

071868420 [2008] RRTA 72 (28 March 2008)

DECISION RECORD

RRT CASE NUMBER: 071868420

DIAC REFERENCE(S): CLF2007/117276 & CLF 2007/96367

COUNTRY OF REFERENCE: Pakistan

TRIBUNAL MEMBER: David Dobell

DATE DECISION SIGNED: 28 March 2008

PLACE OF DECISION: Sydney

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 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by letter. 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
3. The applicant applied to the Tribunal for review of the delegate's decision. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

4. Under s.65(1) of the Act, 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.
5. 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).
6. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

7. 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.

8. 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.

9. 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.

10. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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

17. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

18. From the protection visa application, the applicant is in his thirties, being born on [date] He speaks, reads, writes, Pashtu, and Urdu. He has never married. He lived in Village 1, Town 2, District 3, Province 4. He has had several years of education and worked in a stated occupation He has family in Pakistan.

19. The applicant left Pakistan on [date] and arrived in Australia on [date]

20. The applicant attached the following statement to his protection visa application. He states:

I [name deleted], son of [name deleted] of the district of District 3, (Province 4) - Pakistan, solemnly and sincerely state and declare the following:

1. I am against a political party called Tehrik Nifazi Shariat Muhammadi (TNSM), as it is an extremist party and is well established in the area.
2. The party forcibly sends people to fight in the name of Jihad.
3. The party forces females and young girls not to attend schools and attain education.
4. The party forcibly forbids people from having polio vaccinations, as they consider that as an American spy who destroys their generations. They believe that the vaccination contains some kind of a substance which destroys human fertilization process.
5. The party is against development work done in the society by foreign NGO's. They consider them American allies and are against the people who are friendly to much development and the NGO's, as they consider people who guide the (non-government organizations) NGO's as informers to the (American Allies) against themselves.
6. I acted as a helper to the NGO's and tried to inform them about the problems of this area and how these people are against me.
7. I gathered people of the area against them and tried to tell them the story. They become very aggressive against me and warned me to stop or they will kill me.
8. The TNSM people also warned me through my friends, but I did not stop my struggle against them.

9. One of the TNSM Party leader representative workers came to me on [date] and tried to threaten me and warned me to stop meeting with the NGO and to join the TNSM. I denied and told them that I will continue to spread my opinion against you, as your intentions were wrong. He called a group of men and [description of event and injury suffered by the applicant].
10. The NGO personnel helped me and my wishes with them increased. I worked and gathered people against TNSM with more efficiency. Then, at night on [date] they attacked my house. I ran through the back door and they fired at me, but I escaped. I went to the police station the next day morning.
11. I fled to [Town 5] and hide with my friends for [several] days. I went on [description relating to occupation] on [date].
12. I asked my family about the situation at *home*. They informed me that they are still searching for me and that they issued a killing warning against me. They also went to [Town 5] to ask my friends about me.
13. They issue a warning against me in all Pakistan that whenever I return to the country I should pay for what I have done.

I believe that I could not return to Pakistan because I hold fear of being persecuted by those people who threatened me while I was in Pakistan and they still looking for me.

21. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Pashto/Pushtu and English languages. The applicant was represented in relation to the review by his registered migration agent but the agent did not attend the hearing.

22. When asked, the applicant advised that his representative would not be attending the hearing. As to the location of his passport, he said that his current passport was with the Department of Immigration and he asked whether it could be returned to him. The Tribunal referred to his protection visa application where he had stated that it was with his Boss at his place of employment. He said it would have been given by the Boss, together with another Book, to the Department of Immigration. He said he has not received any receipt for his passport from the Department. The Tribunal undertook to locate his passport and advise him of its whereabouts. [The Tribunal notes he collected his passport from the Department on a stated date.]

23. The Tribunal referred to the applicant's protection visa application and asked whether he had any help with the completion of this. He said that his migration agent had helped him. The Tribunal asked whether its contents had been read back to him in his language. He said the agent read it to a friend in English and the friend interpreted it to him. He confirmed that the contents of the application were true and correct and that he had no changes to make.

