

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75780

REFUGEE APPEAL NO 75781

REFUGEE APPEAL NO 75782

REFUGEE APPEAL NO 75783

AT WELLINGTON

<u>Before:</u>	V J Shaw (Member)
<u>Representative for the Appellants:</u>	S Singh
<u>Appearing for INZ:</u>	No Appearance
<u>Date of Hearing:</u>	14 July 2006
<u>Date of Decision:</u>	19 April 2007

DECISION

[1] These are appeals against the decisions of a refugee status officer of the Refugee Status Branch (RSB) of Immigration New Zealand (INZ) declining the grant of refugee status to the appellants, citizens of Fiji.

INTRODUCTION

[2] The appellants are an Indo-Fijian family. The husband first entered New Zealand in October 2003 and was the holder of a work permit up until May 2005. His wife and two children arrived in New Zealand in December 2004 and were

granted visitors' permits. The husband's refugee claim was lodged on 25 May 2005 and the wife and children's claims on 30 May 2005. The husband and wife were interviewed by a refugee status officer on 11 June 2005 and the family's claims were declined in decisions dated 30 November 2005.

[3] The two children, aged 13 years and 2 years, were represented by their mother, the responsible adult in accordance with s141B of the Immigration Act 1987.

[4] The appellants fear to return to Fiji as they have experienced racial discrimination and criminal violence in the past and believe that their lives would be in danger.

THE APPELLANTS' ACCOUNT

[5] The husband and wife were married in 1992. From early 1993 the wife worked as a secretary with a union and the husband as a chef. Later the husband also established a taxi business employing two drivers and he too would drive a taxi outside his normal work as a chef.

[6] During the late 1990s both the husband and wife became members of the Fijian Labour Party (FLP). Family members of both the husband and the wife were members and/or supporters of the FLP and a cousin of the husband was a Labour member of parliament. The husband worked actively in support of the FLP during the 1999 election campaign giving speeches at election meetings urging people to vote for the FLP.

[7] The union office where the wife worked was in a busy commercial area. Occasionally items such as mobile phones and cash would be stolen from the office. The wife suspected the culprits were unemployed indigenous Fijian youths who often congregated in the vicinity.

[8] The wife encountered jealousy on the part of some of the members of the union committee due to her being Indian. Two committee members even told her directly that her job should be being done by an indigenous Fijian. She reported these remarks to the union president, an indigenous Fijian, and as the individuals

concerned did not repeat the remarks she assumes the president gave them a warning.

[9] During 2001, one of the committee members who had complained about the wife arranged for a young indigenous Fijian woman to work in the office alongside the wife. However, after some six months, the committee terminated the young woman's employment as her work had not been satisfactory.

[10] During 1996 the husband and wife shifted into a house they had had built. On several occasions over the following years the house was burgled and their cars stolen some four or five times. The cars would always be recovered by the police although sometimes in a damaged state. Because of the husband's taxi business there were usually a number of cars on the appellants' property and it was likely that thieves thought that the appellants were financially well off. Although not wealthy the appellants were comfortable.

[11] At the time of the May 2000 coup stones were thrown at the appellants' house and on two occasions louver windows were broken.

[12] Also in the period following the May 2000 coup two or three indigenous Fijian men entered the appellants' home through a window in the middle of the night while the family was sleeping. The thieves demanded money and jewellery and threatened to kill the family. As there was little money in the house the thieves took jewellery and electronic goods. Although terrified the appellants were not harmed. The police were notified and after a delay, apparently caused by a lack of available transport, two ethnic Indian police officers arrived at the house, took statements and investigated for fingerprints. The thieves, however, were not caught.

[13] In the same period the wife had her handbag stolen by an indigenous Fijian while she was on a bus and had stones thrown at her car when she was driving. On one occasion she and other Indian women standing at a bus stop were approached by indigenous Fijian men who pulled at their clothes and threatened to rape them. She and the other women ran off and although they complained to the police, the police did not do anything because of it being at the time of the coup.

[14] A second burglary while the house was occupied took place around Christmas 2000. This time the wife, the elder child and the husband's mother

were at home watching television. Two indigenous Fijian men entered the house carrying knives. One held a knife at the throat of the mother-in-law and demanded that they be given money and jewellery. One threatened to rape the wife if nothing was found. The wife told the men to take whatever they wanted. The police carried out an investigation but no one was apprehended.

[15] During 2003 the husband ceased working as a chef and opened a garage in the town. He and other Indian business owners in the locality experienced regular problems from a group of indigenous Fijian youths. The youths would often throw stones at cars in the garage and steal items such as spare tyres and radios from the cars.

[16] In October 2003, the husband's uncle sponsored him to visit New Zealand. He hoped that in this country he would be able to find work and secure a future for his family. After obtaining a job offer as a cook he was granted a work permit.

