

1010129 [2011] RRTA 220 (18 March 2011)

DECISION RECORD

RRT CASE NUMBER: 1010129

DIAC REFERENCE(S): CLF2010/107601

COUNTRY OF REFERENCE: Pakistan

TRIBUNAL MEMBER: Vanessa Moss

DATE: 18 March 2011

PLACE OF DECISION: Perth

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

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

RELEVANT LAW

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

Definition of 'refugee'

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being

outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

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

person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

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

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file (CLF 2010/107601) relating to the applicant and the Tribunal's file (1010129) 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.

Protection visa application

20. The applicant applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] August 2010. He did not receive any assistance to complete the visa application.
21. The applicant stated that he was born in Karachi, Pakistan on [date deleted] (and is [age deleted] at the time of decision). He speaks, reads and writes Urdu and English. He is of Muhajir ethnicity and is a Christian. He has never been married or in a de facto relationship. He is a citizen of Pakistan and does not hold the citizenship of any other country. He has a Pakistani passport issued in June 2009. He arrived in Australia [in] June 2010 on a student visa valid until [a date in] March 2012. He has never travelled outside Pakistan before his current journey to Australia. From birth until his departure for Australia he has lived in Karachi. He has completed 16 years of education and [details in relation to qualifications deleted]. His gave his occupation as "marketing officer". From January 2007 until April 2010 he worked as a marketing officer in Karachi.
22. His claims in response to questions 41-46 on the application form may be summarised as follows:
 - He left his country to study;
 - If he goes back to his country he will be harassed and may be killed;
 - He will be harmed and mistreated by Muslims;
 - He was born a Muslim and has converted to Christianity;
 - Muslims in Pakistan believe that apostates are to be killed;

- The authorities in Pakistan cannot protect him, because Muslims are a majority in Pakistan and the authorities are incapable of protecting him from them.
23. His parents, four brothers and two sisters live in Pakistan.
 24. Accompanying his application were a certified copy of his current passport, his birth certificate, identity card (with translation), and various documents relating to his education background and employment.
 25. The applicant was interviewed by the delegate [in] October 2010.
 26. [On a further date in] October 2010 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. The delegate did not accept that the applicant was a genuine convert to Christianity, nor did he accept that the applicant would be of particular interest to members of Islamic extremist groups because of his being a Christian convert. The delegate noted that at interview the applicant was unable to answer rudimentary questions regarding not only the life of Jesus Christ, but also the Christian church. Further, the applicant has not attended a Christian church in Australia nor has he told anyone in Pakistan including his family about his conversion. He has not been baptised. He has not read the bible. He visited a church once in Pakistan when he was fifteen. He has no Christian friends and house shares with Muslims. The delegate had regard to section 91R (3) of the Migration Act and considered that the applicant's claimed conversion to Christianity in Australia is for the purpose of attempting to create a profile for himself to enhance his refugee status in Australia and he therefore disregarded this conduct.
 27. Further the delegate noted that country information does not support the applicant's claim that he would be unable to practise his Christianity in Pakistan. The delegate noted that even if the applicant were targeted by Muslim extremists in Pakistan, there is no valid reason why he could not seek the protection of the Pakistani authorities on return, or why the protection would not be forthcoming. He did not accept that the applicant would be mistreated or denied state protection by the Pakistani authorities because of his being a Christian convert or because of any other Convention reason.

Application for review

28. The applicant lodged an application for review of the delegate's decision [in] November 2010. Accompanying his application for review was a submission including his profile, and a bundle of country information from the internet regarding apostacy in the Muslim world and in particular in Pakistan, and the blasphemy laws in Pakistan. The applicant's profile included the following additional information, in summary:
 - He accepts that he does not have much knowledge about Christianity.
 - He does not have knowledge about the life of Jesus Christ.
 - He did not read the basic scriptures of Christianity before he converted to Christianity.

- The reason for his conversion to Christianity was Islam itself. If he had regularly experienced peace and tolerance, he probably would never have left. He gave examples of aspects of Islam with which he disagreed, including its hatred and dislike of others.
- He gave examples of the treatment of apostates in many countries including the US. He claims to be scared of being killed even in Australia on the ground of blasphemy since the law of Islam recognizes no national borders. He states this is the reason why he cannot openly attend Church and make Christian friends.
- He chose Christianity because Christians are tolerant and peace loving, and not because of the affluent and relaxed lifestyle in Australia. There are practising Christians who attend church and non-practising Christians who don't. There are many Christians who wouldn't be able to answer rudimentary questions regarding their religion They should not be regarded as 'Not Genuine' but as non-practicing or non-knowledgeable.
- Recently, he has made some Christian friends including [Ms A] (sic) and [Mr B] who know him by his middle name. He has also secretly visited a church ([Church 1]) with them.
- He acknowledges that he has not told his family and Muslim friends about his conversion to the Christian faith. The reason is he cannot risk his life. He states that it is easier to kill apostates from Islam, particularly after a fatwa, because killers in such cases are treated as heroes. Since his childhood, he has been told by his family and elders that an apostate must be put to death regardless of what religion he adopts. He cites information regarding the treatment of apostates in Pakistan and claims that this is the reason he cannot seek the protection of the Pakistani authorities on return.

