained in his Student visa application, noting that documentary evidence suggesting that his father owned and operated thriving businesses might appear to contradict aspects of his protection claims. The applicant replied that although he wasn't sure exactly what information was submitted with that application, it was designed principally to secure his departure to Australia. Asked whether he thought the supporting documents that accompanied that application were fabricated, he said he didn't know, but he was fearful of harm in Pakistan.
72. The applicant was asked what course he came to study. He said that he studied English and was also trying to apply for refugee status, but he had no information about that. Asked whether he commenced the business studies course that had been the basis for his grant of a Student visa in the first place, he said that he had not.
73. The applicant was asked whether he is still in contact with his family in Pakistan. He said that for awhile he didn't have any contact with them. Then he changed to the Rashidi religion. He had been thinking about telling them, but in the end they found out, and in the end when they did learn about it they threatened him over the phone that he was at risk of being shot if he returned. Asked how they found out, he said that since he had converted he had evangelised and other Pakistanis here had become aware of this. His family recently sent him a letter warning him of the risks to him because he had rejected Shia. There was also a letter that has been received from the Tehreek Organisation saying that if he has renounced Shia then he deserves to die. The letters were tendered to the Tribunal, although the letter from the Tehreek Organisation was not translated.
74. The applicant was asked how people in Multan would be aware that he had evangelised. He explained that his organisation had an office in [deleted: s.431(2)] Road, and people would come and talk about the faith and related issues. Asked whether there were any Pakistanis

from Multan who attended, he said that there were people from a number of different parts of Pakistan, and that the Pakistani community is closely connected. The applicant was asked whether he had the envelope in which the letters had been sent to him and he produced it. Asked about the contents of the letter, he said that the message it contains is that he deserves death if he has renounced Shia.

75. The applicant was asked when he last had contact with his parents. He said that early on he had a lot of contact with them, but they never talked about his residence status; it was more a question of whether he had found a solution to his problems. They also moved to different places as they were also experiencing threats in Pakistan. The Tribunal queried whether his parents hadn't actually inquired about his visa status and he replied that as he didn't have any answer he didn't tell them anything. Asked whether his parents are aware that he has not yet obtained permanent residency in Australia, he said that they are not.
76. The applicant was asked when his family last provided him with financial support. He said he hadn't asked them for any, and they were experiencing fear and violence themselves. Asked whether they provided him with any financial support after he first arrived in Australia, he said that they hadn't and that he usually got it from community services, and he was homeless for awhile. The Tribunal noted that the applicant appeared to have suggested to the Tribunal at the first hearing that he had taken money from his parents since arriving in Australia. He said that he may have made a mistake as he made a number of mistakes in the first hearing.
77. The applicant was asked when he last studied in Australia and he said that [university deleted: s.431(2)] had given him a scholarship under their refugee access scheme. He studied social work and psychology in 2008, having started in 2007.
78. The applicant was asked how he managed to get the recent supporting letters from the TJP and ISO. He said that these had been requested some time earlier, but they only arrived recently. A ban on one of the organisations, or the organisations, was relaxed and then people were able to send the letters then. Asked whether there was any connection between the different organisations, the applicant said there was not. The Tribunal pointed out that the wording of the various letters appeared to be identical and asked him if he had any comment on that. He said that perhaps because they had few resources they have co-operated.
79. The Tribunal also noted that even though the organisations had their own websites, the authors of the supporting letters provided private email addresses rather than organisational ones. Asked to comment on that, the applicant said that it was just a matter of their own personal choice.
80. The applicant was asked about the claims made in his current Protection Visa application and, in particular, to explain the Rashidi Religion. The applicant replied that before he came to Australia he was only exposed to Shia Islam, but here he has been exposed to different religions and philosophies. He met [Person 1] in mid 2006, and they discussed their ideas and formed the Rashidi faith.
81. Asked whether he is still in contact with Mr Rashidi, he said he initially lost contact with him when he was put in detention, although he has since come to visit the applicant in detention on one occasion. His own faith has developed and changed, and he is not sure whether [Person 1] agrees with the changes that he has arrived at.

82. The applicant was asked whether he maintains any official involvement in [Person 1's] religion or faith. He replied that his ideas have developed and he hasn't really discussed that with [Person 1]; however, he does have a leading role. Asked whether anyone else shares his views, he acknowledged that he has no followers but he talks about the Rashidi faith to people he meets, and he fears that if he went to Pakistan he would be prosecuted by the authorities for rejecting Islam and adopting another religion. The applicant explained the basic tenets of his religious beliefs, including spreading the message; the life hereafter; and giving to the needy. [Information about the applicant's religion deleted: s.431(2)].
83. The Tribunal noted that the applicant submitted supporting documents, which state that [Person 1] is [information deleted: s.431(2)]. [Information about Person 1 deleted: s.431(2)].
84. The Tribunal noted that the applicant had submitted a supporting document headed "Fundamentals of Faith of the Rashidi" The Tribunal asked the applicant whether he could point to any obligation to proselytise in that document. The applicant replied that it doesn't mention proselytising, [information deleted: s.431(2)]. He thought there was a reference in it to evangelising, and he certainly mentioned to the department that he considers he has an obligation to evangelise.
85. The Tribunal noted that the applicant had claimed that Shia and Sunni wanted to kill him. The Tribunal also noted that the articles of faith of Rashidi exhort followers to shun the enemies of honesty and love to humanity. The Tribunal queried whether this means that, in fact, he should shun these people rather than go out and preach to them. The applicant replied that he doesn't follow this directive any more. The Tribunal queried whether the applicant's claims could not be seen as evolving to suit the circumstances. He replied that Rashidi developed from Shia faith and other faiths, and it is going through an evolutionary period; however, he is not changing his beliefs to suit the circumstances.
86. The Tribunal asked why the applicant couldn't simply return to Pakistan, engage in social work if he wishes, and keep his religious beliefs to himself, as nothing in the fundamentals of faith of the Rashidi suggests that he has any obligation to spread those beliefs. The applicant replied that this is not possible as the fundamentalists and the state co-exist in Pakistan and persecute those who denounce Islam. The applicant was asked how the state would even know that he has renounced or denounced Islam. He replied that evangelising is a tenet of his faith, but he won't know who might be working for the state. Asked whether evangelising is a non-negotiable tenet of his faith, he replied that it is. Here in Australia society is more tolerant of religious beliefs, unlike in Pakistan.
87. The applicant was asked when he had last spoken to his parents. He said that they had sent a letter to him and indicated that they are very upset, and when he got their letter he contacted them. Asked whether he is in contact with them by phone, he said that he is. The Tribunal asked whether he had any objection to it taking evidence from his father, and he indicated he had no objection.

Evidence of the Applicant's Father

88. The Tribunal then took evidence, via telephone, from the review applicant's father, [name deleted: s.431(2)], with the assistance of a qualified Urdu/English telephone interpreter. The witness identified himself and gave evidence under affirmation.