24. The applicant gave the Tribunal a number of documents. There were original letters in English from organisations in District 3, a police report and a number of actual newspaper articles from his locality as well as some on-line articles from 'Dawn'. The letters supported the applicant's claims that he worked for an NGO, that the TNSM wished to kill him and that he was not safe in Pakistan. The letters from the following organisations:

- Council A, District 3 dated [date]

- Organization B dated [date]
- Council C dated [date]

25. The police report was titled 'First information report' and dated [date] There was an English version of this report stamped by the [area] Police Station. The police report records that the applicant worked for an NGO, that there was an attack on his home on a stated date and that there was an earlier threat and assault on him by the TNSM on another date. The Tribunal placed these documents on file, the originals to be returned at the end of the proceedings.

26. The applicant first told the Tribunal that a short period of time ago the police station in his village had been destroyed by the TNSM.

27. The Tribunal asked the applicant for an overview of what would happen to him should he return to Pakistan. He said that he would be killed by the TNSM. He said that if he returned to his village he would definitely be killed. As to whether he would be killed if he was living elsewhere, he said they are spread out all over the country and where-ever he should live he would be in danger.

28. As to why he is at risk from the TNSM, the applicant said that this was because of his work with the committee. He was referring to Organisation B This group was helping with roads, vaccinations and health issues and the TNSM did not like this.

29. As to whether the Pakistani authorities can protect him, the applicant said that such a person as [name] was recently killed and that, as he was so small and tiny, how could they look after him? He again referred to his village police station being bombed. As to whether he would be detected in a place like Town 5, he said he would be identified and recognized wherever he went. He said that everywhere he would be recognised and referred to the letter from Organisation B

30. As to whether there were any other reasons for him fearing to return to Pakistan, the applicant said that he feared the TNSM only.

31. As to the location of his village, the applicant said it was around a [number] hundred km north of Town 6 and was several km from Town 7. He confirmed that he lived with his family and stated that he was not married. He said that some members of the family did specific work but the others do not work or are still at school. He said he also has many relatives in his town.

32. The applicant said that he worked in a specific job for about a year, and stated the type of work he did. Later he started looking for other stated type of work and found his job through an ad in the paper. Many from this area got the same type of work. For some time he was attending interviews for the job and doing training, as well as some other work at home. He became qualified in his new profession in [year]. He said he would spend several months at work and a few months at home and this was the pattern of his work

33. The applicant said that he would spend some time at a work hostel in Town 5 shortly before and after his new job. As to how he would get work, he said that he would receive a telephone call from the company and that he would arrive in Town 5 and stay there for a short time before commencing his new job, for health and medical checks, and then for a few days after his return.

34. The applicant said that he was always against the TNSM. He said they first came to influence in his area in the 1990's, through some fighting, and then disappeared for a while. He said it was quiet in his area until a few years ago but that the group had been operating secretly. He said that later, it began to operate openly and, by way of example, said that it would hold people and punish people openly. As to how it could get people to go to fight jihad if it was operating secretly, he said that the group secretly invited people and was not forcing people to do so until later.

35. The Tribunal asked the applicant when the leader of the TNSM, who he correctly identified, was imprisoned. He said '[year] or [year]'. As to when the TNSM was banned officially, he said 'in [year] or [year]'. As to who the leader is now, he correctly identified them.

36. As to why he is against TNSM, the applicant said that he was an NGO supporter who gave education to both males and females. He said the NGO he assisted had connections with the Organisation D and gave an example where they provided 80% of the costs for a specific project and the community provided 20%. He said Organisation B was the only NGO he was involved with.

37. As to how many members there were in the Organisation B, the applicant said there were several and said that there was also a Board, consisting of several more people. He said that it covered his own village and was established in [year], and he noted that he was away at his new job when it commenced. He said he did not hold a position on the Committee or Board but was a general helper. He confirmed that he would also help his family in their work at this time.

38. The Tribunal asked for an example of the assistance he provided to Organisation B. He said that he would arrange places for meetings and that this was very dangerous because of actions by the TNSM.

