

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76512**

**AT WELLINGTON**

<b><u>Before:</u></b>	B L Burson (Member)
<b><u>Representative for the Appellant:</u></b>	The appellant represented herself
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	2 June 2010
<b><u>Date of Decision:</u></b>	22 June 2010

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**DECISION**

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[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) declining the grant of refugee status to the appellant, a national of Fiji.

**INTRODUCTION**

[2] The appellant claims to have a well-founded fear of being persecuted in Fiji by reason of her ethnicity as a Fijian of Indian ethnic origin. The central issue to be determined in this case is whether the appellant's risk of future harm reaches the threshold of being persecuted.

[3] What follows is a summary of the evidence given in support of the appellant's case. An assessment follows thereafter.

**THE APPELLANT'S CASE**

[4] The appellant was born in the village of X in Y, Z, in the early 1980s. She is the second of four children born to her parents. Her father was the family's sole income earner. He supported the family by farming land, the lease of which he had inherited from his father and which was communally enjoyed between the

appellant's father and his brothers. On this land the appellant's father grew sugar cane as a cash crop and other crops to provide food for the family. He supplemented income gained from his farming activity with a variety of other jobs.

[5] Over time, the economic situation of the family deteriorated to the point that the appellant's two younger siblings were forced to give up school. Her father simply could not produce enough income to pay the school fees and associated costs and both younger siblings left school at around Form III or Form IV. Her younger brother joined her elder brother in assisting their father on the family land and in due course obtained employment as a salesman. Prior to the appellant's arrival in New Zealand in January 2009 he resigned from this job as a result of a work dispute. Her brother has not been able to find employment since and continues to work on the family land. Her younger sister has not worked but rather has stayed at home assisting her mother. Approximately eight years ago her father suffered a stroke and had to give up farming on the land and her mother provided care for him. Her younger sister assists in this regard.

[6] Of the siblings it was the appellant who had the most successful education. The appellant completed and obtained her Form VI Certificate. In 1998 she commenced work in a supermarket as a cashier. She worked for the same employer between 1998 and 2007 when she resigned after her marriage. In the course of her employment the appellant received a number of promotions and for the last year or so of her employment had a management role which required her to supervise between eight to ten people including indigenous Fijians and ethnic Indian Fijians. After resigning she commenced her own sewing business from home, designing and sewing privately. The income she produced from this business was minimal.

[7] In March 2008, the appellant separated from her husband. Shortly afterwards she commenced a course at a private educational institute in Suva. After completing the course in mid-2008 the appellant attempted to gain employment in her field of study but opportunities were limited because of a lack of employers. However she eventually commenced working for an employer working outside her field of study on a part-time basis which employment she had at the time of her arrival in New Zealand.

[8] The appellant claims that, during the course of her 10-year employment at the supermarket, she was regularly subjected to verbal abuse and harassment by indigenous Fijian customers. When, from time to time, the appellant discovered

them shoplifting, she was met with a torrent of verbal abuse, as were other ethnic Indian staff in the same situation. She noticed that indigenous Fijian customers would be abusive towards them in a way in which they were not when similar problems arose with indigenous Fijian members of staff. Her employer made it clear that they were not to answer back to the complaining customers and, if they did, they would lose their job.

[9] The discrimination the appellant experienced in her employment was replicated in the wider world. It was often the case that, in an argument with an indigenous Fijian, she would be told that Fiji "was not her country" and they were "only brought there to work and that they had no right to be in Fiji".

[10] On one occasion in about 2004/2005, an indigenous Fijian tried to steal her purse one evening but passersby came to her aid and the man ran off.

[11] The appellant's feeling of being treated as a second class citizen in Fiji was further heightened by reports she heard from the news and accounts she heard from others. She often heard that Indian families were forced to vacate houses when their leases ran out without any possibility of renewal and, often, the ethnic Indian Fijians would have to leave some or all of their possessions behind. She had heard accounts of Indians being attacked by indigenous Fijians.

[12] The appellant explained that, since a young age, she had become familiar with what a coup was. Fiji had known a number of military governments since she was a small child and she firmly believes that this is detrimental to the country's future. When decisions are made 'through the gun', the appellant is fearful that anything could happen. Further, the situation of Indians in Fiji is a precarious one. She feels that the situation will deteriorate further in the future and remains concerned for her security and safety if she returns.

### **Documents and submissions**

[13] No supporting documents were filed by the appellant in support of the appeal, the only papers being those already on the Immigration New Zealand file which had been disclosed to the appellant.

### **THE ISSUES**

[14] 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."