89. The witness was asked why he sent his son, the applicant, to Australia. He said he sent him here on a Study Visa. Asked whether there was any other reason the applicant came to Australia, he replied that he was being targeted by the Sepah. They sent him a letter threatening to kill him. It was because the place where he was working he was doing a good job. Asked where his son had been working, he said he was working at Tehreek-e-Jafferia.
90. The witness was asked whether he, or his family, has ever had problems with the Sepah or ASS. He replied that they all used to be targeted. They received letters asking them to leave or they would be killed. Asked whether they still get threats, he said that in our area people continue to be killed. Asked whether he was saying that these things have been happening recently or he is referring to years ago, he said that they still come and inquire from him, and from neighbours, about where the child (the applicant) is.
91. The witness was asked whether his son was ever involved in any other groups and he said that he was also in the student organisation.
92. The witness was asked whether his son was ever detained or tortured while he was in Pakistan. He replied that on a number of occasions he had been beaten and injured, and he thought that on two occasions he had actually disappeared for a number of days.
93. The witness was asked whether his son still adheres to the Shia faith. He replied that he did not, and he was now following something called Rashidi. Asked whether he has heard of this faith before, or understands what it involves, he said that his son doesn't believe in fasting or pilgrimage. He understands his son has been involved for some time now.
94. The witness was asked whether he had recently sent his son a letter. He replied that he had, in order to warn him that if he continued with his activities then they, meaning his family, would have problems. Asked whether he was unhappy about his son's decision, he replied that he is as his ancestors have all believed in their faith, but now his son doesn't. The witness was asked whether he thinks that his son is at risk of harm if he returns to Pakistan and he replied that he definitely is, from all his relatives and his nearest and dearest.
95. The applicant was asked whether his son would be safe if he moved away to a different part of Pakistan. He replied that in Pakistan they have such networks that they might find him. He doesn't think he can come back without risk of harm.
96. The Tribunal observed that as his son was about 15 at the time he claims to have been involved in these groups, he seems to have been very young to have obtained a leadership position. The witness replied that his son was a good speaker and he liked the activities, and he became heavily involved when he was quite young. That's why they used to write threatening letters to him. He was always good at his studies from Year 1. Asked whether he would say that his son was precocious or advanced for his age, he agreed that was the case.
97. The witness was asked which branch of Islam his family belongs to and he said it is Tehreek-e-Jafferia. Asked to specify in broad terms whether his family members were Sunni or Shia, he replied that they are Shia.

Further Evidence of the Applicant

98. The Tribunal put to the applicant some concerns that appeared to have arisen in the first Tribunal hearing. Firstly, the Tribunal noted that the applicant did not appear to know which

sect of Shia he belonged to. He replied that in Pakistan the Shia community has different sub-groups, such as the Sajids, the Tehreeks and the Mohmanans, however they are all part of the same community.

99. The applicant was asked about the suggestion that the ASS had changed its name to the SSP before he is said to have become involved in it. The applicant replied that he had, in fact, responded to that previously and that in the area he came from they were always referred to as the ASS. He doesn't know what names they may have been known by elsewhere. In any event, he wasn't involved in the government or anything such that he would know when the name changed as far as the government was concerned.
100. The applicant was asked whether there was anything else he wished to add. He said he is a genuine refugee, and he has been here for eight years, and he had no legal representation in the beginning. He has renounced Islam and embraced the Rashidi faith and, as a consequence, he will also be imputed with a political opinion as well as targeted by religious extremists.
101. The Tribunal acknowledged that if the applicant has genuinely renounced Islam and will evangelise his new faith, then it follows, on the country information, that he would face a real chance of persecution if he returned to Pakistan. The applicant responded that he has been evangelising whilst he has been in immigration detention. He said that there is no life for him in Pakistan, and that he will be tortured, prosecuted and killed if he returns there. The attitudes are the same all around the country.

Country Information on Pakistan

102. In addition to the information relied on by the applicant, the Tribunal has had regard to the following country information.
103. On 26 July 2005 the Immigration and Refugee Board of Canada published the following report on the Sipah-e-Sahaba (SSP), which is available at http://www2.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=449472:

Pakistan: The Sipah-e-Sahaba (SSP), including its activities and status (January 2003 - July 2005)

Formerly known as the Anjuman-e-Sipah-e-Sahaba (OutlookIndia.com 1 June 2005), the Sipah-e-Sahaba (SSP), also known as the Army of the Friends of the Prophet (CDI 9 July 2004) or Guardians of the Friends of the Prophet (AP 27 Jan. 2003), is a "radical" (BBC 7 Oct. 2003a), "sectarian" group (CDI 9 July 2004; FAS 1 May 2003) with "strongholds" in the central province of Punjab (including towns such as Sargodha, Bahawalpur, Jhang, Multan and Muzaffargarh), and in the city of Karachi (CDI 9 July 2004; BBC 7 Oct. 2003a).

The Sunni cleric Maulana Haq Nawaz Jhangvi founded what became the SSP in the early 1980s in an attempt to deter the increasing influence of the Iranian Shia revolution in Pakistan (ibid.). Jhangvi was assassinated in 1990, at which time Maulana Azam Tariq became the new leader of the SSP (ibid.). Tariq continued to be the leader of the SSP until his death on 6 October 2003, at the hands of gunmen who fired bullets into the vehicle he was travelling in with four others (ibid. 6 Oct. 2003; *Times* 7 Oct. 2003; AFP 30 Jan. 2005). On 15 November 2003, Allama Sajid Naqvi, a Shiite Muslim and leader of Tehreek-i-Islami Pakistan, was arrested in Rawalpindi in connection with the murder of Tariq (*Windsor Star* 17 Nov. 2003; *Milwaukee Journal Sentinel* 17 Nov. 2003; *Gulf News* 18 Nov. 2003). No information about the status of

the case against Naqvi could be found among the sources consulted by the Research Directorate.

In October 2004, *Dawn* identified Maulana Ahmed Ludhianvi, Ali Sher Haideri and Khadim Dhiloon as among the "top leaders" of the SSP (8 Oct. 2004b). In July 2005, *Dawn* again identified Maulana Ali Sher Hyderi [Haideri] as a leader of the SSP (21 July 2005). Additional information on the leadership of the SSP could not be found among the sources consulted by the Research Directorate.

The SSP has also operated as a political party that has held seats in the Pakistan National Assembly (CDI 9 July 2004). *The Herald* reported that the SSP is an "umbrella" political group that supports the Jaish-e-Mohammad ("Army of Mohammad") as its "jihadi" branch and the Lashkar-e-Jhangvi as its "domestic militant" branch (Feb. 2002, 35; see also OutlookIndia.com 1 June 2005; UPI 4 Mar. 2004; CDI 9 July 2004). OutlookIndia.com, an online, New Delhi-based independent magazine that is focused on South Asian geopolitics, identified Lashkar-e-Jhangvi as "a member of Osama bin Laden's International Islamic Front (IIF) for Jihad Against the Crusaders and the Jewish People" (1 June 2005). However, in February 2003, Tariq denied any link with the Lashkar-e-Jhangvi, claiming that "[s]ome members of Sipah-e-Sahaba opposed our peaceful struggle for the enforcement of Islamic laws, and formed Lashkar-e-Jhangvi in 1996," while emphasizing that "Sipah-e-Sahaba has nothing to do with Lashkar-e-Jhangvi" (*The News* 2 Feb. 2003; see also CDI 9 July 2004).

The Center for Defense Information (CDI) reported that the SSP also has "close links" with Jaish-e-Mohammed (JeM), which is "a terrorist organization active in Jammu and Kashmir" and based in Pakistan (9 July 2004).

In its April 2005 report, the International Crisis Group (ICG) stated that "[m]any leading activists [of the SSP] began their political careers in anti-Ahmadi organisations" (18 Apr. 2005, 9). According to the ICG, Ahmadis are Pakistan's "most repressed religious community" who were designated non-Muslims through a 1974 Constitutional amendment (18 Apr. 2005, 4-5). Earlier reports indicate that "[m]any Taliban leaders received instruction in extremism at religious schools in Pakistan run by the SSP" (Knight Ridder 21 Jan. 2002; see also AFP 7 Oct. 2003). As at October 2003, the SSP was still operating "hundreds of seminaries and religious schools mostly in poverty-ridden parts of the Punjab" (*ibid.*). Moreover, the Associated Press (AP) reported in January 2003 that the SSP "backed Afghanistan's radical Islamic Taliban militia" (27 Jan. 2003). Agence France Presse (AFP) reported that in October 2003, Tariq "publicly showed his sympathy for Afghanistan's former hardline Islamic Taliban regime" (7 Oct. 2003).