29. [In] December 2010 the Tribunal wrote to the applicant advising that it had considered the material before it but was unable to make a favourable decision on this information alone. It invited him to appear before the Tribunal to give evidence and present arguments relating to the issues in his case.

Hearing [in] February 2011

30. The applicant appeared before the Tribunal [in] February 2011 to give evidence and present arguments. He took an oath on the bible. The Tribunal also received oral evidence over the telephone from [Mr B], a friend of the applicant. Immediately prior to the hearing the applicant provided two documents to the Tribunal. The first is a certified copy of a Baptism Certificate certifying that he was baptised [in] January 2011 by [Church 1], and the second is an internet report from Human Rights Watch regarding human rights in Pakistan and in particular the persecution of religious minorities in Pakistan.

Applicant's evidence [in] February 2011

31. The applicant indicated that the reason he came to Australia was because he wanted to get a [qualification deleted].

32. When asked when he converted to Christianity the applicant stated that he became a true Christian in the first week of July 2010, having arrived in Australia [in] June 2010. When asked what he meant by becoming a true Christian he indicated that becoming a true Christian involves confessing your sin, repenting it, believing that Jesus Christ died for your sin and accepting that Jesus is your Lord and Saviour. When asked how he knew what becoming a true Christian entailed, he responded that he read about it on the internet. He stated that he starting searching on the internet about Christianity in the first week in July 2010, and that he made a firm decision to leave Islam at the same time. At that time although he wanted to go to church and have Christian friends he was living with radical Muslims and was fearful.
33. When asked what led to his conversion he indicated his disenchantment with Islam, and that when he came to Australia he saw a different picture, that Christians are far better than Muslims. He stated that when Muslims do good things it is out of fear of God whereas when Christians do good things it is out of love of God. At the same time he converted to Christianity he made the decision to leave Islam.
34. When asked what being a Christian means to him he responded that he had no hatred in his heart, he was free of dislike for non-Muslims and that he did not agree with Islam. He said he has to live for Jesus Christ and give his whole life to Jesus and do what Jesus wants him to do. When asked how he discerns what Jesus wants him to do he cited an example of an occasion when he prayed to Jesus to show him the right way, and then, during the course of his [work] someone came up to him and invited him to attend church (this person is [Ms A], the wife of the witness [Mr B]). He said that this happened 3 ½ months ago. He took up the invitation and went to the church which is [Church 1], located near his house. He went with a friend who is also a convert to Christianity from Pakistan. He provided details of his attendance at the church on the Saturday evening and stated that he met with [Mr B] and [Ms A] at that time. He went again to the church the following day and he stated that he has been attending the church every weekend over the last 3 ½ months.
35. The Tribunal asked the applicant about his knowledge of Jesus. The applicant responded that he was born miraculously in Nazareth and that God sent his son to us through Mary. As a child Jesus was a witness to the innocence of Mary. Jesus was baptised by John the Baptist, died on the cross and rose on the third day. Asked what he knew about the teachings of Jesus he responded that there are 4 basic teachings. To confess sin, to repent of sin, to believe he has died for our sins, and to believe in Jesus as Lord and Saviour. For each of these he quoted a bible passage, its chapter and verse. He stated that Christianity is not a set of rules and requirements but rather it is about divine love and forgiveness. He indicated that Jesus taught to love all humanity and believe in him and be saved.
36. The applicant stated that he reads the bible almost every day and especially on Sundays and has done this since he began attending [Church 1]. When asked for his favourite bible story he stated that there was a story in the book of Isaiah but he was unable to recall it. When the Tribunal asked if he could recall any stories in the bible he said he could not.
37. When asked by the Tribunal about prayer he indicated he daily confessed his sin, asked for forgiveness and asked Jesus to be his Lord and Saviour. When the Tribunal asked if

he knew the Lord's prayer he said he knows it but cannot recite it because at church it is put up by the projector.