39. The Tribunal referred to his protection visa application statement where he said he assisted foreign NGOs. He said he thought of this NGO as partly 'foreign', as most money comes from overseas. He said that Organisation B's plans and strategies were checked and signed by a foreign person who he thought was from the Organisation D. He said Organisation D would also provide funds for such things as education and vaccination and provided other things. He said that he returned home a few months *before* the committee was established.

40. As to other examples of the help provided by him, the applicant said that he would be a contact or liaison person for local groups and the Committee. As to his involvement in female education and health education, as referred to in the letter from the Organisation B, he said that these were things that the TNSM did not want and that he was trying to establish. He said for example, he was trying to contact people in different villages and to establish sessions for women and established a Skills Centre to teach girls.

41. The Tribunal then asked when he became aware that the TNSM wanted to kill him. He said this was on in 2006 when he had a face-to-face argument with members of TNSM. He said this argument was over the establishment of the Committee and he said that he thought it was good and wished to support it.

42. The applicant said that he was at home by himself when some men turned up outside. He said he only knew one of the men as from his village and the others were from other villages. He noted that the local man has recently been killed by the Government. He said he did go to the police and tell them about this but did not lodge an official complaint as they told him to leave it.

43. The Tribunal then asked what happened to him on that occasion. He said that he had been warned not to get involved with the Committee but stated that he'd like to help. As a result, at around midnight, there was the firing of guns at his house. The rest of his family was at home at the time. As to how he knew who it was, he said he had no other enemies so knew it was the TNSM. He managed to escape out the back door and went first to his work to hide and then to a friend's house for the rest of the night. As to why his family were not at risk, he said this was because he was the one who was being targeted. He said no-one was hurt. As to how many men there were, he said he did not know as it was dark but said there was definitely more than one and maybe several people. He said he was asleep in his own room at the time they came. He said that their house has an outer wall around the house and that they had come over the outer wall or were sitting on the wall with guns.

44. The applicant said that he went to report the incident to the police the next morning and then left for Town 5. He referred to the police statement he had given the Tribunal. He said he did not go to the work hostel at first but went to stay with friends. He then went the next day to see the Boss and told him his story and asked whether he could start a new job quickly. This would have been on [date]. He confirmed that he left Pakistan on [date], several days later. He said he wanted to be put on a new job straight away.

45. The Tribunal suggested that it was unusual that there was an immediate vacancy for him. He said there are many jobs/places available for work and that often work will come up within a few days.

46. The Tribunal asked the applicant how long he was at his job for in [year], prior to this departure from Pakistan. He said that he had not gone to his new work that year. The Tribunal noted that he had said he returned from his work in late [year] and noted that he would not have been at work for some 12 months, whereas he had also earlier said that he would work for a several months and then have a few months off. He said the amount of time off was optional, you could be off a shorter time. He said later that he had come back from work in the middle of [year].

47. The Tribunal noted that he had earlier said that he had returned from his new work at the end of [year] and that the Committee had been going for some time at that time, but now he said that it was established after he returned home. He said that he returned from his work in the middle of the year and the committee was established later at the same year.

48. The Tribunal put to the applicant that the facts as they have been related – that he arrived in Town 5 on a stated date and went to his new work later in the same month, could have meant that he was going to work as per normal and that he had turned up in Town 5 some two weeks prior to commencement as per normal, at odds with his claims. He said this was not the case as he left the village because he felt fear.

49. The Tribunal asked when the applicant made his plans to seek asylum in Australia. He said he did not have any plans at first but was in constant contact with a family member by telephone. This family member said that things there were getting worse. He said he went to

Country X and then came to Australia and then returned to Country X and again came back to Australia. He said it was a few days before he decided to seek asylum in Australia. This was after talking to the member of his family who had said things were getting worse.

50. The applicant said that he had been to Australia many times in the past. He also noted he had been to Country Y in the past. He said that he had stopped in Town 8 in Australia but that he did not get off until he arrived in Town 9 in 2007.