The SSP follows the Deobandi stream of Sunni Islam, is "[v]iolently anti-Shi'a" (FAS 1 May 2003; ICG 18 Apr. 2005, 3) and wants Pakistan to be officially declared a Sunni Muslim state (Terrorism Knowledge Base June 2005; CDI 9 July 2004; BBC 7 Oct. 2003a; AFP 7 Oct. 2003). The ICG reported in April 2005 that the SSP is Pakistan's first anti-Shiite militant group (18 Apr. 2005, 3). According to CDI, the SSP

aims to restore the *Khilafat* (Caliphate) system, while protecting Sunnis and their *Shariat* (Islamic laws). SSP members declare that Shias are non-Muslims and must be violently converted or suppressed.... The organization boasts 500 offices and branches in all 34 districts of Punjab. It also has approximately 100,000 registered workers in Pakistan and 17 branches in foreign countries such as the United Arab Emirates, Saudi Arabia, Bangladesh, Canada and the United Kingdom (9 July 2004).

Reports have described the SSP as a violent group (AFP 18 Nov. 2003a) that is "responsible for most [of the] anti-Shia acts of terror" in Pakistan (ICG 18 Apr. 2005,

3). The violence, which is taking place "in retaliation for the political and religious assertiveness of the Shias of Pakistan following the triumph of the Islamic Revolution in Iran in 1979" (OutlookIndia.com 1 June 2005), has led to numerous reports of the murder of Shiite militants and ordinary Shiite citizens (ICG 18 Apr. 2005, 24; Terrorism Knowledge Base June 2005; CDI 9 July 2004; *The News* 8 May 2005; *ibid.* 8 Mar. 2004; *Dawn* 21 May 2005; *ibid.* 8 Oct. 2004a; *ibid.* 8 Oct. 2004b; AFP 7 Oct. 2004; *ibid.* 7 Oct. 2003; *Times* 7 Oct. 2003; BBC 15 Apr. 2005; *ibid.* 7 Oct. 2003b; AP 10 Oct. 2003; Xinhua 19 Nov. 2003).

Activities of the SSP have ranged from "organizing political rallies calling for Shi'as to be declared non-Muslims [and] assassinating prominent Shi'a leaders" (FAS 1 May 2003; see also UPI 4 Mar. 2004) to the "indiscriminate" killing of Shiites, including attacks on Shiite mosques (Terrorism Knowledge Base June 2005; see also CDI 9 July 2004). The SSP has consistently maintained that, despite accusations to the contrary, it has not been involved in violence (BBC 7 Oct. 2003b; see also Terrorism Knowledge Base June 2005) and that it is a "legitimate political group" (*ibid.*; see also CDI 9 July 2004). The Research Directorate was able to find only a few reports that refer to political activities carried out by the SSP (*Gulf News* 25 Apr. 2004; *Dawn* 8 Oct. 2004b; *ibid.* 19 Aug. 2004).

104. The applicant referred to Sepah-e-Sahaba Pakistan (SSP) as Anjuman Sepah-e-Sahaba or ASS, a moniker which was held against him by the Tribunal at first instance on the basis that country information suggested that it had changed its name to Sepah-e-Sahaba Pakistan (SSP) well before the applicant claimed to have come to its adverse attention. However, the country information on this point is far from unequivocal, and there is evidence of both the persistence of the use of the former name and the interchangeableness of the two names. For example, the online edition of *Dawn* dated 15 March 1998 (the year that applicant claims to have become actively involved in various Shia groups), available at <http://www.karachipage.com/news/mar98/031598.txt> refers to the banning of various publications in Pakistan including *Shia Mazhab Kay Buniadi Chalees Aqeeday, published by Anjuman Sipah-e-Sahaba Pakistan*. More recently, a report published in February 2006 at <http://www.nefafoundation.org/miscellaneous/pakistanjihad0806.pdf> and expressed to have been *Adapted from an expert report submitted on behalf of federal prosecutors in United States v. Hamid Hayat (U.S. District Court for the Eastern District of California, CR#05-240GB)* refers to the organization in question as "Anjuman Sipah-e-Sahaba (SSP)"
105. The 2008 US Department of State Report on Human Rights Practices, released on 25 February 2009 and available at <http://www.state.gov/g/drl/rls/hrrpt/2008/sca/119139.htm> includes the following in its section on Pakistan,

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.

c. Freedom of Religion

The constitution states that adequate provisions shall be made for minorities to profess and practice their religions freely, but the government limited freedom of religion in practice. Islam is the state religion, and the constitution requires that laws be consistent with Islam. According to the constitution, Shari'a can be applied to a situation deemed to be in contradiction to the Koran, and therefore citizens who are normally governed by secular law can be subject to Shari'a. Shari'a also was applied in some tribal areas. In the PATA of NWFP, religious advisors assisted judges. All citizens were subject to certain provisions of Shari'a and the blasphemy laws. Freedom of speech is constitutionally subject to "any reasonable restrictions imposed by law in the interest of the glory of Islam."

Reprisals and threats of reprisals against suspected converts from Islam occurred. Members of religious minorities were subject to violence and harassment, and at times police refused to prevent such actions or charge persons who committed them, leading to an atmosphere of impunity. The constitution stipulates the president and the prime minister must be Muslim. The prime minister, federal ministers, and ministers of state, as well as elected members of the Senate and National Assembly (including non-Muslims), must take an oath to "strive to preserve the Islamic ideology," the basis for the creation of the country.

Religious groups must be approved and registered; there were no reports the government refused to register any group.

The law declares the Ahmadi community, which considers itself a Muslim sect, to be a non-Muslim minority. The law prohibits Ahmadis, who numbered more than two million, from engaging in any Muslim practices, including use of Muslim greetings, referring to their places of worship as mosques, reciting Islamic prayers, using specific Islamic terms, and participating in the Hajj or Ramadan fast. Ahmadis were prohibited from proselytizing, holding gatherings, or distributing literature. Government forms, including passport applications and voter registration documents, require anyone wishing to be listed as a Muslim to denounce the founder of the Ahmadi faith. The Ahmadi community claimed that during the year, 31 Ahmadis faced criminal charges under religious laws or because of their faith. As of November, there had been four targeted killings of Ahmadis during the year, according to the AHRC.

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. Groups such as the Khateme Nabuwat Movement, which considered anyone who questioned the finality of Prophet Muhammad to be a heretic, were reported to insult Ahmadi beliefs, but authorities did not prosecute these cases.

On June 8, police charged all the residents of Rabwah in Punjab under anti-Ahmadi laws and arrested Muhammad Yunus. The basis for the police charges against the thousands of Rabwah residents, according to the FIR, included lighting fireworks and lamps and greeting each other, which the government considered to be preaching their faith, a crime by law. The case was pending at year's end.

In August communities near Multan warned Ahmadis in the area to close their places of worship. When they refused, the communities lodged a complaint with local police, alleging the Ahmadis were attempting to proselytize. Police ordered the

"temporary closure" of Ahmadi centers in the area. They remained closed at year's end.

On September 10, the Multan bench of the Lahore High Court ruled that one of the men who allegedly abducted two Christian girls and subsequently married one of them be granted custody of her. According to Christian Solidarity Worldwide (CSW), on June 26 in Muzaffargarh district, Punjab, three men kidnapped 13-year-old Saba Masihto and Anila, her nine-year-old sister. CSW reported the men admitted to forcing the girls to convert to Islam before compelling Saba to marry one of them. The court granted the parents custody of Anila.

On October 9, Gulsher Masih and his daughter, Sandal Gulsher, were arrested after the father was accused of desecrating the Koran. Both remained in detention at year's end.