38. When the Tribunal asked about his baptism a few days before the Tribunal hearing, the applicant indicated that his friend [Mr B] had asked him the day before, if he wanted to be baptised. He described his baptism in the pool at [Church 1].
39. The applicant gave evidence that he is no longer living with Muslims but rather is living with two Christians from his church, and he has been living with them for about 3 months. One of them is also a convert from Pakistan with whom he was sharing a house initially with the Muslims.
40. The applicant said that he had asked his friend [Mr B], without reference to him, to contact his brother in Pakistan to ask him to become a Christian. He gave [Mr B] his brother's contact details. When the Tribunal enquired whether he thought that his brother would be amenable to such a suggestion, he responded that it was his responsibility, because he is saved, to save his family, and that [Mr B] is encouraging him to do so. When the Tribunal put it to the applicant that he had previously given evidence that his family were of the view that converts should be put to death, he responded that he should try his best, and that [Mr B] has encouraged him to do so.
41. His parents and siblings are not aware of his conversion to Christianity.
42. The applicant claimed that if he returns to Pakistan he will not have any kind of freedom and will be put to death because converting to Christianity is not tolerated. He indicated that Muslims are not allowed to convert to Christianity and all who leave Islam should be put to death and that he will not be able to live as a Christian and will be persecuted. He says that he cannot hide his religion if he goes home and he will be forced to go to the mosque. He will not be able to read the bible.
43. The Tribunal drew to the applicant's attention his comment in his statement to the Tribunal that he is scared of being killed in Australia on the ground of blasphemy since the law of Islam recognizes no national borders and that this was the reason he gave as to why he cannot openly attend Church and make Christian friends. The Tribunal asked the applicant if he knew of this happening to anyone in Australia, and he responded that he did not, but that he did not want to be the first one.
44. The applicant stated that he did not know why the delegate said he was not a genuine convert, and that he would never play with his religion, and religion is not a game.

Evidence of [Mr B] [in] February 2011

45. The witness gave evidence that he has known the applicant for about 4-5 months. He corroborated the applicant's account of their meeting at [Church 1], following an invitation emanating from his wife to the applicant at a [store] where the applicant was a [vocation deleted]. He confirmed the applicant's evidence that the reason he came to hear about Christ was because he had not found fulfilment in the Muslim faith. He indicated that recently the applicant had asked him to email his brother and tell him about Christ. He corroborated the applicant's account of his first attendance at [Church 1] and that the applicant has attended once a week since that time. He also corroborated the applicant's account of his baptism [in] January 2011. He indicated that he believed

the applicant was a genuine convert and not doing it to get a visa, and it was for this reason that he and his wife have invested time in the applicant. When later asked to explain the basis upon which he held this view he indicated that he thought he was a good judge of character and that he had asked the applicant questions and checked his motives and regarded him as sincere and could see the joy in his heart and the change in his life. He stated that he did not see any gain in the applicant doing it for any other reason.

Resumed hearing [in] February 2011

46. The Tribunal invited the applicant to appear at a resumed hearing [in] February 2011 and the applicant appeared before the Tribunal on that day. The Tribunal also received further oral evidence over the telephone from [Mr B], at the applicant's request.
47. At the outset of the hearing the Tribunal reiterated the comments it made at the first hearing that if the Tribunal was of the view that the applicant had engaged in conduct while in Australia in order to strengthen his claim to be a refugee it must disregard that conduct in assessing his claim to be a refugee. The Tribunal explained to the applicant that it had concerns about the genuineness of his conversion. It explained that it was concerned that he may have converted to Christianity in order to strengthen his claims to be a refugee, and that it may disregard his conduct in Australia, which forms the only basis of his refugee claim. The Tribunal explained that it had invited the applicant to attend this further hearing to provide him with an opportunity to respond to the Tribunal's concerns.

Applicant's oral evidence [in] February 2011

48. In response the applicant stated that he had lodged his student visa application in 2009, and was expecting it to be granted in January 2010. When he did not get it then he contacted the Department and was told that they were undertaking security checks. He considered withdrawing his admission to get his fees back however his consultant advised him that this was useless. He was granted his student visa [in] April 2010, but waited until June 2010 to come to Australia to begin his course in July 2010. He stated that if he had any plan, he would have come earlier, as soon as his student visa issued.
49. He stated that he went to [Mr B]'s church ([Church 1]) for the first time before he received the delegate's decision. He stated he had no plans to go to church himself. He also stated that he never asked to be baptised. When the Tribunal enquired about the church he had visited in Karachi, he responded that he visited the church building as a tourist only. He stated that if he is a genuine Muslim he would not speak against his religion for some sort of gain. He indicated that his two Christian friends have warned him that his life will be in danger if he converts and told him it is better to keep his religion.