[15] 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 APPELLANT'S CASE**

### **Credibility**

[16] The appellant impressed as an open and honest individual. Her evidence was given candidly and without embellishment. The Authority finds that she has given a truthful account of her experiences.

### **Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?**

*Non-discrimination, state obligation, and the human rights approach to interpreting being persecuted*

[17] New Zealand refugee jurisprudence has, from an early stage, embraced the principle that the sustained or systemic denial of human rights demonstrative of a failure of state protection is the appropriate measure of being persecuted for the purposes of determining refugee status – see *Refugee Appeal No 2039 (re MN)* (12 February 1996).

[18] The Authority's 'human rights approach' to interpreting the Article 1A(2) requirement of 'being persecuted' draws on a framework of multilateral human rights treaties contained in what is known as the 'International Bill of Rights'. This comprises the 1948 Universal Declaration of Human Rights (UDHR), and, by virtue

of their almost universal accession, the 1966 International Covenant on Civil and Political Rights (ICCPR), and the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), together with the 1966 Convention on the Elimination of All Forms of Racial Discrimination (CERD), the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the 1989 Convention on the Rights of the Child (CRC) – see *Refugee Appeal No 71427/99* [2000] NZAR 545; [2000] INLR 608 at [51] and *Refugee Appeal No 72558/01 and 72559/01* (19 November 2002) at [113]-[115].

[19] As Thornberry “Confronting Racial Discrimination: A CERD Perspective” observes in *Human Rights Law Review* Vol. 5, No 2 (2005) at 254:

The principle of non-discrimination is fundamental to the human rights enterprise - part of its architecture. It is a way of getting to equality in the enjoyment of human rights by addressing negative practices denying equality.

The Authority’s jurisprudence has recognised the centrality of non-discrimination in the enjoyment of fundamental rights guaranteed under both the ICCPR and ICESCR – see, respectively, *Refugee Appeal No 74665/03* (7 July 2004) at [94]-[103] and *Refugee Appeal Nos 75221 and 75225* (23 September 2005) at [85]-[90].

[20] Of particular significance in this case is CERD. Article 1(1) of CERD, defines racial discrimination as follows:

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

[21] The core obligation of states under CERD is set out in Article 2, which provides:

**Article 2**

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

[22] Article 4 of CERD requires states to:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

[23] Further obligations “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone” are imposed under Article 5 in relation to a broad range of civil and political and economic social and cultural rights. Relevantly in terms of this appeal these include:

(e) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;

[24] Article 6 of CERD imposes an obligation to:

assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

[25] Difficulties in determining the scope of state obligation under CERD arise from tension between the definition of racial discrimination in Article 1, which refers to lack of equality of enjoyment of human rights and fundamental freedoms in “fields of public life” and obligations under Article 2(1)(d) and Article 5 to prohibit and eliminate racial discrimination spheres of life which may, in some instances, have a significant (if not complete) private component – see Thornberry, at 252 and Meron, “The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination” *American Journal of International Law* (1985) Vol 79, 283 at 291-295. In relation to the extent to which CERD imposes an obligation on states to regulate racial discrimination occurring in the ‘private sphere’, in *General Recommendation No 20: Non-discriminatory implementation of rights and freedoms (Art 5) (15/03/1996)*, the CERD Committee has emphasised that, insofar as private institutions are concerned:

To the extent that private institutions influence the exercise of rights or the availability of opportunities, the State Party must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination.

[26] More broadly, Thornberry, at p252, refers to a concluding observation by the Committee made in the context of state reporting. Here, the Committee has recommended that, while purely private conduct falls outside the scope of state obligation under CERD, in accordance with the basic state obligation under Article 2 to address policies and other practices, “which have the effect of creating or perpetuating racial discrimination wherever it exists”, the state should:

review legislation so as to render liable to criminal sanctions the largest possible sphere of private conduct which is discriminatory on racial or ethnic grounds.

[27] Thus, CERD imposes obligations to combat and eliminate racial discrimination leading to unequal enjoyment of a range of rights guaranteed under both the ICCPR and ICESCR in civil, political, economic, social, and cultural life.

[28] In respect of these obligations, countries must act in good faith. Known as *pacta sunt servanda* at a customary international law level, the good faith principle has been codified in Article 26 of the 1969 Vienna Convention of the Law of Treaties. As Thirlway, “The Sources of International Law” in M Evans (ed) *International Law* (2003, 121-122), remarks:

The whole point of a binding agreement is that each of the parties should be able to rely on performance of the treaty by other party or parties, even when such performance may become onerous or unwelcome to such other party or parties.