During the year, there were no developments in the January 2007 case in which an Intelligence Bureau district officer ordered the arrest of five Ahmadis, including two minors ages eight and 11, after a teacher discovered the minors carrying an Ahmadi children's magazine, Tashhizul Azhan. The case received wide press coverage, following which the charges were dropped. The case was re-filed in February 2007 against two adults.

There were no developments in the trial of the March 2007 case of a retired assistant sub-inspector who shot and killed a recent Ahmadi convert in a restaurant in Seerah, near Mandi Bahauddin in Punjab. The retired officer, Riaz Gondal, later surrendered to police and admitted to the killing, claiming the act was justified under Islamic apostasy laws. At year's end, he was incarcerated and the case was pending.

There were no developments in the case of Martha Bibi, a Christian who was arrested for blasphemy in January 2007 and released on bail in May 2007. She was accused of making derogatory remarks against the Koran, but she claimed the charges originated from Muslim contractors who did not want to pay for materials her husband had sold them.

There were no developments in the September 2006 blasphemy case of Shahid Masih, who was arrested for the theft and burning of a Koran in Faisalabad and granted bail in January 2007.

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.

On November 4, the court acquitted Christian doctor Robin Sardar of blasphemy charges. Sardar was arrested in May, and after his release Sardar went into hiding fearing for his life and remained in hiding at year's end, according to the Commission for Peace and Human Development.

There were no legal restrictions on Christian or Hindu places of worship. District nazims had to authorize the construction after they assessed whether a new church or

temple was required. Religious minority groups experienced bureaucratic delays and requests for bribes when attempting to build houses of worship or obtain land.

Islamiyyat (Islamic studies) was compulsory for all Muslim students in state-run schools. Students of other faiths were exempt from such classes; in practice, however, teachers forced many non-Muslim students to complete Islamic studies.

106. The UNHCR on 3 December 2008 published the following report on its *Refworld* website at <http://www.unhcr.org/refworld/country,,IRBC,,PAK,,49913b5e59,0.html>. The report is entitled *Pakistan: The treatment of Shias, specifically in Multan and Lahore; government response to violence against Shias (2006 - November 2008)* and contains the following:

Islam is the state religion of Pakistan with Sunni Muslims forming the majority of the population (*Europa 2008* 2008, 3498; US 19 Sept. 2008). According to the United States (US) Department of State's *International Religious Freedom Report 2008*, the Shia minority is roughly 10 to 20 percent of the population (US 19 Sept. 2008, Sec. 1; see also *ibid.* 6 Nov. 2008). *The Europa World Yearbook 2008* indicates that estimates of the Shia population range from 5 to 20 percent of the total population (2008, 3498).

The treatment of Shias

According to the US Department of State's *Country Reports on Human Rights Practices for 2007*, Shia Muslims in Pakistan "faced discrimination and societal violence" (US 11 Mar. 2008, Sec. 5), as well as "significant discrimination in employment and access to education, including at government institutions" (*ibid.*, Sec. 2.c; *ibid.* 19 Sept. 2008, Sec. 2). *Country Reports 2007* further states that Shia Muslims "were the targets of religious violence" (*ibid.* 11 Mar. 2008, Sec. 2.c). The *International Religious Freedom Report 2008* indicates that some Sunni Muslim groups have published literature calling for violence against Shia Muslims (US 19 Sept. 2008, Sec. 3). Freedom House states that Shia Muslims (along with Christians and Ahmadis) are targeted by extremist groups in Pakistan (2008). Both Freedom House and *Country Reports 2007* indicate that Shias and Sunnis engaged in sectarian violence against one another in 2007 (Freedom House 2008; US 11 Mar. 2008, Sec. 2c).

According to a 29 October 2008 article from the British Broadcasting Corporation (BBC), three members of the Shia community were killed in a sectarian attack in the north-western town of Dera Ismail Khan. The *International Religious Freedom Report 2008* notes that on 27 January 2008 in Peshawar, a suicide bombing occurred at a Shia mosque killing twelve persons (US 19 Sept. 2008, Sec. 2). Both the Associated Press (AP) and Agence France-Presse (AFP) report that, on 17 January 2008, a suicide bomber targeted a Shia mosque in Peshawar killing several people and injuring twenty (AP 17 Jan. 2008; AFP 18 Jan. 2008; see also US 19 Sept. 2008, Sec. 2). The *International Religious Freedom Report 2008* indicates that on 5 December 2007, Shia religious leaders in Kohat received letters containing threats of attack should they fail to cease operations and leave Kohat, or in some cases, convert to Sunni Islam (US 19 Sept. 2008, Sec. 3). According to *Country Reports 2007*, in September 2006, the district president of the banned Shia group Tehreek-e-Jaferia Pakistan (TJP) was killed (US 11 Mar. 2008, Sec. 1.a). In April 2006, a Shia cleric and his driver were reportedly killed in a shooting in Faisalabad (*The Daily Times* 19 Apr. 2006; AFP 20 Apr. 2006).

The treatment of Shias in Multan and Lahore

According to a professor of politics at the Lahore University of Management Sciences (LUMS), "Sunni militancy against Shias was on its peak in the 1990's and

early 2000's" (10 Nov. 2008). The LUMS Professor further stated that "[m]ilitancy has subsided in recent years both in Multan and Lahore" (10 Nov. 2008).

The Daily Times reports in a 14 June 2006 article that six members of the banned group Lashkar-e-Jhangvi (LJ) were arrested in Multan and that the group was organizing "attacks against Shias in the area." A 6 February 2007 *Dawn* article indicates that police arrested Rizwan, an individual who allegedly killed two Shia scholars in Karachi and Lahore in 2006.

According to INTERFACE, a Pakistani agency which promotes the profession of teaching and provides teachers to a variety of educational institutions in Pakistan (INTERACE n.d.) and the *International Religious Freedom Report 2008*, students at the Punjab University (PU) in Lahore have reported that some teachers and administrative officials have been "discriminating among students on religious and political grounds" (ibid. 19 May 2008; US 19 Sept. 2008, Sec. 3). One student was reportedly denied a room in the university's hostels because he was a Shia Muslim (INTERFACE 19 May 2008; US 19 Sept. 2008, Sec. 3). An Inter Press Service News Agency (IPS) article states that Shia students at PU "were prevented from attending congregational prayers" behind Sunni prayer leaders and that Shia students would pray separately after the Sunni students had completed their prayers (27 Sept. 2008). The IPS article further indicates that, in August 2008, "six Shia students were expelled from PU hostels for insisting on joining congregational prayers" (27 Sept. 2008). According to the IPS article, the PU university administration later stated that the students will be readmitted if they relinquish their demand to pray with the congregation or with Shia prayer leaders (27 Sept. 2008). INTERFACE notes PU officials responded to student complaints by stating that PU rules provide for the equal treatment of students regardless of religious affiliation and that complaints would be investigated (19 May 2008).

Government response

The *International Religious Freedom Report 2008* indicates that the government of Pakistan signed the *International Covenant on Civil and Political Rights* in April 2008 (US 19 Sept. 2008, Sec. 2). With respect to the government response to violence against Shias, the same report notes that government of Pakistan used negotiations and peace talks in attempts to end violence between Sunnis and Shias in the tribal areas of the country (US 19 Sept. 2008, Sec. 2). *Country Reports 2007* states that, at the end of 2007, LJ members were on trial for a February 2006 attack on Shia worshippers (US 11 Mar. 2008, Sec. 1.a). The LUMS Professor provided the following information regarding the government response to violence against Shias:

In the 80's and 90's, certain persons and institutions in the government allegedly supported anti-Shia militancy. This has not been the case for a decade now. The anti-terrorism regime in Pakistan was conceived and put into practice in the mid-90's essentially in the backdrop of Shia-Sunni conflict. The official measures in this direction have paid dividends. (10 Nov. 2008)

However, *Country Reports 2007* states that the "[p]olice often failed to protect members of religious minorities – particularly ... Shias – from societal attacks" (US 11 Mar. 2008, Sec. 1.d).