51. The Tribunal asked the applicant what were his plans once he arrived in Australia. He said that Australia appeared to be a nice and calm place to seek protection. He came to Sydney by train one day after arriving. As to why he came to Sydney, he said that there were classmates of his here. He said he was the only person who got off at Town 9. As to how he managed to get from Town 10 to Sydney with no English, he said that he had money and it was not that hard. He said he was in Sydney for around one month and then went to Town 11.

52. The Tribunal then asked the applicant how he got in contact with his 'classmates'. He said that he attended a Mosque in the Suburb 12 area but that he did not know these people before he came to Sydney. They were of his tribal background. He said he came to Sydney to put in his protection visa application. As to why he did not lodge this in Town 10, he said he did not know you could do this in Town 10 and that he did not know anyone in Town 10.

53. The Tribunal then asked the applicant about life in Pakistan should he return. The applicant said that he had been speaking regularly to a family member, every few days. The Tribunal asked how he knew that the TNSM was looking for him there. He said that the TNSM had 80% local support and only some 20 to 30 per cent were against them. He said that his family member told him that things were still bad there. The Tribunal asked whether the family member was saying that things were still bad there generally or that they were looking for him in particular and he said 'both'. The Tribunal asked why they would still be looking for him if he had left the area and was no longer supporting the work of the Committee and was of a low profile. He said that whoever was involved in helping the committee, the TNSM was chasing them and then said that some people have escaped earlier and gone overseas.

54. As to why he could not live elsewhere in Pakistan, the applicant said that there was no protection for him. The Tribunal said that country information suggested he was free to live elsewhere in Pakistan. He said that they would get him wherever he lived. The Tribunal again said that he was free to live elsewhere in Pakistan under the Constitution, and that country information suggested that TNSM only operated in a particular area. This would mean that he would be able to live safely in places such as towns and cities not in that area. The applicant referred to the country information he had provided saying that nowhere is safe in Pakistan. He referred to bomb blasts in Town 15 and in a number of other places and said things were getting worse there. The Tribunal pointed out to the applicant that civil disturbances were not necessarily persecution and that persecution would be determined in relation to an individual's situation. The applicant again referred to the death of [name]. The Tribunal noted that the applicant was not the leader of a political party and was not a high profile target. He acknowledged this.

55. The Tribunal put to the applicant that it did not understand why the TNSM would come from District 3 to another city such as Town 5 especially to target him, when he is a low-profile person. He said that they would do this as they are everywhere. The Tribunal said it found this difficult to accept.

56. The Tribunal asked the applicant whether any of the newspaper articles provided by him supported his claims in this regard. He said it was in the TNSM manifesto to target NGOs. The Tribunal again said it was talking about whether he would be a target if he were living in other cities in Pakistan, not locally. The Tribunal asked whether he would like more time to provide information to support his claims. The applicant referred to a curfew in his village, and also said that he had sworn to tell the truth to the Tribunal. He also suggested that there was no more information he could provide.

57. The Tribunal said it would give the applicant 28 days to provide any further information which might support his claims in this regard. He was not sure that there would be any more information but the Tribunal said it would give him 28 days anyway. As to whether he had anything else to say, he said he had nothing else to say other than he would be in danger in Pakistan.

58. On [date], the Tribunal received a submission from the applicant's migration agent, together with copies of the newspaper articles handed to the Tribunal at the hearing.

59. On [date], the Tribunal wrote to the applicant via his migration agent putting certain adverse information to him. The migration agent subsequently asked for an extension of time in which to respond, which the Tribunal granted. On [date] the migration agent provided the following:

- A photocopy of a handwritten document dated [date] with a non-accredited translation to the effect that it is from the TNSM and because the applicant is against Islam by associating with NGOs, a decision has been given by religious scholars to have him killed in the best interests of Islam
- A photocopy of a handwritten document, no date, with a non-accredited translation stating that it is titled Joint Decision of the Religious Scholars and which appears to be a general threat against those such as the army who oppose Islamic law
- Two newspaper articles

INDEPENDENT COUNTRY INFORMATION

60. The Tribunal refers to information on TNSM from the South Asia Terrorism Portal, a project conceived, executed and maintained by the Institute for Conflict Management, an autonomous, non-governmental, non-profit society set up in 1997, based in New Delhi, India. The Institute is committed to the task of evaluating terrorist and violent movements which threaten the fabric of modern states in South Asia and recommend solutions. It states:

Tehreek-e-Nafaz-e-Shariat-e-Mohammadi

(Movement for the Enforcement of Islamic Laws)

The Tehreek-e-Nafaz-e-Shariat-e-Mohammadi is one of the five outfits that were proscribed by President Pervez Musharraf on January 12, 2002.

