BETWEEN:

MUHAMMAD NASEEM

Applicant

- and -

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION

Respondent

<u>**REASONS FOR ORDER AND ORDER**</u>

<u>**CAMPBELL J.**</u>

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[1]   This is an application for judicial review of a decision of the Convention Refugee Determination Division of the Immigration and Refugee Board (the "CRDD"), dated November 16, 2001, wherein the Applicant was found not to be a Convention refugee.

[2]   The Applicant is a citizen of Pakistan who based his claim on a well-founded fear of persecution because of his membership in the Peoples Party of Pakistan (the "PPP"). The Applicant alleged that he was persecuted by rival political parties and from Pakistan police authorities. The CRDD found that there was insufficient credible evidence to establish the claim and concluded that there was not more than a mere possibility that the Applicant would suffer persecution were he to return to Pakistan.

[3]   The Applicant brings this judicial review challenging this decision on various grounds. I accept the Applicant's first submission that the CRDD erred in holding that the repeated arrest and detention of the Applicant were non-persecutory because they were based on laws of general application. As a result, I find it unnecessary to address the remaining issues raised.

[4]   The Applicant was a member of the PPP and served as General Secretary in his province. The Applicant participated in various protest rallies between 1996 and his departure in 2001 and was arrested at these rallies, detained for days and was physically mistreated by the police. The CRDD assessed this evidence and concluded as follows:

Having regard to the political unrest in Pakistan at these times, the panel finds these allegations by the claimant to be plausible. However, it finds that the claimant's arrest and detention by the police on these three occasions was pursuant to a law of general application intended to quell political unrest in Pakistan at the time and not persecutory. In the Brar decision, the Federal Court of Canada, Trial Division, stated:

"National security and peace and order are valid social objectives of any state, and temporary derogation of civil rights in an emergency does not necessarily amount to persecution".

The panel finds that the police, by stopping this political demonstration and arresting and detaining the participants, were only attempting to maintain peace and order.

(Applicant's Record, p. 10)

[5]   The CRDD made this finding after reviewing documentary evidence concerning PPP rallies and the police response. The CRDD found that there was no documentary evidence to indicate that unduly harsh police tactics were used against the demonstrators.

[6]   The Applicant also expressed fear of the military government in Pakistan because of the arrest and detention of other PPP members. In response, the CRDD concluded as follows:

Again, the panel finds that these arrests and detentions at the direction of the governing military regime were made pursuant to a law of general application to quell social unrest during a time of tense political transition in Pakistan and not persecutory. The panel accepts that the claimant could be subjected to harassment by the military by reason of his PPP membership and political activities.

(Applicant's Record, p.16)

[7]   In my opinion, the above passages indicates that the CRDD erred by failing to conduct a proper analysis of whether the arrests and detention were persecution or the result of generally applied laws. It is well-established that prosecution for laws of general application may not constitute persecution; however, there are a number of factors that must be taken into account before this determination can be made, including whether or not the application of these laws may have a persecutory effect (*Cheung v. M.E.I.*, [1993] 2 F.C. 314 (F.C.A.). The Federal Court of Appeal has recognized that police conduct may not simply be the result of the general application of laws, but rather deliberate harassment against politically active claimants (*Suruipal v. M.E.I.*, [1985] F.C.J. No. 326).

[8]   The Applicant states that there was no evidence before the CRDD as to the specific statute or provision for which the Applicant was arrested and detained. The Applicant points out that the Applicant was never charged with any particular crime or convicted, but rather "police authorities administered punishment without procedural guarantees and without judicial authorization or intervention".

[9]   On the facts of this case, I find that there is ample evidence that the repeated arrest and detention of the Applicant indicates a pattern of harassment by Pakistan authorities that has a clear political motivation. I accept the Applicant's submission that the CRDD had no evidence to support its conclusion that this legally sanctioned harassment was an attempt to maintain peace and order. The evidence in the present case is capable of proving that the arrests and detention were not a "temporary derogation of civil rights in an emergency", but rather a deliberate attempt to suppress political opposition that has continued over a number of years. As a result, I find that the CRDD erred in law by failing to conduct a proper contextual analysis of whether this treatment amounted to persecution.

O R D E R

Accordingly, the CRDD's decision is set aside and the matter is referred back to a different panel for redetermination.

(Sgd.) "Douglas R. Campbell"

Judge

Vancouver, B.C.

July 17, 2002

FEDERAL COURT OF CANADA

TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: IMM-5655-01

STYLE OF CAUSE: MUHAMMAD NASEEM

                                                            Applicant

- and -

THE MINISTER OF CITIZENSHIP

AND IMMIGRATION

                                                            Respondent

PLACE OF HEARING: Vancouver, B.C.

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