Evidence of [Mr B] [in] February 2011

50. The Tribunal explained to the witness the reason for the resumed hearing in the same terms as it explained it to the applicant, and indicated that the applicant had requested the Tribunal to take further evidence from the witness.

51. The witness indicated that his wife had approached the applicant with an invitation to attend church, and that “he never came looking for us”. He reiterated the circumstances of his wife’s meeting with the applicant at the [store]. He indicated that every time the applicant has come to church it has been in his own car and of his own will. He indicated that the applicant had invited one of his friends along to church who has made a commitment to the church, and that there was no benefit in the applicant doing this. Another friend of the applicant’s had told the witness that the applicant has told him he has been studying the bible, and the witness indicated that this shows that the applicant is genuine.
52. When the Tribunal explored further with the witness his comments at the first hearing that he had asked the applicant questions and checked his motives, the witness indicated that he asked the applicant about the Muslim religion, asked him if he went to the mosque and gained the impression that the applicant was not a strong believer and went because of family. He had spoken with the applicant about what it means to be a Christian and told him what he thought about the Muslim faith (which was that praying to Mecca was praying to an idol and silly). The witness indicated that he tested the applicant this way and the applicant did not get offended. The applicant’s responses indicated to the witness that the applicant did not believe in the Muslim religion.
53. The witness reiterated his earlier statement about his belief in the genuineness of the applicant, that he was honest and good and sincere, and that he had no reason to doubt his genuineness. He indicated he had seen a change in the applicant and that the applicant was happy to have the truth, happy to be in church with other people, he is hungry to find out more and he is reading the bible. He considered him to be well mannered, well-organised, good with people, appreciative of all the help that he is given, a good man, and honest. The witness indicated that there have been people before who he thought would be at church forever and they had left after a year. He said that his wife is sensitive and good at picking up if people are playing games, and that she has no doubts about the applicant.
54. The witness sees the applicant once a week and speaks with him on the phone about three times a week.

COUNTRY INFORMATION

55. Christians form one of several religious minorities in Pakistan who jointly account for 5 per cent of the population. Other minorities include Hindus, Parsis/Zoroastrians, Baha’is, Sikhs, Buddhists, and Ahmadis. The remaining 95 per cent of the population is Sunni or Shia Muslim.¹
56. Islam is the state religion, and all elected ministers and members of the Senate and National Assembly are required to pledge to “strive to preserve the [state’s] Islamic ideology”. Although the Constitution provides for freedom of minorities to practice their religion, the government imposes limits on these rights. The Constitution also allows for freedom of speech to be limited by “any reasonable restrictions imposed by law in the interest of the glory of Islam”. Furthermore, Pakistan’s blasphemy laws

¹ US Department of State 2010, *International Religious Freedom Report for 2010 – Pakistan*, 17 November, Sections I, II – Attachment 1

which prescribe the death penalty for defiling Islam are said to discriminate against religious minorities.²

57. The Human Rights Commission of Pakistan (HRCP) reports that violence against, and harassment of, religious minorities increased throughout 2009. In particular, there were instances of “[r]eprisals and threats of reprisals against suspected converts from Islam”.³ Consequently, conversion to minority religions often occurs “in secret to avoid societal backlash”.⁴
58. A November 2010 article from Christian news service *Compass Direct* reports the assault by a group of Muslim extremists of a Christian convert in Islamabad. Rev. Dr. Suleman Nasri Khan converted from Islam to Christianity in 2000, and was first attacked in 2008 after Muslim extremists learned of his conversion. The more recent attack occurred as a result of a fatwa (Islamic religious ruling) demanding his death. A fellow Reverend who found Khan unconscious after the attack claimed that “he couldn’t go to police or a hospital out of fear that Muslims would level apostasy charges against Khan” The Muslim extremists have also reportedly named six Christian families from Khan’s congregation on a hit-list.⁵
59. In addition to Christian converts specifically, Christians in general face discrimination and harassment in Pakistan. The US Department of State reported in November 2010 that acts of violence, as well as governmental and societal discrimination, against Christians continue to occur. Christians reportedly experienced difficulty in obtaining employment other than menial labour jobs, although improvements have occurred in recent years within the private sector.⁶ The Economist Intelligence Unit (EIU) stated in August 2009 that “Taliban ideology has...underpinned an upsurge in attacks against Christians in Pakistan...Demands for sharia law to be applied in Pakistan are linked to the idea that Christians should be expelled from the country”.⁷
60. A number of attacks on Christians have recently occurred in Karachi. The *Pakistan Christian Post* reported on 12 January 2011 that a Muslim police officer and Muslim gang members had been kidnapping and assaulting young Christian males, and forcing Christian women to convert to Islam. One Christian youth was found dead in early January after he was allegedly followed by a Muslim police officer.⁸ Another attack on