Formation

The Tehreek-e-Nafaz-e-Shariat-e-Mohammadi (TNSM) was founded in 1992 with the objective of a militant enforcement of Sharia (Islamic law).

Ideology and Objectives

The TNSM is a militant Wahabi outfit whose primary objective is the imposition of Sharia in Pakistan.

Ideologically, it is dedicated to transform Pakistan into a Taliban style state. In an August 1998-speech in Peshawar, Maulana Sufi Mohammed, its leader who is currently imprisoned in Pakistan, reportedly declared that those opposing the imposition of Sharia in Pakistan were wajib-ul-qatl (worthy of death).

The outfit while rejecting democracy has termed it as 'un-Islamic'. In an interview, Maulana Sufi Mohammed said, "We want enforcement of the Islamic judicial system in totality: judicial, political, economic, jihad, fi sabilillah, education and health. In my opinion the life of the faithful will automatically be moulded according to the Islamic system when the judicial system is enforced."

TNSM rejects all political and religio-political parties as, according to it, they follow the western style of democracy.

TNSM openly condones the use of force in what they see as a Jihad.

Leadership, Structure and Headquarters

Maulana Sufi Mohammed is the leader of the Tehreek-e-Nafaz-e-Shariat-e-Mohammadi (TNSM). He was an active leader of the Jamaat-e-Islami in the 1980s. He quit the Jamaat in 1992 to form the TNSM. He is reported to have organised thousands of people to fight the Northern Alliance (NA) in Afghanistan after the defeat of the Taliban in 2001. However, a majority of them were either killed or arrested by the NA in Afghanistan. Some, including Sufi Mohammed, managed to return to Pakistan, only to be arrested. Sufi Mohammad has since then been in jail.

Since Sufi Mohammad's imprisonment, his son-in-law Maulana Fazalullah is reportedly now leading the TNSM.

Maulana Faqir Mohammed is one of the prominent leaders. Maulana Liaquat, another of the prominent TNSM leaders, was killed during the aerial strike claimed by the Pakistani security forces on a Madrassa (seminary) in the Chingai village at Bajaur on October 30, 2006. The Government has said that the Ziaul Uloom wa Taleemul Quran seminary, run by Maulana Liaquat, was being used for training militants. At least 83 people were killed in the aerial raid. Faqir Mohammad and Maulana Liaquat were wanted by the Government for harbouring Taliban operatives and training militants.

The executive body is the highest policy making organ of the TNSM. The outfit has a large number of ex-servicemen, including many retired Commissioned Officers, within its ranks. According to one report, many TNSM cadres are alleged to be persons with a criminal background.

The TNSM headquarters is located in Maidan, near Bajaur Agency in the North West Frontier Province (NWFP).

Area of operation

The TNSM operates primarily in the tribal belt, such as Swat and the adjoining districts of the NWFP. Although well established in the NWFP, the TNSM has had only limited success in expanding its activities beyond the tribal areas of the province. It has substantial support in Malakand and Bajaur and includes activists that have fought in Afghanistan at some time during the past 25 years.

Activities and Incidents

Since the imprisonment of Sufi Mohammed, the loss of cadres in end 2001 and the proscription, the TNSM has been largely defunct. However, more recent reports indicate that the outfit began to revive after the October 8, 2005-earthquake and the subsequent relief efforts by Islamist extremist groups.

The Government believes that the TNSM has links with the Taliban militia in Afghanistan.