*Discrimination against Fijians of Indian ethnic-origin – country Information*

[29] In 2006 the armed forces commander, Commodore Voreqe (Frank) Bainimarama, overthrew the elected government in a bloodless *coup d'état*. In 2007 the interim military government was replaced by a nominally civilian interim government headed by Bainimarama as Prime Minister. Writing at the beginning of 2008, the Authority in *Refugee Appeal No 76156* (14 January 2008) noted that at that time:

[6] ...Recent human rights reports indicate that although there are racial tensions in Fiji, there is no evidence that Indo-Fijians suffer persecution for reasons of their ethnicity, or that the Fiji state is unwilling or unable to provide protection to its Indo-Fijian citizens.

The United States Department of State *Country Report on Human Rights Practices 2006: Fiji* (6 March, 2007) which is referred to extensively in the decision of the RSB, certainly indicates some erosion in the respect for human rights. However, as also noted, the Bainimarama government has professed a commitment to multi-racial politics and to Fijians of many ethnic backgrounds.

[30] After reviewing the then available country information, the Authority concluded at [7]:

On the basis of that analysis and the most up-to-date information available, the Authority is satisfied that the December 2006 coup and subsequent events have not led to a deterioration in the security of the Indo-Fijian community, or to violence by or against indigenous Fijians. The police force is maintained by joint military and police operatives and it appears that there is still a police force capable of maintaining law and order.

[31] On 9 April 2009, the Court of Appeal declared the coup and the interim government unlawful. On 10 April, the government abrogated the constitution, imposed a state of emergency, and began to rule by decree.

[32] The United States Department of State *Country Reports on Human Rights Practices for 2009: Fiji* (March 2010) (“the 2009 DOS report”) paints a similar picture to that outlined in *Refugee Appeal No 76156*. It notes at s1(a) that there were no reports that the government or its agents committed arbitrary or unlawful killings during 2009. At s1(c) the report notes that, while some persons opposed to the government or suspected of engaging in corrupt practices have been beaten, there are no reports of beatings of Fijians of Indian ethnic origin by the security of police forces on account of their ethnicity.

[33] However, country information does confirm that some Fijians of Indian ethnic origin have been subjected to assaults and home invasions by non-state actors. The Canadian Immigration and Refugee Board, Research Directorate *FJI103287.E Fiji: Situation of Indo-Fijians in Suva; Particularly Women* (2007-



2009) records information provided by a Professor of Development Studies at the University of the South Pacific (“the USP professor”). The report cites the USP professor as stating:

The situation of Indo-Fijians in Suva depends on their socioeconomic situation and political connections. Generally, their sense of insecurity is broadly shared but those in lower socioeconomic status (a majority) are more likely to be subject to home invasions and mugging compared to their wealthier and more well-connected counterparts. Such people also tend to be ignored by the police.

[34] The USP professor states that, while there were Indo-Fijians in the police force in Suva, “their numbers had declined over the last four coups”. Regarding the situation of Indo-Fijian women, the USP professor is reported as stating that women:

... generally remain subordinated to their husbands, fathers and male relatives. Younger women are getting educated and gaining confidence but there is a large category of women, Indo-Fijians women who are marginalised and vulnerable to domestic and other forms of violence.

[35] More broadly, country information establishes that discrimination against Fijians of Indian ethnic origin exists in the social and economic spheres. A useful outline of this is contained in two reports prepared by the Officer of the High Commissioner for Human Rights (OHCHR) to the Seventh Session of the Working Group on the Universal Periodic Review (UPR) of the Human Rights Council.

[36] The OHCHR *UN Treaty Bodies summary report A/HRC/WG.6/7/FJI/2* (13 November 2009) notes at [15], that a range of policies exist in the Fiji government’s strategic development plan aimed at alleviating poverty. It notes that the government has a formal plan in relation to indigenous Fijians containing affirmative action policies to improve education and training. Yet, the report notes, such policies extended to areas where there was very weak, if any, evidence of such an ethnic concentration of disadvantage. The report states that:

Government welfare and poverty reduction programmes predominantly assisted Fijians, disregarding all evidence that the poorest of the poor were more often Indo-Fijian.

[37] The report, at [20], noted the “serious concern” in 2008 of the treaty monitoring body established to consider states party reports under the 1965 International Covenant on All Forms of Racial Discrimination (“the CERD Committee”) that no specific laws prohibiting racial discrimination had been adopted in Fiji at that time and that the CERD Committee had recommended an expedited legislative review to ensure full compliance with the Convention. On 12 May 2009, the then President issued the Human Rights Commission Decree 2009

which repealed the Human Rights Act 1999. This Decree established the Fiji Human Rights Commission (FHRC). Part 3 of this decree prohibits (s19) “unfair discrimination” on prohibited grounds (including race) in various spheres including employment, education and the provision of goods, services and facilities. Complaints about unfair discrimination can be lodged with the FHRC (s28) which has a discretionary power to investigate (s29).