² US Department of State 2010, *International Religious Freedom Report for 2010 – Pakistan*, 17 November, Introduction, Sections I, II – Attachment 1; US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Pakistan*, 11 March, Section 2c – Attachment 2

³ US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Pakistan*, 11 March, Section 2c – Attachment 2

⁴ US Department of State 2010, *International Religious Freedom Report for 2010 – Pakistan*, 17 November, Section III – Attachment 1

⁵ ‘After Fatwa, Pastor in Pakistan Beaten with Bricks’ 2010, *Compass Direct*, 5 November – Attachment 3

⁶ US Department of State 2010, *International Religious Freedom Report for 2010 – Pakistan*, 17 November, Introduction, Section III – Attachment 1

⁷ UK Home Office 2010, *Country of Origin Information Report – Pakistan*, 18 January, pp.112 – Attachment 4

⁸ ‘Christian boy shot dead in Karachi’ 2011, *Pakistan Christian Post*, 12 January

<http://www.pakistanchristianpost.com/headlinenews.php?hnewsid=2556> – Accessed 13 January 2011 – Attachment 5

Christians in Karachi by Muslim extremists occurred in December 2010, following the conversion to Islam by a Christian youth in order to marry a Muslim girl.⁹

61. Furthermore, in May 2010, a Christian church in Karachi was attacked by Muslim extremists, who threatened to kill Christians in the area. After the church pastor reported the attack to police, a report was filed against four Christians for allegedly threatening the Muslims group's leader, a convert from Christianity to Islam.¹⁰ *Compass Direct* reports that in April 2009, Christians in Taiser town, near Karachi, faced calls to convert to Islam or pay a tax for protection. Islamic militants in the town opened fire on Christians attempting to remove graffiti reading 'Long Live the Taliban', resulting in the death of a young boy.¹¹
62. Other recent incidents involving Christians in various parts of Pakistan include the illegal detention of three men on false charges after their Muslim employer reported to police that they had refused to work on Sundays; the forced departure from Lahore of five Christian boys who were accused of blasphemy after desecrating an Islamic banner; the attempt by police to extort money from 47 Christians by falsely charging them with alcohol possession; intimidation and death threats made against a female Christian shop-owner after being accused of blasphemy by another shop-owner because she refused to sell him her shop; the killings of six Christians and injuries to seven others by militants in Quetta; extremist mob attacks on, and forced evictions of, Christian communities in Punjab; and the police abuse in custody of a Christian man charged with robbery.¹²
63. Furthermore, a September 2010 news report highlights claims of Christian NGOs in Pakistan that the widespread discrimination against religious minorities in Pakistan is also evident in the recent flood crisis, with Christians reportedly being denied relief aid from some Muslim charity groups unless they convert to Islam.¹³
64. Pakistan's blasphemy laws are outlined in Sections 295 and 298 of the Pakistan Penal Code, and include defiling Islam and/or the Holy Qur'an, and using derogatory remarks in respect of the Holy Prophet. Punishments under these laws range from fines to life imprisonment, and even the death penalty. Although there have not yet been any executions for blasphemy, some individuals have been sentenced to death, while those accused have been attacked, and some killed, by violent extremists.¹⁴
65. The British High Commission in Pakistan reported in January 2009 "that although apostasy was not illegal, people who change their faith are regularly charged with

⁹ 'Christians In Karachi Comes Under Attack From Islamists' 2010, ReligionNewsBlog website, 15 December <http://www.religionnewsblog.com/25507/christians-in-karachi-comes-under-attack-from-islamists> – Accessed 13 January 2011 – Attachment 6

¹⁰ US Department of State 2010, *International Religious Freedom Report for 2010 – Pakistan*, 17 November, Section II – Attachment 1

¹¹ 'Lawyer threatens to kill Christian charged with 'blasphemy'' 2009, *Compass Direct*, 6 May – Attachment 7

¹² US Department of State 2010, *International Religious Freedom Report for 2010 – Pakistan*, 17 November, Sections II, III – Attachment 1

¹³ 'Pakistan: some Christians denied aid unless they convert to Islam' 2010, All Voices website, 7 September <http://www.allvoices.com/contributed-news/6694816-pakistan-some-christians-denied-aid-unless-they-convert-to-islam> – Accessed 11 January 2011 – Attachment 8

