

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76218

AT AUCKLAND

Before: A R Mackey (Chairman)

Representative for the Appellant: I Uca

Date of Decision: 16 June 2008

DECISION

[1] This is an appeal against a 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, who was born in Uganda and whose former habitual residence was the United Arab Emirates (UAE).

INTRODUCTION

[2] The appellant made his first application for refugee status on his third visit to New Zealand on 20 July 2001. That application was refused by the RSB. He then appealed to this Authority. In a decision (*Refugee Appeal No 73512/02* (20 January 2003)) an appeal to this Authority was dismissed. An appeal was then made to the Removal Review Authority. That appeal was also dismissed in a decision dated 12 September 2003. The appellant, however, remained in this country and submitted a further claim for refugee status on 29 February 2008.

[3] The second application for refugee status was declined by the RSB on 30 April 2008 following an interview held with the appellant on 4 April 2008.

[4] The appellant claims that he is stateless and that there are changed circumstances in either the UAE or Uganda, or both, since the time of his first claim. The refugee status officer concluded that he did not have jurisdiction as the

further claim was not based on significantly different grounds to the previous claim. The RSB in its determination referred to its jurisdiction under s129J(1) of the Immigration Act 1987 (“the Act”) which states:

“A refugee status officer may not consider a claim for refugee status by a person who has already had a claim for refugee status finally determined in New Zealand unless the officer is satisfied that, since the determination, circumstances in the claimant’s home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim.”

[5] After receiving the appeal on 6 May 2008 the Authority wrote to the appellant’s representative on 13 May 2008 setting out the *prima facie* conclusion that the appellant’s claim was manifestly unfounded and clearly abusive as it appeared the RSB had reached a valid conclusion that there have been no significant changes in circumstances since the original claim.

JURISDICTION OF THE AUTHORITY TO DISPENSE WITH AN INTERVIEW

[6] In certain circumstances the Authority is permitted to determine an appeal on the papers without giving an appellant an interview. This arises under s129P(5)(a) and (b) of the Act, where the appellant was interviewed by the RSB (or given an opportunity to be interviewed but failed to take that opportunity) and where the Authority considers the appeal to be *prima facie* manifestly unfounded or clearly abusive. The Authority’s general jurisdiction in this regard was examined in *Refugee Appeal No 70951/98* (5 August 1998).

[7] As noted, the Authority, through its Secretariat, wrote to the appellant’s representative on 13 May 2008. The letter from the Secretariat set out the issues involved and referred to the relevant jurisdiction in the Act. A brief assessment of the appellant’s case was set out in the letter in the following terms:

“Your client arrived in New Zealand on 1 March 2001, after spending the early part of his life in Uganda and some 30 years in the UAE. In his first refugee claim, he stated that he could not return to the UAE as he was a stateless person and would not have any liberty. Additionally, he claimed that he could not return to Uganda because of problems he would encounter because of his ethnic origins and the security situation in Uganda. He was interviewed at that time by a refugee status officer and his application was declined in January 2002. He then appealed to this Authority. In the first decision noted above, the Authority dismissed his appeal, dealing with both the well-foundedness of his potential claims and the issue of statelessness. Subsequent to that refusal, an application was made to the Removal Review Authority, which was later declined. A second claim for refugee status was lodged with the RSB on 29 February 2008. The appellant was again interviewed. The second claim arose because he stated he could not return to the UAE as he would face persecution as a non-Arab and secondly, as circumstances in Uganda had changed since his first claim because there had been recent demonstrations in which Asians had been targeted and that he would be without

family or financial support and thus placed under duress if he was returned to Uganda.

The reasoning of the RSB in their letter of decline appears, from our assessment and consideration of the relevant country information, to reach a valid conclusion that there has been no change in circumstances, as required under s129J(1) of the Immigration Act 1987, and accordingly that the RSB had no jurisdiction to consider the subsequent claim. As this is the preliminary conclusion of the Authority, it is logical that the Authority must, at this time, view this second appeal as a manifestly unfounded and/or clearly abusive one."

[8] In the letter from the Secretariat it is also explained that the appellant bore the responsibility for establishing his refugee claim, pursuant to s129P(1) and (2) of the Act, as explained in *Refugee Appeal No 72668/01* (Minute No 2) (5 April 2002) and *Anguo Jiao v Refugee Status Appeals Authority* [2003] NZAR 647.

[9] The appellant's representative replied to the Authority on 29 May 2008 providing submissions and a schedule of documents in support. These have been fully considered by the Authority.

CONCLUSION ON WHETHER TO DISPENSE WITH AN INTERVIEW

[10] As noted above after considering the provisions of s129J(1) of the Act this appellant was interviewed by a refugee status officer in respect of his second claim. After considering the submissions of the appellant's representative where it is claimed that he could not return to either Uganda or the UAE because "he fears persecution from the Convention reasons of race, nationality and member of a particular social group" the Authority has concluded that on the assessment of all the evidence presented that there is no error in the conclusions of the refugee status officer made pursuant to s129J(1). The officer rightly concluded that there was a lack of jurisdiction. The submissions now provided, and assessed below, do not indicate any material change in circumstances since the first claim, as required by s129O of the Act. In this situation the appeal is considered manifestly unfounded or clearly abusive.