[38] Commenting further on the position of minorities and indigenous people the *UN Treaty Bodies summary* report notes at p11:

57. Concerned about the lower levels of representation of Indo-Fijians, [the CERD Committee] recommended measures to ensure that all ethnic groups are duly represented in State institutions and the public administration, including special measures, particularly in the military, taking into account its role during the political turmoil in Fiji

58. [The CERD Committee] remained concerned that the status of land distribution in Fiji inhibited the economic development of non-indigenous communities, particularly Indo-Fijians. [The CERD Committee] called for immediate measures to resolve land rights issues in a conciliatory and equitable manner, and for urgent interim measures to prevent further deterioration of the economic situation of non-indigenous Fijians. It also strongly recommended reviewing the current land regime.

[39] In its *Concluding Observations: Fiji* (18 February – 7 March 2008) (CERD/C/FJI/CO/17), the CERD Committee noted criminal law provisions existed in relation to some aspects of article 4 of CERD, but expressed concern at Fiji’s opposition to the banning of racist organisations and the absence of laws to the effect that committing offences for racial reasons generally constitutes an aggravating circumstance.

[40] Furthermore, in relation to the education system, the CERD Committee at [19]:

[welcomed] the compulsory teaching of both the Fijian and Hindi languages, although it remains unclear whether this is applicable to all schools. The Committee, however, considers that the mere re-registering of a school as private and the withdrawal of its funding when its enrolment policies are found to be discriminatory is not conducive to preventing segregation in schools.

[41] The complementary *OHCHR Civil Society Summary Report* (A/HRC/WG.6/7/FJI/3) (11 November 2009) is a summary of 17 civil society stakeholder submissions. Commenting more widely on equality and non discrimination this report notes:

17. According to [one civil society organisation (CSO)] racism and ethnic division continues to be an ongoing problem, as one of the root causes of political instability in Fiji. Discrimination is institutionalised with some Government bodies having little or no representation of minority ethnic groups. [Another CSO] noted that ethnic Indians have been discriminated against in laws and government

policies. In a joint submission, [two CSOs] indicated that ethnicity remains a dominant factor in the country and affects the country's politics, economy and society. Fiji's population is a multi-cultural, multiracial mix, with indigenous Fijians comprising 51 per cent, Indo-Fijians (descendants of Indians from the Indian subcontinent) approximately 44 per cent, and Asians, Caucasians, and other Pacific Islanders making up the rest. The ethnic division is illustrated by the contrast between the private and public sectors; Indo-Fijian families largely control most private businesses, while indigenous Fijians largely head Government ministries and the armed forces. Tension between ethnic Fijians and Indo-Fijians has been a longstanding problem.

[42] At [52] this summary report notes that access to land is an ongoing source of tension between ethnic groups and that uncertainty over future land tenure arrangements is a "significant cause of tension between the indigenous Fijian and Indo-Fijian communities".

[43] The 2009 DOS report notes at s2(c):

Racial polarization was reflected in religious differences, which were largely along ethnic lines; this contributed to political problems. Most ethnic Fijians were Christians, and most Indo-Fijians were Hindu, with a sizable minority of Muslims. The dominant Methodist Church has closely allied itself with the interests of the pro-indigenous-Fijian movement.

Break-ins, vandalism, and arson directed at houses of worship, predominantly Hindu temples, were common. The attacks were broadly viewed as reflections of intercommunal tensions, although there was often evidence that theft was a contributing motive

[44] This report also comments on the under representation of ethnic minorities in the Fijian legislature. The report notes that, as at the end of 2009, there were only two Indo-Fijian ministers in the cabinet and no other minority Ministers. Indo-Fijians, who account for 37 per cent of the population, were, according to this report, "under represented at senior levels of the civil service and greatly so in the military". This was despite Indo-Fijians comprising approximately 35 per cent of the civil service overall.

[45] Finally, the Freedom House *Freedom in the World 2009: Fiji* (16 July 2009) reads in a similar vein. This report states:

Race based discrimination is pervasive, and indigenous Fijians receive preferential treatment in education, housing, land acquisition and other areas; some jobs are only open to them.

### *Summary of country information*

[46] The above country information establishes that, while there is no specific targeting of Fijians of Indian ethnic origin for physical abuse on account of their ethnicity by state agents following the December 2006 coup, from time to time state agents may be slow or fail to adequately respond to instances of physical

abuse and property violations perpetrated against them by private individuals. It is not clear on information before the Authority, however, if any failure to adequately respond is a function of their ethnicity, lower socio-economic status, combination of both, or other factors.