¹⁴ UK Home Office 2010, *Country of Origin Information Report – Pakistan*, 18 January, pp.93-94 – Attachment 4; US Department of State 2010, *International Religious Freedom Report for 2010 – Pakistan*, 17 November, Section II – Attachment 1

blasphemy and insulting Islam”.¹⁵ A July 2010 report on surveys conducted by the Pew Research Center found that approximately 76 per cent of Pakistanis support the death penalty for people who convert from Islam.¹⁶

66. In August 2010 a Christian man in Karachi was accused of blasphemy by Islamic extremists for marrying a Muslim woman, while his wife was threatened with death for leaving Islam. The family has been forced to continually move house in order to avoid being attacked or charged under blasphemy laws.¹⁷ The *Pakistan Christian Post* reported in July 2010 that a Muslim family in Rawalpindi was accused of blasphemy after being baptised by a local pastor, whose life was also now in danger as a result.¹⁸
67. The blasphemy laws are also used to target and intimidate religious minorities, including Christians. In 2009, 6 out of a total 112 cases were registered against Christians, although many more faced threats and accusations on the grounds of blasphemy. Courts generally do not require evidence in blasphemy cases, and bail is often denied, resulting in lengthy detention where detainees are subject to ill-treatment. When blasphemy cases are heard in court, large numbers of extremists appear in the courtroom and make public threats against acquittals.¹⁹ In 2009 a Christian man charged with blasphemy, Hector Aleem, was threatened in court by an Islamic lawyer, who stated “[i]f the judge does not punish Aleem according to the law, then [we] will kill him ourselves”.²⁰
68. In November 2010 a Christian woman, Aasia Bibi, became the first female to be sentenced to execution under the blasphemy laws for allegedly insulting the Prophet Muhammad and the Qur’an. Salman Taseer, the governor of Punjab, visited Bibi in gaol and publicly criticised the blasphemy laws. As a result of his controversial views, Taseer was shot and killed in Islamabad on 3 January 2011 by an Islamic extremist after a fatwa was issued calling for his death.²¹ A rally of more than 50,000 people was subsequently held in Karachi on 10 January 2011 to protest against calls for a reform to the blasphemy laws. Islamic leaders from Jamaat-e-Islami and Jamiat-e-Ulema-e-

¹⁵ UK Home Office 2010, *Country of Origin Information Report – Pakistan*, 18 January, p.97 – Attachment 4

¹⁶ Pew Research Center 2010, ‘America’s Image Remains Poor: Concern About Extremist Threat Slips in Pakistan’, The Pew Global Attitudes Project website, 29 July pp.9, 26 – <http://pewglobal.org/files/pdf/Pew-Global-Attitudes-2010-Pakistan-Report.pdf> – Accessed 22 December 2010 – Attachment 9

¹⁷ ‘Blasphemy’ threats send Pakistani worker, couple into hiding’ 2010, *Compass Direct*, 24 August – Attachment 10

¹⁸ ‘Baptized Muslim family and Pastor under blasphemy in Pakistan’ 2010, *Pakistan Christian Post*, 30 July <http://www.pakistanchristianpost.com/headlinenews.php?hnewsid=2180> – Accessed 11 January 2011 – Attachment 11

¹⁹ Human Rights Watch 2010, ‘World Report 2010: Pakistan’, January – Attachment 12; US Department of State 2010, *International Religious Freedom Report for 2010 – Pakistan*, 17 November, Sections II, III – Attachment 1; UK Home Office 2010, *Country of Origin Information Report – Pakistan*, 18 January, pp.94-95 – Attachment 4

²⁰ ‘Lawyer threatens to kill Christian charged with ‘blasphemy’’ 2009, *Compass Direct*, 6 May – Attachment 7

²¹ ‘PAKISTAN: Hindu minority lives in mounting fear’ 2011, *IRIN News*, 6 January <http://www.irinnews.org/Report.aspx?Reportid=91544> – Accessed 10 January 2011 – Attachment 13; ‘Pakistan row over possible pardon’ 2010, *Al Jazeera*, 24 November

<http://english.aljazeera.net/news/asia/2010/11/20101124192246764876.html> – Accessed 22 December 2010 – Attachment 14; Gall, C. 2011, ‘Pakistan Faces a Divide of Age on Muslim Law’, *The New York Times*, 10 January http://www.nytimes.com/2011/01/11/world/asia/11pakistan.html?_r=1&ref=world – Accessed 11 January 2011 – Attachment 15; Georgy, M. 2011, ‘Pakistan governor buried, clerics warn against grief’, *Reuters*, 5 January <http://www.reuters.com/article/idUSTRE7010QP20110106> – Accessed 11 January 2011 – Attachment 16

Pakistan stated “that there was no need to mourn the death of Taseer [and] praised [his assassin] as a hero of Islam”.²²