It first came into prominence in November 1994 when it led an armed uprising in support of Sharia in the Malakand division of NWFP. The outfit's call to arms reportedly drew large numbers of experienced Afghan Mujahideen from the nearby Peshawar and Bajaur areas. Approximately 40 persons, including 12 security force personnel, were killed in a week of fighting before the Government was able to reestablish its writ. The Frontier Corps was deployed to regain control of the Saidu Sharif airport, roads, police stations and judicial courts in the area. Police fired tear gas on December 4, 1994, to halt a march by approximately 10,000 members of the TNSM who were seeking the release of 85 colleagues who had been arrested during the past month's protests.

On June 19, 1995, the TNSM Chief and 20 of his senior followers were arrested following a clash with the security forces. At least 26 persons were injured when hundreds of TNSM cadres occupied Government offices in the Swat district. They were demanding the implementation of an agreement reached with the Government in 1994 to enforce Sharia in Malakand. Further, on September 6, 1998, the TNSM threatened to attack American property and also abduct American citizens in Pakistan unless the USA apologised to the Muslim world for the August 1998 missile strikes in Afghanistan.

The TNSM in Malakand organized a protest procession in Mingora on September 20, 2001 where the speakers called for raising a voluntary army in order to extend support to the Taliban militia against the then impending US strikes.

During the US military campaign in Afghanistan, the TNSM is reported to have sent thousands of armed cadres to Afghanistan to fight alongside the Taliban militia. News reports of October 27, 2001, from Bajaur indicated that approximately 10,000 TNSM cadres led by their Chief, Maulana Sufi Mohammed, crossed the Pakistan-Afghan border. They were armed with Kalashnikovs, rocket launchers, missiles, anti-aircraft guns, hand grenades and swords. News reports added that the political administration of Bajaur Agency allowed the TNSM cadres to pass through the agency jurisdiction on their way to Afghanistan. According to the TNSM Chief, the cadres were proceeding to Kandahar, headquarters of the erstwhile Taliban regime. Qazi Ihsanullah, a TNSM spokesperson, said in Bajaur on October 27, 2001: "We will resist if the authorities try to stop us. The jihad (holy war) will start here...Initially Mullah Omar advised us to wait and come to Afghanistan only when necessary but we have told them that we will stay in Afghanistan as a reserve force."

The outfit has reportedly established parallel courts in the Malakand division to protest against what it perceives are the non-cooperation of the Government. According to the TNSM leadership, the legal system in Pakistan was based on English laws and hence was not acceptable to the outfit. Further, these 'courts' are reportedly pronouncing 'decisions' on many cases free of charge. The TNSM has also demanded the use of Pashtu language for court proceedings instead of the national language, Urdu.

Media reports have indicated that a sizeable number of TNSM activists have joined the Taliban ranks.

In April 2001, the TNSM had demanded that the administration of Malakand put in place a 'true Islamic judicial system' by dismantling the present set-up. It rejected the Government's judicial system which, in its perception, lacks authority and finality under Islamic injunctions. In his speeches at Ushu, Kalam and other places in April 2001, the TNSM Chief said, "There is no room for vote in slam and the concept of democracy which some religio-political parties are demanding is wrong."

The TNSM is also reported to have set up some FM radio stations in the Bajaur area to campaign for funds and volunteers to fight alongside the Taliban. These radio stations are also used to air TNSM leaders' address to pro-Taliban rallies. Writing in *Terrorism Focus* (Volume 3, Issue 19; May 17, 2006), Sohail Abdul Nasir indicated that “People in the Malakand and Swat districts, populated mainly by the Yousafzai Pashtun tribe, have been gathering in public places to burn personal electronics equipment such as television sets, tape recorders, VCRs, computers, CDs and other musical equipment. The significance of this development is that it has been motivated by the religious sect Tehreek-e-Nafaz-e-Shariat-e-Mohammadi...” Nawa-i-Waqt reported on May 1, 2006, that TNSM has decided to launch a movement—consisting of protests after Friday prayers and additional rallies—against the Government. On February 22, 2006, Dawn reported that political authorities have closed five illegal FM radio channels in different parts of the Bajaur Agency. The action was reportedly initiated after a TNSM leader Maulana Faqir Mohammad relayed lectures on his illegal channel against the Government and the local administration after the January 13, 2006-US air strike in the Damadola village of Bajaur Agency.