[47] More broadly, while some degree of legal protection from racial discrimination exists, there is some doubt as to whether the legal regime in Fiji fully complies with the standards set in CERD by the international community to combat and eliminate racial discrimination in all its forms. It is unclear how effective the legal regime currently in place will be in practice. Certainly country information available to the Authority establishes that there remains some degree of institutionalised discrimination against Fijians of Indian ethnic origin in Fiji. They are under-represented in the legislative branch. Government policy in terms of poverty reduction and other areas of social policy is, to some extent, directed by reference to ethnic criterion and not empirical data relating to the actual incidence of poverty or particular social need. Economic and social life in Fiji is stratified along ethnic lines, with indigenous Fijians dominating public sector employment. Tensions between the indigenous Fijian and Fijian Indian communities exist and are exacerbated by arrangements surrounding land tenure.

#### *Application to the facts*

[48] While underpinned by anti-discrimination notions, the Refugee Convention requires something more than a future risk of suffering racial discrimination to be established to qualify a claimant for recognition as a refugee. It requires the establishment of the state of 'being persecuted', understood as serious harm plus the failure of state protection – see *Refugee Appeal No 71427/99* (16 August 2000) at [67]; *R v Immigration Appeal Tribunal; Ex Parte Shah* [1999] 2 AC 629, 653F; *Horvath v Secretary of State for the Home Department* [2000] 3 WLR 379, 403B. Thus, even if it is accepted that Fiji fails to protect some of its citizens against racial discrimination in terms of the standards imposed by the international community under CERD, this failure must nevertheless lead to a predicament for a claimant which reaches the threshold of being persecuted.

[49] The question which then arises is whether the discrimination which the appellant will encounter if she returns to Fiji amounts to serious harm.

*Serious harm*

[50] The Refugee Convention requires a forward looking inquiry. Nevertheless, the past experiences of the appellant will typically be a reliable indicator of what may happen in the future, absent any significant change in the country conditions. The above country information clearly establishes that ethnic Indo-Fijian citizens face systemic discrimination in Fiji. The systemic environment has no doubt contributed to the verbal abuse that the appellant experienced in her working life and other problems she has encountered.

[51] Country information does not establish that the situation as it exists currently in Fiji is significantly different from that which existed in the past. Thus, in this particular case, it can reasonably be expected that the experiences of the appellant in the future will not be any different from those she has experienced in the past.

[52] The Authority therefore accepts that she may well encounter various forms of discrimination as she has in the past. Yet her past experiences did not reach the 'serious harm' threshold of being persecuted. Apart from the incident in 2004/2005 when someone attempted to steal her purse, the appellant has encountered no forms of physical violence. She has always managed to find employment and has been promoted in her employment. She has managed to obtain an education. She earns enough to have sufficient savings to pay for her vocational educational course. Bank statements filed in support of her visitor's visa application show a person with a regular income and a steadily increasing savings account.

[53] It is accepted that past incidents in which the appellant was compelled by her employer to act subserviently to ethnic Fijians were momentarily demeaning and humiliating. Nothing said here should be taken as any endorsement of such disgraceful discrimination. The issue which must be confronted, however, is whether the occasional, sporadic occurrence of such incidents constitutes harm that could be said to be serious such as to mandate, at international law, the imposition of surrogate protection. Viewed from this perspective, isolated incidents of racial abuse or verbal mistreatment by private individuals are not serious. They are temporarily hurtful and distressing, but not serious harm in the sense contemplated by the Refugee Convention.

[54] There is no reason to believe that the appellant's situation in the future would be any different, discrimination notwithstanding. In short, there is no real

chance that the appellant will suffer serious harm as a result of any discrimination she may encounter in the economic or social spheres.

[55] The appellant strongly submitted that the nature of a military government is such that “anything could happen” and she is generally fearful for her security in the future. However, nothing untoward has happened to her in the past. There is nothing to suggest that her characteristics expose her to any risk of harm at the hands of the military authorities or other state agent, let alone a risk at the real chance level. Her generalised fear and insecurity arising from the 2006 coup does not equate to a well-founded fear of being persecuted. It would be entirely speculative to say that the appellant will face a real chance of serious harm and a failure of state protection should she be returned to Fiji in circumstances where a truly democratic government is yet to be re-established.

[56] For these reasons the Authority answers the first principal issue in the negative. The need to consider the second does not, therefore, arise.

## **CONCLUSION**

[57] For the reasons mentioned above, the Authority finds the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

“B L Burson”

B L Burson  
Member