69. Further examples of the blasphemy laws being used against Christians in 2010 include the sentencing of a Christian man to life imprisonment on charges of blasphemy for comments he made about the Qur’an and the Prophet Mohammad, and the sentencing of a Christian couple to 25 years imprisonment for defiling the Qur’an by touching it with unclean hands. In September 2009, a Christian man accused of blasphemy died in police custody, with human rights groups claiming that he was killed extra-judicially.²³

FINDINGS AND REASONS

70. The applicant travelled to Australia on a Pakistani passport and claims to be a national of Pakistan. On the basis of this evidence the Tribunal accepts that the applicant is a national of Pakistan and has assessed his claims against Pakistan as his country of nationality.
71. The applicant claims to have converted to Christianity from Islam in July 2010 whilst in Australia. The applicant fears harm, discrimination, and death from religious extremists as an apostate and a Christian convert if he returns to Pakistan. In particular, he fears being tried under Islamic blasphemy laws. He claims that his family and friends are not aware of his conversion.
72. The issue for the Tribunal to consider is whether or not the applicant faces a real chance of persecution on the basis of his claimed conversion to Christianity if he returns to Pakistan.
73. The applicant arrived in Australia [in] June 2010 and claims to have become a true Christian in the first week in July 2010, and then, on the basis of this claimed conversion, applied for a Protection visa [in] August 2010. The applicant claimed to have become a true Christian within weeks of his arrival in Australia, and to have begun searching Christianity on the internet within weeks of his arrival. The Tribunal is troubled by the timing of his claimed conversion and finds it difficult to believe that he would have made the decision to become a Christian after only a few weeks in Australia, on the basis of what he saw here and his disenchantment with Islam. The Tribunal finds the applicant’s evidence regarding his reasons for converting to Christianity unconvincing.
74. The Tribunal notes that in the intervening period between the decision made by the delegate and the Tribunal hearing the applicant claims to now read the bible almost daily, attend church weekly, have been baptised, and live in a household with Christians.

²² Thuburn, D. 2011, ‘Pope calls on Pakistan to scrap blasphemy’, *The Age*, 11 January <http://news.theage.com.au/breaking-news-world/pope-calls-on-pakistan-to-scrap-blasphemy-20110111-19lcf.html> – Accessed 11 January 2011 – Attachment 17; Aziz, F. 2011, ‘Tens of thousands rally against changes in blasphemy law’, *Reuters*, 9 January <http://www.reuters.com/article/idUSTRE70826520110109> – Accessed 11 January 2011 – Attachment 18

²³ US Department of State 2010, *International Religious Freedom Report for 2010 – Pakistan*, 17 November, Section II – Attachment 1

75. The Tribunal accepts on the basis of the evidence before it, that the applicant has been attending [Church 1] weekly for approximately 3 ½ months and that he was baptised as a Christian at [Church 1] [in] January 2010. It accepts his account, which was corroborated by the witness, of how he came to be invited to attend the church. Further, it accepts the applicant's evidence that he is now living in a household with Christians.
76. The applicant's evidence of his attendance at the church and of his baptism [in] January 2010 was corroborated by the witness. Although the witness gave evidence that the applicant's attendance there began 4-5 months ago (as opposed to 3 ½ months ago on the applicant's account) the Tribunal does not make any adverse finding on the basis of this inconsistency in the evidence. The Tribunal accepts the evidence of the applicant, which was corroborated by the witness, that it was at the witness's prompting, that the applicant was baptised [in] January 2011.
77. The Tribunal accepts that the witness believes that the applicant is a genuine convert and not doing it to get a visa and that it was for this reason that he and his wife had invested time in the applicant. The Tribunal found the witness to be sincere and the Tribunal accepts that this is indeed the view of the witness. However, the witness is not an infallible judge of character, as he readily admitted, and it does not follow that his belief in the genuineness of the applicant's conversion is unassailable. In light of the evidence before the Tribunal, the Tribunal has come to an opposite view. The Tribunal concludes that the applicant is not a genuine convert, but rather an opportunist seeking to secure refugee status in Australia, following his internet search on Christianity shortly after his arrival.
78. The applicant claimed that he has read the bible almost every day since he joined [Church 1] and yet he was unable to answer the Tribunal's question as to what was his favourite bible story other than to say there is a story in the book of Isaiah. Nor was he able to recall any story in the bible, when asked. This is at odds with his claim to have read the bible almost every day for a period of approximately 3 ½ months. The Tribunal does not accept that he reads the bible almost every day as claimed, and places considerable weight on this as indicative of his lack of bona fides. The Tribunal would have expected that a person who has claimed to have read the bible almost daily, for a period of 3 ½ months, to have been able to outline to the Tribunal a bible story. The applicant's recitation of the "four teachings" of Jesus and his ability to quote the source of those teachings chapter and verse was at odds with his inability to recall a single bible story when asked to do so. The Tribunal's impression was that this aspect of his evidence was scripted and rehearsed for the purposes of enhancing his refugee claim.
79. An applicant can acquire refugee status *sur place* where there is a well- founded fear of persecution as a consequence of events that have occurred since leaving their own country. This is however subject to section 91R (3) of the Migration Act which provides that any conduct engaged in by the applicant in Australia must be disregarded in determining whether he or she has a well-founded fear of persecution unless the applicant satisfies the Minister (or the Tribunal on review) that he or she has engaged in the conduct otherwise than for the purpose of strengthening his or her claim to be a refugee within the meaning of the Refugees Convention as amended by the Refugees Protocol.