[17] At the end of 2003 the house was again burgled at night. This time the wife and elder child were alone in the house. Two indigenous Fijian men wearing masks entered the house and demanded money and jewellery and threatened to kill the wife. They took food and other household items but did not harm the wife. Again the police carried out an investigation but failed to apprehend the thieves. After this incident the wife decided to go to live with her parents in their home some four to five kilometres away. The wife is unaware of her parents having experienced similar problems with burglaries and she experienced no trouble while living in their house.

[18] She later organised for the house to be tenanted. The tenants experienced a similar burglary some months later. Burglaries, and more particularly car theft, were particularly common in the appellants' neighbourhood.

[19] The appellants have experienced acts of violence in the past and say they fear for their physical safety at the hands of indigenous Fijians should they have to return to Fiji. The husband has more recently suffered a stroke and he is concerned that, whereas in the past he was able to challenge indigenous Fijians when they threatened his family or property, now that he was no longer in good health he will have difficulty keeping his family safe.

[20] Following the hearing the Authority continued to monitor the developing political crisis in Fiji that culminated in a further coup in December 2006. On 22 February 2007 the Authority wrote to the appellants' representative advising that it was proposed to finalise the appeals and enclosing a range of media reports and commentaries on the December 2006 coup and subsequent events. Submissions were invited on any concerns the appellants had as to their safety in the changed political climate.

[21] On 16 March 2007 a letter was received from the appellants' representative, Mr Singh, in which he advised that the appellants were "absolutely petrified at the thought of going back to Fiji" as they believed that the recent coup had exacerbated the situation and that Indians can now never be safe in Fiji. Fiji will not recover because the coup mentality seems to have afflicted the military and Indians fear for their safety.

THE ISSUES

[22] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[23] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANTS' CASE

[24] In general the Authority accepts the account given by the appellants of their life in Fiji. There was some confusion in the evidence as to the number of

burglaries suffered in the period between May 2000 and December 2003. When previously interviewed the appellants had only ever referred to two burglaries, one soon after the May 2000 coup when the husband and wife had both been present in the house and a second burglary at the end of 2003 when the husband had already left for New Zealand and the wife was alone in the house with the elder child.

[25] Before the Authority the wife referred for the first time to a second burglary when the husband had not been present and she had been in the house with her mother-in-law. She was uncertain when this burglary had occurred but thought it could have been around Christmas 2000. The Authority is in some doubt as to whether this burglary occurred.

[26] It is possible that in the past recounting of numerous small incidents of harassments and thefts some incidents can be overlooked. However the wife had a tendency to confuse details of various incidents and to inflate their number. It is most unlikely that if a knife had been placed at the throat of the husband's elderly mother and threats made to rape and/or kill the wife – details of the 2003 burglary – that the appellants would have omitted to mention this when interviewed by the RSB or in their comments on the RSB interview report. The Authority extends the benefit of the doubt that a second burglary occurred during 2000 but rejects the claim that the burglars placed a knife at the mother's throat or threatened to rape the wife.

Real chance of serious harm

[27] At the time of the May 2000 coup, the appellants experienced harassment. Stones were thrown at their house and car, the wife had her handbag snatched and was subjected to unpleasant sexual threats when at a bus stop. Besides regular theft of their cars they have also been the victims of several burglaries when present in the house. In at least two of these, burglars carried knives and threatened to harm family members. Although such burglaries would have been frightening the burglars did not physically harm the family. Noticeably the police responded and carried out investigations but were unable to locate the burglars.

[28] These experiences reflect the racial tension and ill-will that has plagued Fiji as a result of the 1987 and 2000 coups as well as increased poverty. Distressing though such incidents may have been for the appellants, the level of harm, even

considered on a cumulative basis, falls below that entailed in the notion of being persecuted, namely the sustained or systemic violation of core human rights demonstrative of a failure of state protection (*Refugee Appeal No 71427/99* [2000] NZAR 545).

[29] Over the years the Authority has regularly assessed the political situation in Fiji and the position of the Indo-Fijian community. The 1987 and 2000 coups aimed to consolidate the political prominence of the indigenous Fijians. In the immediate period of lawlessness that followed the coups many Indo-Fijian experienced harassment, assaults, damage to property and thefts. Race-based politics became entrenched and the Indo-Fijian community subject to systemic discrimination particularly in the provision of public service jobs and the ability to benefit from government-sponsored affirmative action programmes. Disillusioned, many Indo-Fijian have chosen to migrate (*Refugee Appeal No 73373-5* (10 June 2002)).

[30] However, as the Authority has repeatedly noted, discrimination *per se* is not sufficient to establish a case for refugee status. Nor does every breach of a claimant's human rights constitute persecution (*Refugee Appeal No 71404/99* (29 October 1999) at [65]-[67]).