107. The UK Home Office Country of Origin Information Report on Pakistan issued in July 2009 and available at http://www.homeoffice.gov.uk/rds/country_reports.html#countries includes the following:

Opposition Groups and Political Activists

15.07 The *Daily Times* reported, on 29 June 2008, that:

“Banned militant outfits are resurfacing in Karachi and reopening their offices... Some of them have taken on new names. Rival sectarian outfits, Sipah-e-Sahaba Pakistan (SSP) and Sipah-e-Mohammad Pakistan (SMP), have reopened their sealed offices and have temporarily changed their names to Ahl-e-Sunnat-Wal Jamat and Shia Ulma Council, respectively. The Tehreek-e-Jafferia Pakistan (TJP) has also changed its name to the Jafferia Student Organisation... The groups are distributing handbills and chalkings on walls across the city... [and] have reportedly restarted their activities from mosques in areas where they dominate.” ...

19.12 The AHRC Report 2008 recorded:

“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.”

19.13 The Parliamentary Human Rights Group report ‘Rabwah: A Place for Martyrs?’ (PHRG Report 2007), published in January 2007, provided a tabulated summary of the blasphemy laws and the penalties for breaching them:

Pakistan Penal Code	Description	Penalty
298a	Use of derogatory remarks etc., in respect of holy personages	Three years’ imprisonment, or fine, or both
298b	Misuse of epithets, descriptions and titles etc., reserved for certain holy personages or places, by Ahmadis	Three years’ imprisonment and fine
298c	An Ahmadi, calling himself a Muslim, or preaching or propagating his faith, or outraging the religious feelings of Muslims, or posing himself as a Muslim	Three years’ imprisonment and fine
295	Injuring or defiling places of worship, with intent to insult the religion of any class	Up to two years’ imprisonment or fine, or both
295a	Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs	Up to 10 years’ imprisonment, or fine, or both
295b	Defiling, etc., of Holy Quran	Imprisonment for life
295c	Use of derogatory remarks, etc; in respect of the Holy Prophet	Death and fine

19.14 The USSD IRF Report 2008 noted that “Freedom of speech is subject to ‘reasonable’ restrictions in the interests of the ‘glory of Islam’.” The same report observed that while the blasphemy laws were supposed to protect all religions, where the feelings of a religious minority were insulted, the legislation was rarely enforced and cases only occasionally entered the legal system.

19.15 The same source also noted that:

“Public pressure routinely prevented courts from protecting minority rights. These same pressures forced justices to take strong action against any perceived offense to Sunni orthodoxy. Discrimination against religious minorities was rarely placed before the judiciary. According to several NGOs, cases against Christians and

Ahmadis continued to grow during the reporting period; however, the judiciary, even at the lower levels, acted in a more judicious manner in dealing with these cases as compared with previous reporting periods. NGOs reported that cases against both the local Christian and Hindu communities continued but to a lesser degree, and that social discrimination remains at high levels. There was generally a long period between filing the case and the first court appearance. Lower courts were frequently intimidated, delayed decisions, and refused bail for fear of reprisal from extremist elements. Bail in blasphemy cases was usually denied by original trial courts, arguing that since defendants faced the death penalty, they were likely to flee. Many defendants appealed the denial of bail, but bail was often not granted in advance of the trial.”

19.16 The USCIRF Report 2009 stated that:

“Blasphemy allegations, which are often false, result in the lengthy detention of, and sometimes violence against, Ahmadis, Christians, Hindus, and members of other religious minorities, as well as Muslims. Because the laws require no evidence to be presented after allegations are made and no proof of intent, and contain no penalty for leveling false allegations, they are commonly used by extremists to intimidate members of religious minorities and others with whom they disagree. They also are often used by the unscrupulous simply to carry out a vendetta or gain an advantage over another.”

19.17 Reporting on the issue of the changes introduced to the blasphemy laws in 2005, the USSD Report 2008 observed that:

“...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.”

19.18 On the same matter the USCIRF Report 2009 commented that “Although the penalties were amended in October 2004 with the aim of reducing the more maliciously applied charges, the minor procedural changes have not had a significant affect on the way the blasphemy laws are exploited in Pakistan.”

19.19 The USCIRF Report 2009 report also noted that:

“The negative impact of the blasphemy laws is further compounded by the lack of due process involved in these proceedings. In addition, during blasphemy trials, Islamic militants often pack the courtroom and make public threats of violence as a consequence of an acquittal. Such threats have proven credible since they have sometimes been followed by violence.

Although no one has yet been executed by the state under the blasphemy laws, individuals have been sentenced to death. Several of those accused under the blasphemy laws have been attacked, even killed, by violent extremists, including while in police custody. Those who escape official punishment or attacks by extremists are sometimes forced to flee the country.”

19.20 There were 41 new blasphemy cases reported in the year July 2006 to June 2007 (USSD IRF 2007) and a total of 53 between July 2007 and June 2008. During this period the “...authorities arrested at least 25 Ahmadhis, 11 Christians, and 17 Muslims on blasphemy charges. Many remained in prison at the end of the reporting period. The National Commission for Justice and Peace (NCJP) stated that ‘Generally we do not request bail because of security. Blasphemy suspects are often safest in prison under police protection’.”(USSD IRF Report 2008)

19.21 The Freedom House Freedom in the World 2008 Country Report on Pakistan recorded that:

“Instances of low-ranking police officials being bribed to file false blasphemy charges against Ahmadis, Christians, Hindus, and occasionally other Muslims continue to take place... To date, appeals courts have overturned all blasphemy convictions, but suspects are generally forced to spend lengthy periods in prison, where they are subject to ill-treatment, and they continue to be targeted by religious extremists after they are released. In an attempt to limit abuse of these laws, an amendment was enacted in 2005 requiring that a senior police officer investigate such charges. This led to a significant reduction in new blasphemy cases, according to the U.S. State Department’s Report on International Religious Freedom, with several dozen cases being reported each year. [See contrasting reports on this latter point in paragraph 19.18 above]”

Apostasy

19.27 As stated in the USSD IRF Report 2006 “There was no law against apostasy; however, societal pressure against conversion from Islam was so strong that any conversion almost certainly would take place in secret.”

19.28 A response regarding apostasy to the UK Border Agency from the Foreign and Commonwealth (FCO) Office British High Commission in Pakistan, dated 9 January 2009, stated that although apostasy was not illegal, people who change their faith are regularly charged with blasphemy and insulting Islam. The FCO noted that “This is usually when a conversion is made to an entirely separate religion (e.g. becoming Christian). Arguably a Sunni Muslim becoming Shia is a conversion of belief within a single religion and we are not currently aware of examples of blasphemy legal proceedings against Shias by Sunnis.”

19.29 On 9 May 2007, Asianews reported that a draft bill on apostasy had been adopted in its first reading by the National Assembly and had been put before a parliamentary standing committee for consideration. The article stated that “Tabled by a six-party politico-religious alliance, the Muttahida Majlis-i-Amal or MMA, the Apostasy Act 2006 which the government sent to the committee would impose the death penalty on Muslim men and life in prison on Muslim women in case they leave Islam. It would also force them to forfeit their property and lose legal custody of children.” The Country of Origin Information Service is not aware, at the time of writing (July 2009), that the bill has progressed through the Pakistan parliament. However the USCIRF Report 2008 noted that “Significantly, the representation of Pakistan’s coalition of militant religious parties... Muttahida Majlis-e-Amal (MMA), fell from 56 elected seats out of 272 to just six in the new parliamentary assembly.”