Security agencies suspect that the TNSM could be behind the November 8, 2006-suicide bombing at Dargai in the NWFP in which 42 soldiers were killed.

From: <http://www.satp.org/satporgtp/countries/pakistan/terroristoutfits/TNSM.htm>. Accessed 10 March 2008

61. The Tribunal notes that the above states that the particular TNSM operates primarily in the tribal belt, and the adjoining districts. It also states that, although well established in the districts, the TNSM has had only limited success in expanding its activities beyond the tribal areas of the province. The Tribunal was unable to find any country information indicating any activity by this group outside this Province.

62. As to freedom of movement in Pakistan, access to major cities like Islamabad, Lahore or Karachi does not appear to be restricted. Freedom of movement within such cities has, in recent years, been subject to certain restrictions with regard to certain political groupings and identities but it would not appear that any restrictions have been placed on the residency rights of citizens generally (see: *US Department of State 2006, Country Reports on Human Rights Practices for 2006 – Pakistan, Section d. ‘Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation’*, 6 March 2008; see also: *Human Rights Commission of Pakistan 2005, Freedom of Movement’* in *The State of Human Rights in 2005* http://www.hrcp-web.org/images/publication/annual_report/pdf_2005/3-1.pdf – Accessed 14 May 2007)

FINDINGS AND REASONS

63. On the basis of the applicant’s Pakistani passport on the Department’s file, the Tribunal accepts that the applicant is a national of Pakistan and assesses his claim against that country.

64. The applicant claims that he will be killed by a group known as the TNSM, should he return to Pakistan. He claims this threat arose because of his support for a NGO community group, Organisation B, in his hometown village. He detailed two attacks by this group on him and provided a police first information report dated [date] to support these claimed attacks. He has also provided documentation to support his specific claims, including a letter from the TNSM claiming he is on a death list as well as letters from a community group, Organisation B, Council A and Council C claiming that he worked for NGOs and for this, the TNSM want to kill him and that his life is in danger in Pakistan. He also provided the Tribunal with a

large number of newspaper articles, all detailing attacks and activities of the TNSM in areas of Province D.

65. On the basis of the independent country information, the Tribunal accepts that conditions in Province D generally are volatile and that there is a great deal of religion-based violence there. The Tribunal also accepts that non-government agencies, and local people who assist them, may be at risk of serious harm in that area, especially from the TNSM, which the Tribunal accepts is active in the applicant's home town and environs.

66. As to the applicant's claims as to his involvement with an NGO and the resulting threats from TNSM, the Tribunal had some doubts as to their genuineness. The applicant was not able to give much detail at hearing on what activities he undertook to assist Organisation B which placed him at such risk. Further, there was some inconsistency in the evidence as to when he became involved with this group. He first said that this group commenced when he was at his new job, then said that he had returned home some a few months before the group was established, and later said that he returned home after the group was established, finally stating that he returned home at the beginning of the year and the group was established later at the same year. Also, his version of events as to how he managed to get work urgently in Town 5 at the end of [year] because of the threats to him from the TNSM in his village did raise suspicion with the Tribunal that he had in fact just been turning up for a work as per normal arrangements.

67. However, the applicant has provided documentary evidence to support his claim of being at risk of serious harm from the TNSM in his hometown in District 3. There was also his oral evidence of the recent bombing of the police station and that his family member had reported that things were still bad there and the TNSM was still looking for him. The Tribunal has no way of testing the veracity of the supporting documentation, but given the generally credible version of events the applicant gave the Tribunal, is prepared to accept that the applicant is at risk from the TNSM in his village in District 3. The Tribunal is also prepared to accept that he is at risk in the entire District 3 area and Province 4 area, given conditions there at present. The Tribunal thus accepts that the applicant has a fear of serious harm in Province 4.