[31] At the time of the hearing in mid-2006 a new Fijian political crisis was underway with the head of the Fijian military forces Commodore Bainimarama openly threatening to topple the government if it continued its plan to introduce legislation to grant amnesty to those involved in the 2000 coup: "New Fiji PM on collision course with military" *The New Zealand Herald* (18 May 2006); "Threats come from army" *Fiji Times* (2 June 2006).

[32] Over the following months the standoff between the government and the military intensified with the military demanding the resignation of those appointed to government posts who were associated with the 2000 coup. Also demanded was the withdrawal not only of the Racial Tolerance and Unity Bill which provided amnesty for the 2000 coup perpetrators but also the withdrawal of two other contentious bills, the Qoliqoli Bill and the Land Claims Tribunal Bill which sought to return traditional fishing grounds to indigenous owners and establish a commission to control and regulate fishing rights. The military considered all three bills to be racially divisive and a threat to Fiji's security. Dr S Chandrasekharan "Fiji: Army

Gives an Ultimatum to Qarase's Government" *South Asia Analysis Group*
<http://www.saag.org/papers20/paper1995.html>.

[33] After New Zealand-brokered talks between Commodore Bainimarama and Prime Minister Qarase failed, the military deposed the government on 4 December 2006. The following day Parliament was dissolved, Commodore Bainimarama assumed executive authority and established a military council to run the affairs of the country with the assistance of a newly appointed interim Prime Minister, Dr Jona Senilagakali. The Vice President was also removed from office along with a number of senior government officials including the Police Commissioner, the Solicitor General and Chairman of the Public Service Commission: Sanjay Ramesh "Fiji's slow march to military take-over" *Asia Pacific Network* (8 December 2006) http://www.asiapac.org.fj/cathaypacific/resources/aspac06/081206ramesh_coup.html. Dr S Chandrasekharan "Fiji: The Army Strikes" *South Asia Analysis Group* (8 December 2006) <http://www.saag.org/papers21/paper2055.html>.

[34] In early January ousted President Ratu Josefa Iloilo resumed his position as President and appointed Commodore Bainimarama as interim Prime Minister. An interim cabinet was appointed with members drawn from all the major political parties including the ruling party of Qarase. Mahendra Chaudhry, leader of the Fiji Labour Party and a former Prime Minister, accepted a cabinet position as Minister of Finance. After some tension the Great Council of Chiefs, one of whose members had joined the Cabinet, endorsed the appointment of Commodore Bainimarama as interim Prime Minister and called on the people of Fiji to support him and his ministers. Dr S Chandrasekharan "Fiji Military Commander Consolidates His Position" *South Asia Analysis Group* (12 January 2007) <http://www.saag.org/papers21/paper2095.html>.

[35] In contrast to previous coups which replaced the elected governments with an ethnically-based Fijian government dominated by chiefly interests and intent on ensuring ethnically-based control of the Fijian political system, the December 2006 coup was not ethnically-based or targeted. To this extent it could be construed as a military counter-coup against the entrenchment of the political success of the 2000 coup. Unlike its predecessors the December 2006 coup was also notable for the absence of violence against Indo-Fijians. As a result of the new government's professed commitment to multi-racial politics and protecting the interests of commoners against the rich and powerful, many Fijians from both the indigenous

and Indian communities have supported the new government. Sanjay Ramesh "Military clean-up – from blessing to a big question mark" *Asia Pacific Network* (17 January 2007) http://www.asiapac.org.fj/cathaypacific/resources/aspac07/170107ramesh_coup.html, "Now the Good News" *Time Magazine* 5 February 2006 p44.

[36] The available evidence shows that to date the changed political environment following the December 2006 coup has not led to deterioration in the security of the Indo-Fijian community. In particular there has been no indigenous Fijian violence against Indo-Fijians. The appellants' fears that a coup mentality has taken hold and that the position of Indo-Fijians is now more insecure than ever does not sufficiently acknowledge the anti-racial motivations of the December coup.

[37] Were the coup to fail it may well generate some violence against Indo-Fijians as happened in 1987 and 2000. However, although previous coups did see some looting, assault and harassment of Indo-Fijians the violence was relatively contained. Most importantly, in the unlikely event of political violence, conflict is more likely between competing indigenous Fijian interests.

[38] Further, even in the unlikely event of political violence the likelihood that the present appellants would suffer serious harm rising to the level of persecution is at best a speculative or remote possibility. Nor is there any evidence that the husband's reduced health, following his stroke, would enhance the risk of the family being seriously harmed.

[39] The Authority concludes that in the event of the appellants returning to Fiji there is no real chance that they will suffer serious harm because of their race. Their fears of being persecuted are not well-founded.

CONCLUSION

[40] For the reasons mentioned above, the Authority finds the appellants are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeals are dismissed.

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V J Shaw
Member