Sectarian Violence

19.89 The USSD Report 2008 recorded that “Attacks on houses of worship, religious gatherings, and religious leaders linked to sectarian, religious extremist, and terrorist groups outside FATA resulted in hundreds of deaths during the year.” The Report added that in 2008 “Sectarian violence between Sunni and Shia extremists continued...” 19.90 Jane’s Sentinel Country Risk Assessment for Pakistan noted in its chapter on Security, updated 30 April 2008, that:

“Shia-Sunni violence has caused an estimated 4,000 deaths since 1980, but levels have not been constant, fluctuating between months and years and generally occurring on a tit-for-tat basis... There has been a spike in anti-Shia violence over the course of 2008 and the first quarter of 2009. Sectarian riots have continued in 2008, with the start of the year witnessing clashes in the Kurram Agency, prompting about 500 families to flee across the border to the Afghan provinces of Paktia and Khost... The unrest has intensified particularly in the Tirah valley of the agency, and clashes are reported between two militias, the Lashkar e Islam headed by Mangal Bagh (the group that is also responsible for the unrest in the Khyber Agency) and the Ansar ul Islam headed Qazi Mahboobul Haq. These clashes are an indication of inter-sect conflict, with the Lashkar e Islam being a Wahhabi-influenced Deobandi outfit,

following a more puritanical version of Islam, while the Ansar ul Islam comprises supporters of the Barelvi order.”

19.91 The USCIRF Report 2009 noted that “Chronic levels of religiously-motivated violence, much of it committed against the Shi’a minority by Sunni extremists, continue throughout the country... These violent extremists, some of whom have ties to Taliban groups, are reported to have engaged with impunity in the killing of hundreds of Shi’a civilians, imposing a harsh, Taliban-style of justice, and displacing Shi’a and other minority populations.”

19.92 The HRC Report 2008 noted that:

“As in previous years, the month of Muharram [Islamic New Year, based on a lunar calendar so precise dates in the Gregorian calendar vary. In 2008 it fell between 10 January and 8 February] raised serious security challenges. The increased number of suicide bombings and an escalated militancy added to the sectarian tensions that played out in Muharram every year. The help of the army was sought to maintain law and order; the hospitals were put on high alert and their administration was directed to make arrangements on war footings especially after a spate of suicide attacks in Rawalpindi and Lahore... In the Kurram tribal agency, combatants belonging to Sunni and Shia sects engaged in bloody fighting and casualty figures rose over 1,000. Thousands of people were displaced and their property ransacked, looted and torched.”

19.93 The USSD IRF 2008 Report observed that:

“The World Council of Religions in Islamabad, assisted by leaders from Islamic, Christian, Hindu, Sikh, Buddhist, and Parsi communities and backed by President Musharraf, continued to organize interfaith dialogue sessions throughout the country. The Religious Affairs Ministry and the Islamic Ideology Council continued to organize smaller intersectoral and interfaith meetings and dialogue sessions. Following these meetings, Deobandi and Jamaat-e-Islami religious and political leaders significantly toned down anti-Christian and anti-Hindu rhetoric... throughout the reporting period the Government continued its efforts to end the Sunni/Shi’a violence in Kurram Agency through negotiations and peace talks.”

19.94 The same report added:

“Targeted assassinations of clergy remained a key tactic of several groups, including the banned sectarian organization Sipah-i-Sahaba (SSP), the terrorist organization Lashkar-i-Jhangvi (LJ), and the sectarian organizations Sunni Tehrike (ST) and Sipah-i-Mohammad (SMP). SSP and LJ targeted both Shi’a and [Sunni] Barelvis, whereas ST and SMP targeted [Sunni] Deobandis... Relations between the country’s religious communities remained tense. Violence against religious minorities and between Muslim sects continued. Most believed that a small minority were responsible for attacks; however, discriminatory laws and the teaching of religious intolerance created a permissive environment for attacks. Police often refused to prevent violence and harassment or refused to charge persons who commit such offenses.”

19.95 The USSD IRF 2008 Report cited several examples of sectarian violence during its reporting period (July 2007 to June 2008): “On June 17, 2008, four Shi’a Muslims were killed in Hangu, NWFP. Police did not confirm the attack was sectarian, but the town has had a history of violent clashes between the majority Sunni and minority Shi’a Muslims.

“According to a BBC Report, on June 16, 2008, a bomb exploded outside a Shi’a mosque in Dera Ismail Khan killing four persons and injuring three others. The explosion occurred as worshippers were leaving after evening prayers. On January 17, 2008, a suicide attack in a Shi’a mosque in Peshawar’s Qissa Khawani Bazaar killed 10 persons and injured approximately 20 others. The attack took place on the seventh day of the holy month of Muharram. The bombing was motivated primarily by sectarian tension. Several small protests followed the explosion but concluded

peacefully. Since November 2007 multiple incidents of violence and death have been reported in Kurram Agency due to an on-going battle between Deobandis and Shi'as. Sunni militants deliberately exploited sectarian tensions, resulting in multiple deaths during the year.”

19.96 The website of the South Asian Terrorism Portal (SATP) provided statistics on sectarian violence in Pakistan for 2008 (based on news reports), stating that there were 97 incidents, 306 deaths and 505 people injured. From January to 25 June 2009, SATP recorded 80 sectarian incidents, 155 deaths and 371 people injured.

19.97 In correspondence from the Foreign and Commonwealth Office (FCO) to the UK Border Agency, dated 9 January 2009, an FCO official stated that:

“...there are incidents of sectarian violence - mainly Sunnis against Shias - in the parts of Pakistan where the Shia minority are most prevalent. For example, in January 2007, during the Shia festival of Ashura, at least two suicide bombers attacked Shia gatherings and two rockets were launched at a Shia mosque in Bannu. Authorities respond to these attacks, although in Pakistan police investigation etc does not equate to protection or necessarily to justice through legal proceedings.”

Other Information relevant to the Applicant’s activities since arriving in Australia

108. The [university name deleted: s.431(2)] student union website contains a list of the 2009 student representatives at [website deleted: s.431(2)]. The list includes the names, positions, contact numbers and photographs of the various representatives, including the applicant who is listed as [name deleted: s.431(2)], University Council member. [University name deleted: s.431(2)] Council Minutes of Meeting, [number and date deleted: s.431(2)] December 2008 available at [webiste deleted: s.431(2)], confirm that the applicant was elected to the Council of [deleted: s.431] University as one of two student representatives for 2009.
109. The existence of the community organisation [Organisation A] is evidenced by various publicly available records. An Incorporated Association History Full Extract obtained by the Tribunal from Business Affairs Victoria on 22 June 2009 confirms that [Organisation A] continues to be registered as operating at [address deleted: s.431(2)], and has been operating since [date deleted: s.431(2)] 20086, although the only Current Public Officer listed is [name deleted: s.431(2)]. [Organisation A] has evidently received state government funding (see, for example, [website deleted: s.431(2)])
110. Confirmation of the applicant’s involvement with [Organisation A] is also available, for example from the website of [information deleted: s.431(2)]. The website lists various community organisations, with [Organisation A] shown as providing transition program. The applicant, [name deleted: s.431(2)], is listed as its contact person under the title of public relations officer: [website deleted: s.431(2)].

FINDINGS AND REASONS

Country of Nationality

111. The applicant claims to be a citizen of Pakistan He arrived in Australia on an apparently valid Pakistani passport, issued to him by the Pakistani authorities in Multan [in] October 2000 and stating that he is a national of that country. He was also recently issued with an emergency passport by the Pakistani authorities for the purposes of facilitating his return to that country. The Tribunal finds on this basis that he is a national of Pakistan, and has assessed his claims against that country.

