

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76379

AT AUCKLAND

Before: B A Dingle (Member)

Representative for the Appellant: The appellant represented himself

Date of Decision: 28 August 2009

DECISION

[1] This is an appeal against a decision of the Refugee Status Branch (“the RSB”) of the New Zealand Immigration Service, declining the grant of refugee status to the appellant, a citizen of the Republic of Singapore.

INTRODUCTION

[2] The appellant arrived in New Zealand on 31 August 2008. He lodged an application seeking refugee status on 25 February 2009. A refugee status officer of the RSB interviewed the appellant on 6 May 2009 and a decision declining the appellant’s application was published on 12 June 2009. On 24 June 2009, the Authority received notice of an appeal against that decline decision.

[3] Pursuant to sections 129P(5)(a) and 129P(5)(b) of the Immigration Act 1987 (“the Act”), where an appellant was interviewed by the RSB or, having been given an opportunity to be interviewed, failed to take that opportunity, the Authority has a discretion as to whether to offer the appellant the opportunity to attend an interview. In exercising this discretion, the Authority will consider whether the appeal is *prima facie* ‘manifestly unfounded or clearly abusive’. Should that be the case, the Authority may determine the appeal on the papers, without offering the

appellant an interview. The Authority's general jurisdiction in this regard was examined in *Refugee Appeal No 70951/98* (5 August 1998).

[4] On 30 July 2009, the Authority, through its Secretariat, wrote to the appellant advising that the Authority's preliminary view of the appellant's appeal was that it was *prima facie* 'manifestly unfounded or clearly abusive', and giving reasons in this regard. It was noted that the account appeared not to identify any basis as to why the appellant would face a real chance of persecution for a Convention reason in the event that he returned to Singapore.

[5] The Secretariat's letter specifically stated:

"The Authority's enquiry is forward looking. Therefore, the question is not whether you have experienced persecution in Singapore in the past but whether you have a well-founded fear of being persecuted for a Convention reason in the future.

For the purposes of refugee determination, a refugee is defined as someone who has a well-founded fear of being persecuted for one of the five Convention grounds, namely race, nationality, religion, political opinion or membership of a particular social group. It is well established in the Authority's jurisprudence that it is sufficient for an appellant to establish that the relevant Convention ground is a contributing cause to the risk of "being persecuted". It is not necessary for that cause to be the only cause, but a Convention ground must be identified as being relevant to the cause of the risk of being persecuted; see *Refugee Appeal No 72635/01* (6 September 2002); [2003] INLR 629 at [173].

The Authority's preliminary view is that your claimed predicament is not in any way linked to one of the five Convention reasons. Your claim, as outlined in your Confirmation of Claim Form (dated 23 February 2009), appears to be that you are at risk of harm from a "loan shark" and/or his associates because you have not repaid a loan for which you provided a guarantee some years previously. Therefore, none of the five Convention reasons appear to be relevant to your claim and your claim to refugee status cannot succeed.

Furthermore, it is a well-established principle of refugee law that nations should be presumed capable of protecting their citizens, and clear and convincing evidence is required to demonstrate a state's inability to do so; see *Refugee Appeal No 523/92* (17 March 1995). You have not provided any evidence that undermines the presumption of state protection available in Singapore. The Authority is not aware of any credible source which identifies the Singaporean state as being in breach of its duty to afford reasonable levels of protection to all of its citizens."

[6] The Secretariat's letter also advised that the Authority has the jurisdiction to determine an appeal on the papers, without offering an interview pursuant to s129P(5) of the Act, in circumstances which, on a preliminary view, applied in the appellant's case. The appellant was provided with an opportunity to present submissions and/or evidence to support his claim, by 14 August 2009. Notice was given that, unless the Authority was persuaded otherwise by such submissions and evidence, it could consider and determine the appeal without giving the

appellant an opportunity of attending a further interview. Reference was also made to *Refugee Appeal No 70951/98* (5 August 1998).

[7] The Secretariat's letter advised that the responsibility for establishing an appellant's refugee claim lay with the appellant, pursuant to ss129P(1) and 129P(2) of the Act (as referred to in *Refugee Appeal No 72668/01* (Minute No. 2) (5 April 2002) and in *Anguo Jiao v Refugee Status Appeals Authority* (HC, Auckland, M.207-PLO2, 29 July 2002, Potter J)). The letter further advised that persecution has been defined as 'the sustained or systemic denial of basic or core human rights such as to be demonstrative of a failure of state protection'; see Hathaway, *The Law of Refugee Status* (1991) 104 to 108, as adopted in *Refugee Appeal No. 2039/93* (12 February 1996) at 15.

[8] On 13 August 2009, the Authority received a response by way of letter. The Authority will refer to the letter later in this decision.