68. However, the Tribunal has difficulty accepting the applicant's claims that his life is at risk from the TNSM everywhere in Pakistan. The Tribunal put to the applicant that it has independent country information which suggests that people in Pakistan are generally free to live anywhere within their country, such as the major cities, and that Political operations are limited to the Province 4 of Pakistan. The Tribunal also put to the applicant that it was not able to locate any independent country information which might suggest that TNSM operates beyond the boundaries of the Province D. The Tribunal also put to the applicant that he could live safely elsewhere in Pakistan, in cities which are not located in that Province, such as Islamabad, or even further afield in a city such as Town 5.

69. The Tribunal notes that the letters from the Organisation B, Council A and Council C all claim that the applicant's life is in danger in Pakistan. The Tribunal is not prepared to accept these letters as accurate as to the risk faced by the applicant in *all* of Pakistan, as they provide no evidence to support their contention, nor is there any available independent country information to support the conclusion they have come to. The Tribunal put this to the applicant in writing.

70. The Tribunal also considered that the applicant's actions would make him a 'low profile' person and this would mean that, even if the TNSM did operate outside of Province 4 or had

contacts with any Islamic affiliated groups in the major cities, the TNSM would be most unlikely to want to look for him in particular throughout Pakistan in order to kill him. In the hearing, the applicant accepted that he was not a high profile target like his suggested [person name] and the Tribunal put the issue of the likely consequences of his 'low profile' to him at hearing and also later in writing.

71. The applicant's response to what was put to him in writing was to provide more documents and newspaper articles. There was one document, headed as being from the TNSM itself, identifying the applicant as someone to be killed in the best interests of Islam because he opposes the principles of Islam and the TNSM for working and affiliating with NGOs

72. Accepting this document at face value, the Tribunal does not accept that the TNSM's view of what is in the 'best interests of Islam' would be held by all Muslim groups nationally in Pakistan. There is still nothing in the material provided which suggests that the applicant would be at risk outside Province 4 from the TNSM or that it has agents in other cities to do its bidding. The newspaper articles provided, like the articles provided at hearing, only referred to events in Province 4, and the other document from a militant Islamic organisation does not mention him specifically at all

73. Thus, the Tribunal does not accept that the TNSM has issued a 'kill warning' in all of Pakistan and are currently searching nationally for the applicant, themselves or through any alleged agents or that the applicant would be recognised in places like Town 5 for the purposes of his being killed.

74. On the evidence before it, the Tribunal concludes that the applicant could relocate and live safely in other parts of Pakistan. As to whether relocation in Pakistan is reasonable in the applicant's particular circumstances, the Tribunal put to the applicant in writing that it was reasonable for him to relocate because he would not be at risk of persecution on re-entering Pakistan via any number of major cities to access safe areas and, on his own evidence;

- he is a single man, and thus responsible for himself only;
- he is a man who spends much of the year away from Pakistan and is used to being away from his home village for long lengths of time, and being from District 3, is thus used to travelling long distances to Town 5 to commence work;
- he is familiar with, and has previously stayed in, a major Pakistani city –Town 5;
- he speaks Pashtu and also Urdu, the official language of Pakistan, and this would assist him in finding employment (if he chose not to continue with his new job in the future) and also in finding accommodation in many other cities in Pakistan and;
- he is a resourceful man, as demonstrated by his travelling unassisted from Town 10 to Sydney while not speaking the English language, finding fellow country-people here, as well as meeting his food and accommodation needs here in Australia.

75. In his written response to the Tribunal, the applicant did not dispute any of the above reasons as to why it was reasonable for him to relocate. The Tribunal thus finds that the

above reasons are valid and concludes that it may be reasonable for the applicant to relocate to avoid the risk of serious harm to him in District 3 and Province 4.

76. As the Tribunal has concluded that the applicant could reasonably relocate within Pakistan, this means that he does not have a well-founded fear of persecution in his country of nationality, Pakistan, now, or in the reasonably foreseeable future.

77. The applicant has not made any claim to fear persecution for any other reason. As a result, the Tribunal is not satisfied that the applicant has a well-founded fear of persecution in Pakistan for any Convention reason.

CONCLUSIONS

78. Having considered the evidence as a whole, 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

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

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| <p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act</i> 1958. Sealing Officers ID: PRRTIR</p> |
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