80. On the basis of the evidence of the applicant and the witness regarding the applicant's baptism [in] January 2011, which evidence is accepted by the Tribunal, the Tribunal accepts that the applicant has converted to Christianity. However, the Tribunal does not accept that the applicant's conversion is genuine. There are a number of aspects of the applicant's evidence that the Tribunal relies upon for its finding in this regard. Firstly, his evidence that the reason for his "becoming a true Christian" was his disenchantment with Islam, and "seeing a different picture" once he got to Australia. The Tribunal does not accept that after only a few weeks in Australia his disenchantment with Islam would have crystallised to the point where he would decide to turn his back on Islam, and simultaneously "become a true Christian" The Tribunal would have expected that a genuine convert would, from that point onwards, have engaged in some bible reading, and be seeking out a church community to join. And yet the applicant did not do so at that time. The Tribunal accepts that the applicant's churchgoing and baptism was at the instigation of others, but regards his accession to these two activities as opportunistic on the applicant's part. These outward manifestations of his conversion have been corroborated by others. Secondly, for the reasons set out above the Tribunal considers that some of his evidence was rehearsed for the purposes of enhancing his refugee claim, and yet when asked by the Tribunal he was unable to recall his favourite bible story or any bible story. His claim to bible-reading, which may be said to be an indicator of his faith not readily able to be corroborated by others, when tested by the Tribunal was found not to be credible.
81. For the reasons given above the Tribunal is not satisfied that the applicant has converted to Christianity otherwise than for the purpose of strengthening his claims to be a refugee and the Tribunal has therefore disregarded this conduct pursuant to s91R(3). The Tribunal has formed the view that his claims relating to his conversion were contrived to obtain a protection visa, notwithstanding that his invitation to attend church, and be baptised, were at the instigation of others. The Tribunal finds that the applicant's activities in Australia, namely his baptism, his church attendance, his becoming friends with Christians, and his living with Christian friends, were not undertaken for any other reason than to strengthen his refugee claim. The Tribunal is not satisfied that the applicant became baptised, attended church, became friends with Christians or shared a house with Christians out of a genuine belief in Christianity. Accordingly, the Tribunal disregards these activities in assessing his claims for protection pursuant to s91R(3).
82. Although the Tribunal is satisfied, on the basis of the country information set out above, that converts to Christianity may be persecuted in Pakistan, having found the applicant not to be a genuine convert to Christianity and since this is the only basis for the applicant's claim to be a refugee, the Tribunal finds that the applicant does not have a well-founded fear of persecution for a Convention reason if he returns to Pakistan now or in the reasonably foreseeable future.
83. The Tribunal finds that if the applicant returns to Pakistan he will not engage in any activities such as bible reading or attending church, or otherwise do anything to manifest faith in Christianity. The Tribunal does not accept that the applicant is committed to the Christian faith, nor does it accept that the applicant will seek to practise as a Christian if he returns to Pakistan. According to his own evidence the applicant had no plans of his own to go to church in Australia, nor did he ask to be baptised. The Tribunal regards this as indicative of his lack of genuine interest in

Christianity. In explaining away his own lack of knowledge and earlier non-attendance at church, the applicant's claim is that genuine Christians can be non-practicing and non-knowledgeable. In the Tribunal's view the applicant's own evidence is not indicative of a person who identifies himself as a Christian, in anything other than name. Accordingly, the Tribunal is satisfied that the applicant would not be identified as a Christian if he returns to Pakistan. Therefore the Tribunal does not accept that the applicant faces a real chance of harm by reason of his religion should he return to Pakistan. The Tribunal is not satisfied that the applicant has a well-founded fear of persecution for reason of his religion.

CONCLUSIONS

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

DECISION

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