JURISDICTION OF THE AUTHORITY TO DISPENSE WITH AN INTERVIEW

[9] Having carefully considered all relevant matters, for the reasons which will be apparent later in this decision, the Authority is satisfied that the appellant's appeal is *prima facie* 'manifestly unfounded or clearly abusive'. The Authority notes that the appellant was interviewed by the RSB on 6 May 2009. It is appropriate to now proceed to determine the appeal on the papers pursuant to ss129P(5)(a) and 129P (5)(b) of the Act, without giving the appellant an opportunity to attend a further interview. All material and submissions tendered throughout the determination process have been taken into account in determining this appeal.

THE APPELLANT'S CASE

[10] What follows is a summary of the evidence presented in the appellant's case.

[11] The appellant was born in and is a citizen of Singapore. He is a Tamil of the Hindu faith and has never experienced any problems on account of his nationality or religion.

[12] For the purposes of this decision, his early life was unremarkable.

[13] He married in 1984 and has two children. His wife and children are currently living in Australia with a relative.

[14] In 2001, the appellant was introduced through a mutual friend to LL with whom he met socially over the next six years. In early 2007, LL asked the appellant to act as a guarantor for a loan that LL had taken out with a high interest lender ("the lender"). The appellant agreed and was required to provide personal identity and contact details. LL wanted to borrow a sum which was more than a single lender would advance, so he approached approximately 14 different lenders in order to borrow the required amount.

[15] In May 2008, the appellant committed a traffic offence and was sent a letter outlining a fine he had to pay and a court date (in September 2008) on which he was required to appear to face charges. He did not pay the fine or attend the court hearing.

[16] In approximately June or July 2007, the lender (or one of) contacted the appellant to inform him that LL had stopped making payments and that therefore he (the appellant) was now responsible for the loan repayments. The appellant failed to contact LL to discuss the matter.

[17] The appellant woke one morning to find that the door of his house had been padlocked and the outside of the house painted with O\$P\$ which he interpreted to mean "owe money pay money". The padlock was removed and the appellant went to the police to make a complaint. The police said that there was little they could do although they would try to increase the patrols in the area.

[18] The appellant began making payments to the lender and throughout July and August 2008 he paid a total of SGD15,000. In order to make the payments he had to use credit cards, sell jewellery and borrow money from relatives. In late August he realised that he could no longer continue to make the payments and he decided to leave Singapore. He sold his house and after paying all liabilities he had approximately SGD60,000 – 70,000 left which he set aside for the family's pension fund and which cannot be accessed.

[19] The appellant arranged travel to New Zealand and arrived here on 31 August 2008. His wife and children travelled to Australia where they are staying with relatives.

[20] In September 2008, the appellant contacted his brother in Singapore who told him that the (sold) house had again been targeted for damage and the appellant's name was painted on exterior walls. Further, as a result of the appellant not appearing at Court to answer his traffic charges an arrest warrant was issued against him.

[21] On 27 November 2008, the appellant was issued with a Visitor's Permit until 3 December 2008. He submitted his Confirmation of Claim for Refugee Status on 5 February 2009 and was subsequently issued with a work permit valid until 25 November 2009.

[22] The appellant fears that if he returns to Singapore he will again become a target for the money lenders and that because he cannot pay the outstanding sum, he will be at risk of serious harm. He referred to instances in which other individuals who have failed to repay debts to money lenders have been harassed or physically harmed.

THE ISSUES

[23] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly 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, is unable or, owing to such fear, is unwilling to return to it."

[24] 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

[25] As the Authority has determined not to interview the appellant, his account, as recorded above, is accepted for the purposes of determining this appeal.

[26] However, the appellant's claim can be dealt with shortly. Even if the appellant is at risk of future harm at the hands of the lender, such a risk is not linked to a Convention ground. To fall within the ambit of the Refugee Convention, it is necessary for a claimant to have a well-founded fear of persecution *for a Convention Ground*, as is clear from the second issue raised at [24](b) above. These grounds are a person's race, religion, nationality, membership of a particular social group, or political opinion.

[27] There is no evidence in this claim to support a finding that any harm faced by the appellant is for a Convention reason. Nothing in the appellant's letter of 13 August 2009 displaces the Authority's *prima facie* view (set out in the letter on 30 July 2009 and excerpted in paragraph [5] above) that his claim must fail for lack of nexus to a Convention ground. In fact, in his response the appellant concedes that his claimed risk of harm does not relate to one of the Convention grounds. His letter goes on to urge the Authority to nevertheless "give an exception to my case".

[28] On the evidence put before it, the Authority is bound to find that any harm faced by the appellant in Singapore would not be for one of the Refugee Convention grounds. The Authority does not have the jurisdiction to consider other circumstances or to make discretionary decisions on an exceptional basis as urged to by the appellant.

[29] For these reasons, the Refugee Convention has no application to the appellant's circumstances and his claim for refugee status must fail. The appellant is not a refugee.

CONCLUSION

[30] The Authority finds that 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 A Dingle"
B A Dingle
Member