Well-founded Fear of Persecution for a Convention Reason

Application of s.91R(3) with Respect to Conduct Engaged in by the Applicant in Australia

112. Since arriving in Australia the applicant claims to have rejected the Shia Muslim faith in which he was raised and embraced an obscure, hybrid religion he refers to as Rashidi. He also claims to have engaged in various other activities including participating in the management of a community-based organisation called [Organisation A], and being elected to the Council of [deleted: s.431(2)] University as one of two student representatives for 2009 although obviously as the applicant has been in immigration detention since [date deleted: s.431(2)] December 2008 he has been unable to date to fulfil his obligations.
113. This conduct appears, either explicitly or implicitly, to have been relied upon by the applicant in support of his protection claims, and the Tribunal is satisfied on the evidence before it that the conduct has occurred.
114. However, in light of the Tribunal's findings as set out below about the applicant's credibility, both generally and in respect of his religious and political activities, the Tribunal is satisfied that this conduct was engaged in otherwise that for the purpose of strengthening the applicant's refugee claim.
115. Consequently, there is no conduct to be disregarded for the purposes of s.91R(3).

Assessment of Protection Claims

116. The applicant first arrived in Australia [in] February 2001, and applied for a protection visa [in] September 2002, claiming to be at risk of persecution for reason of his membership of the Shia branch of Islam and his involvement in a number of Shia organisations.
117. The applicant's protection claims were rejected by the Department and also by the Tribunal, differently constituted, on appeal. The applicant maintains that those claims are genuine, although he concedes that there were mistakes or inconsistencies in his evidence.
118. Taking into account the effluxion of time and the applicant's rejection of the Shia faith, the Tribunal doubts that these claims give rise to a real chance of persecution in the reasonably foreseeable future, and the applicant appears to have conceded as much.
119. However, some further assessment of those claims may nevertheless be appropriate because of the bearing it has on the assessment of the applicant's credibility generally.
120. The applicant's evidence of the course of his various protection and related applications has been far from consistent. His original application was not made until more than 18 months after he first arrived in Australia, despite the applicant claiming at the second Tribunal hearing that his main reason for coming to Australia was to escape persecution in Pakistan, and also that he had not even commenced to study the course he had ostensibly travelled here to undertake in the first place. Many claims or aspects of claims raised at the first Tribunal hearing had not been raised in the original protection application. For example, in the original application, the applicant claimed he was a member of ASS before breaking away from it, whereas at the first RRT hearing he denied that he had ever been a member of the ASS. The applicant also only claimed for the first time at that hearing that he had been an office bearer in the TJP and had been kidnapped and held captive by the ASS (or SSP) for one week. At the first Tribunal hearing, the applicant claimed to have joined the ISO in 1998 and become

[Position A] in 2000/2001, whereas the supporting letter which he produced much later said to have been issued by that organisation states that he became the [Position A] in 1998.

121. At the second Tribunal hearing the applicant claimed that he had made a lot of mistakes at the first Tribunal, and he also claimed that he did not have a representative at that stage. This latter assertion is plainly wrong, as the first protection visa application was clearly completed by a registered migration agent, and a different migration agent (and lawyer) was acting for him at the time of the first Tribunal decision.
122. The Tribunal has great difficulty accepting some of the applicant's evidence, including some of the documentary evidence submitted by him. For example, the applicant initially maintained that the supporting letters from the ISO and the TJP were provided independently of each other, despite them being worded and formatted identically, and giving the authors' private rather than organisational email addresses. The Tribunal doubts that those documents are genuine, and places little weight on them. Similarly, the TJP letter handed up at hearing, which although untranslated apparently reverses that organisation's earlier support for the applicant and now denounces and threatens him as an apostate, has the air of having been contrived in order to reinforce the applicant's claims. The Tribunal also has some concerns about the motivation behind the recent supporting letter sent by the applicant's father, coming as it did shortly after the primary decision in which the delegate expressed surprise that the ostensibly evangelical applicant had neglected to mention to his own parents that he had rejected their faith and embraced a new one,
123. Even in relation to peripheral matters the applicant appears to have at least exaggerated or engaged in self-aggrandizement. As the delegate in the present case observed, there is something of a gulf between the applicant's evangelical rhetoric and practice. In written claims in support of his s.417 requests he has asserted that he is the managing director of [Organisation A] whereas his name does not appear as an office bearer in the corporate affairs records of that organisation, and other information accessed by the Tribunal indicates that he was only the public affairs officer. This causes the Tribunal to question whether the applicant was even involved in the Shia organisations he claims to have been involved in at all, or at least to the extent he claims to have been involved.
124. On the other hand, there are significant aspects of the evidence before the Tribunal that do tend to support the applicant's claims, both with respect to his past involvement in Shia groups and the consequences which flowed from that involvement, and also with respect to his renunciation of Islam and embracing of a new faith.
125. The present Tribunal does not agree with some of the concerns raised with respect to the applicant's credibility in the decision of the first Tribunal, because, as explained above, those claims were not necessarily at odds with the available country information.
126. The applicant has displayed physical evidence consistent with his claims to have been seriously assaulted for Convention reasons on a number of occasions in the past.
127. The applicant's claims of active involvement in both [Organisation A] and the Rashidi faith, while not borne out to the extent which the applicant has claimed, appear nevertheless to be both clearly and independently verifiable. The applicant himself has submitted some evidence in support of this claim, including a Rashidi manifesto and a supporting statement signed by a group of adherents, although as the delegate pointed out, there is no way of verifying that

statement as no contact details are provided for the individuals who have put their names to the list, [information deleted: s.431(2)].

128. To a significant degree, the applicant's claims were corroborated by his father, from whom the Tribunal took evidence of its own volition and without prior notice to the applicant, thereby tending to reduce, in the view of the Tribunal, the likelihood of that evidence having been concocted to support the applicant's claims. Despite the aforementioned concerns about the recent letter received from the applicant's father, he did confirm he wrote it at the Tribunal hearing, and he also confirmed in essence the background events which were said to have caused the applicant to flee Pakistan in the first place. In particular, he testified that the applicant and indeed the family had been involved in TJP and ISO, and explained that the applicant had been a precocious youth who was a good speaker at a young age. As a consequence, he had become a target for Sunni groups in Multan, particularly the Sepah , and had on a number of occasions been attacked, beaten, and gone missing.
129. The Tribunal notes that despite his involvement in [Organisation A] and his claim to have been attempting to spread his beliefs, including while in immigration detention, there is no evidence that the applicant has had any success attracting a following to his beliefs, which might suggest that he has, to date, been somewhat of a failure as an evangelist of his own beliefs. On the other hand, the Tribunal notes that the applicant has demonstrated consistent involvement in community and/or religious groups which reflect his beliefs at the time, and which display in the Tribunal's view a considerable tendency to actively participate and express himself in public life, in a way which appears to encompass both religious and political tendencies. Thus from an early age he claims to have been involved with Shia religious and student groups, and since arriving in Australia he has, in addition to his involvement in [Organisation A], he has commenced a social work course at [deleted: s.431(2)] University's under its Refugee and Asylum Seeker Scheme, and notably been elected as one of two student representatives to sit on the University council for 2009, although obviously his detention has prevented him from fulfilling his duties in this capacity.
130. This tends, in the view of the Tribunal, to support the proposition that that applicant does have a genuine desire and motivation to actively engage in religious and political life, which is consistent with his assertion that he would wish to continue to engage in such activities in the event that he return to Pakistan but for, perhaps, his fear of the consequences which might ensue.
131. The Tribunal has also had regard to country information, including that provided by the applicant. In the view of the Tribunal, this information tends to support the applicant's claims in general terms. For example, the information extracted from the *US State Department Report* extracted above tends to show that people who have turned away from Islam, people who are members of religious minorities, and people who engage in proselytising, can and do face serious harm capable of amounting to persecution.
132. The Tribunal notes and has placed some weight on the Foundation House report which suggests that the applicant displays medical symptoms consistent with past trauma such as that claimed by the applicant.
133. The Tribunal has also taken into account its own policy document *Guidance on the Assessment of Credibility*, particularly the following:
 - 5.3 Traumatic experiences including torture may impact upon a number of aspects of an Applicant's case including the timeliness of an application, compliance with

immigration laws, or the consistency of statements since arrival in Australia. They may also impact adversely on an Applicant's capacity in providing testimony of such events.