[11] In respect of the UAE it is submitted that the appellant considers himself stateless as he has no identity documents from either Uganda or the UAE. He relies on a letter from the government in Dubai, Uganda Refugees Liaison Officer dated 2 October 2001, which states that the appellant had decided not to return to Dubai and taken up permanent residence elsewhere the liaison office will not provide him with support and that all government/identification documents were to be returned. The appellant advises that he will not approach the authorities in the UAE to request to be allowed to re-enter or to obtain any new travel documents. It

is stated however that the only way that the appellant might gain re-entry to the UAE will be if the New Zealand authorities make an official request to the authorities in the UAE. The appellant, however, submits that such a request, together with disclosure that the appellant has been living unlawfully in New Zealand for several years, is currently imprisoned and has criticised the authorities in the UAE for their treatment of refugees, will attract negative attention. He also reminds the Authority that the UAE is not a signatory to the Refugee Convention. It is submitted therefore that he has a real chance of being imprisoned for his criticism and treated harshly on his return.

[12] The fact that the application may have to be made through the New Zealand authorities, with or without evidence of his behaviour in New Zealand, does not establish that the UAE would not provide him with re-entry or new travel documents. A refusal to approach the UAE authorities cannot be used as evidence the UAE will not allow his re-entry. (A full discussion of issues of statelessness and re-entry is set out in *Refugee Appeal No 72635* (6 September 2002)) and is adopted.) Beyond this there is nothing to indicate in the country material available that the appellant has a real chance of being persecuted in the UAE should he be returned there.

[13] The Authority is thus fully satisfied there is no apparent change in the circumstances of the nature envisaged under s129O of the Act and that the decision of the RSB in this regard was fully sustainable.

[14] In respect of Uganda the submissions claim that an intensification of pre-existing factors since the appellant left his country of birth, aged about 12 years, establishes that he now has a *sur place* refugee claim. The circumstances submitted are entirely subjective to the appellant. These are that he is an overstayer in New Zealand, currently imprisoned, has openly criticised the human rights situation in Uganda, refuses to deal with officials in Uganda and has no Ugandan identity papers and refuses to accept Ugandan citizenship.

[15] As was set out in paragraph [42] of the Authority's first decision the Constitution of the Republic of Uganda makes it plain that the appellant was entitled to retain his citizenship of birth and to apply for restoration of citizenship by virtue of his birth. Section 3 of the Constitution of the Republic of Uganda makes this clear. The fact that the appellant may be abusive towards Uganda, have no desire to return or to have abused the laws of New Zealand, is irrelevant as the appellant is entitled to Ugandan citizenship upon application. The appellant's

subjective choices on this issue are not determinative. (*Refugee Appeal No 72635* at [65]-[140].) Accordingly again, the Authority is fully satisfied that the conclusions of the RSB in finding there was no significant change in circumstances were valid.

[16] For the above reasons therefore the Authority will determine this matter on the papers without giving the appellant the opportunity to attend a further interview.

THE APPELLANT'S CASE

[17] As noted in the submissions above and in the submissions put before the RSB the appellant claims, for a number of subjective reasons relating to his behaviour in New Zealand and reluctance to engage with either the authorities in the UAE or Uganda, that he is now stateless and also that there is a real chance of him being persecuted if returned to either of these two countries of former habitual residence.

THE ISSUES

[18] 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."

[19] 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

[20] As the Authority has noted it will determine this matter without an interview of the appellant. Thus an assessment of credibility will not be made. Accordingly his account, as recorded, is accepted for the purposes of determining the appeal. The account is summarised in the decision of the RSB at page 4 (page 455 of the file).

[21] The Authority is satisfied the determination of the RSB carefully assessed the issue of jurisdiction and possible change in circumstances in respect of both the UAE and Uganda. The assessment noted at the outset the necessity to be guided by s129J(2) of the Act.

[22] In respect of the UAE the RSB noted that the appellant's claim that he would be discriminated against as a non-Arab was addressed in the first instance by the Authority as was his claim of the disadvantages he might suffer through the inability to claim full citizenship. Neither of those was found to amount to persecution. The appellant's status as an undocumented person is not a change in circumstances and there have been no significant changes in the UAE since the first determination of the Authority.

[23] In respect of Uganda it is claimed the appellant now has a *sur place* claim. However, the issues now presented were considered in fact by the RSB in the RSB's first decision and they were also considered by the Authority. A careful assessment of the most recent country information in respect of Uganda reveals no mention of Asians being the subject of abuse or discrimination at this time. Thus the RSB was correct in finding that there was no objective basis for concluding that a change of circumstances had taken place in Uganda since the Authority's first decision was made in 2003. One single incidence of violence was correctly assessed as not amounting to a significant change in circumstances.

[24] The issue of the appellant returning to Uganda as an undocumented returnee was also considered and found correctly to be unsustainable. Again no change in circumstances is evident.

[25] The additional submissions now made in that regard are totally based on the appellant's subjective circumstances and his subjective assessment as to how that behaviour and his attitudes will be treated. These do not overcome the objective information that under Ugandan law he may apply for the restoration of his citizenship by virtue of his birth in Uganda and that he has not established a well-founded fear of being persecuted should he be returned to Uganda.

[26] As the Authority finds that there have been no changes in circumstances relating to the appellant's claim in respect of either of his two countries of former habitual residence to the extent that the subsequent claim is based on significantly different grounds from the previous claim this appeal cannot succeed. In addition, and in the alternative, the Authority is satisfied that on the submissions and evidence provided the appellant does not have a well-founded fear of being persecuted in either the UAE or Uganda for one or more Convention reason.

CONCLUSION

[27] 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.

"A R Mackey"

A R Mackey
Chairman