134. In light of the above, the Tribunal is prepared to give the applicant the benefit of the doubt and accept that he was involved at least to some extent with the TFJ and ISO, and to accept that he was harmed in the past by Sunni militants for reason of his Shia activities as claimed.

135. The Tribunal also accepts, on the evidence before it, that the applicant's religious and political beliefs are genuine, and that it is an important part of his expression of those beliefs for him to actively engage with others and disseminate his own, albeit evolving, religious philosophy.

136. In *Appellant S395 of 2002 v Minister for Immigration and Multicultural Affairs* (2003) 216 CLR 473, McHugh and Kirby JJ made the following observation at [40]:

...persecution does not cease to be persecution for the purpose of the Convention because those persecuted can eliminate the harm by taking avoiding action within the country of nationality. The Convention would give no protection from persecution for reasons of religion or political opinion if it was a condition of protection that the person affected must take steps - reasonable or otherwise - to avoid offending the wishes of the persecutors. Nor would it give protection to membership of many a "particular social group" if it were a condition of protection that its members hide their membership or modify some attribute or characteristic of the group to avoid persecution. Similarly, it would often fail to give protection to people who are persecuted for reasons of race or nationality if it was a condition of protection that they should take steps to conceal their race or nationality

137. Consequently, the Tribunal accepts that to require the applicant modify his behaviour by concealing or suppressing his religious or political activities would amount to a persecutory curtailment of his freedom of religious and political expression. Just as it was erroneous for the Tribunal, in *Applicant S395*, to assume that the homosexual applicant could simply return to Bangladesh and avoid persecution by behaving discreetly, it seems to the Tribunal that it would be similarly erroneous to expect the applicant in the present case to suppress his legitimate and genuinely held religious and political beliefs in order to avoid further problems in Pakistan.

138. The Tribunal acknowledges, as the delegate has observed, that the applicant may not in fact manage to attract any adverse attention to himself, even if he does engage in the sort of activities he claims he will engage in. On the other hand, and having regard in particular to the applicant's evident capacity to attract attention and support in other contexts such as student politics, the Tribunal is not confident that he will refrain from engaging in such activities nor that he will manage to avoid any adverse attention in the process.

139. The country information set out above makes it clear, in the view of the Tribunal, that in Pakistan there are high degrees of: sectarian violence, particularly directed by Sunnis against Shias; intolerance of non-Muslims, particularly proselytisers of other religions, apostates and actual or imputed blasphemers against Islam; and animosity towards the West and those who embrace it. In light of its earlier findings, the applicant therefore appears to the Tribunal to possess a number of characteristics or attributes which may place him at risk of serious harm in Pakistan.

140. The Tribunal therefore finds that there is more than a remote chance that the applicant will encounter serious harm capable of amounting to persecution for the purposes of s.91R of the Act in the reasonably foreseeable future, should he return to Pakistan.

Convention Nexus

141. Although the applicant professes to have his own set of religious views, it is nevertheless worth noting that persecution “for reasons of religion” can also include persecution because the applicant does *not* have a particular religion or because the applicant’s conduct offends against the religion of the alleged persecutors: *Prashar v Minister for Immigration and Multicultural Affairs* [2001] FCA 57 (Madgwick J, 7 February 2001). See also *Cameirao v Minister for Immigration and Multicultural Affairs* [2000] FCA 1319 (O’Loughlin J, 15 September 2000) at [25], and *Hellman v Minister for Immigration and Multicultural Affairs* (2000) 175 ALR 149 at [27]. In *Prashar*, the Federal Court held that this aspect of the Convention definition was not limited to people holding a religious belief but extended to non-believers. His Honour stated:

... if persons are persecuted because they do not hold religious beliefs, that is as much persecution for reasons of religion as if somebody were persecuting them for holding a positive religious belief. The Convention protects people in relation to the subject matter of religious belief. It does not protect believers and leave non-believers to the wolves.

142. Similarly, with respect to the Convention ground of political opinion, it has been recognised that the imputation of a political opinion can be sufficient to found a protection claims. For example, in the *V v MIMA* (1999) 92 FCR 355, a decision of Full Court of the Federal Court, Wilcox J observed, at 363, that:

...it is enough that a person holds (or is believed to hold) views antithetic to instruments of government and is persecuted for that reason;

143. From the applicant’s claims, at least some of which the Tribunal has already indicated it accepts, and from the country information available to the Tribunal, it is evident that the essential and significant reasons why the applicant is at risk of persecution in Pakistan are twofold. Firstly, there is the Convention reason of his actual and/or imputed religion, including his Shia background, his renunciation of Islam, and his adoption of a new set of religious beliefs. Secondly, and for overlapping reasons, the applicant is at risk of persecution for reason of his actual and/or imputed political opinion, in light of the evidently political philosophy which, not surprisingly given the obvious and relevant intertwining of religion and politics in Pakistan, seems to form an integral part of his current religious beliefs.
144. The Tribunal is satisfied that the essential and significant reasons for the persecution feared are the Convention reasons of religion and political opinion.

Availability of State Protection

145. As well as fearing persecution from the state itself, the applicant claims in effect that state protection is not available to him in Pakistan, as the government is unwilling and/or unable to protect him from the harm feared, and that to seek protection from the authorities in such circumstances would be futile. This claim is amply borne out by the country information cited, such as the US State Department report where it states that...

[1]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 faith fostered religious intolerance, acts of violence, and intimidation against religious minorities.

146. The Tribunal finds on the basis of this evidence that the state of Pakistan at present fails to provide the level of protection which its citizens are entitled to expect according to international standards: see *Minister for Immigration and Multicultural Affairs v Respondents S152/2003* (2004) 222 CLR 1 at [27]-[29]. The Tribunal concludes that the applicant's unwillingness to seek protection from those authorities is therefore justified for the purposes of Article 1A(2).

Conclusion on Persecution

147. In the present case, the Tribunal finds that the applicant faces a real chance of persecution if he returns to Pakistan in the reasonably foreseeable future, for the Convention reasons of his religion and political opinion, which for the purposes of s.91R(1)(a) are the essential and significant reasons for the harm feared.

Internal Relocation

148. The country information suggests to the Tribunal that the problems faced by apostates blasphemers and the like, although perhaps most severe in the north-west of the country, occur throughout Pakistan. The Tribunal considers that the applicant would be at risk wherever he goes in Pakistan, even were he to keep his head down and his mouth shut which, as the Tribunal has already found, would itself be the imposition of an unlawful, persecutory restriction on the applicant's fundamental freedoms. The Tribunal is satisfied that in the present case the risk of Convention persecution exists in the country as a whole, and that safe relocation within Pakistan is therefore not reasonably open to the applicant.

Safe Third Country

149. There is no evidence before the Tribunal to suggest that the applicant has any right to enter and reside in any third country. Accordingly, the Tribunal finds that the Australia's protection obligations are not excluded under s 36(3) of the *Migration Act 1958*.

CONCLUSIONS

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

DECISION

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

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

Sealing Officer's I.D. prrt44