

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75678

AT WELLINGTON

<u>Before:</u>	V J Shaw (Member)
<u>Representative for the Appellant:</u>	S Singh
<u>Appearing for INZ:</u>	No Appearance
<u>Date of Hearing:</u>	13 July 2006
<u>Date of Decision:</u>	19 April 2007

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of Immigration New Zealand (INZ) declining the grant of refugee status to the appellant, a citizen of Fiji.

INTRODUCTION

[2] The appellant is an Indo-Fijian woman aged in her 50s who is separated from her husband. She arrived in New Zealand during February 2003 but did not file her refugee claim until 4 February 2005. She was interviewed by the RSB on 18 April 2005 and her refugee claim was declined in a decision dated 24 June 2005.

[3] The appellant fears that she is at risk of being assaulted in Fiji and that because of discrimination against Indo-Fijians she will not be able to access state protection.

THE APPELLANT'S CASE

[4] The appellant is from a large family of nine children. Her widowed mother and four of her siblings continue to reside in Fiji. In 1970 she married her husband and over the next 17 years the couple had seven sons all of whom, with the exception of a son who has recently died, remain living in Fiji. Three of the sons are married.

[5] In 1980 the husband fathered a female child with another woman living in New Zealand. The child was born in New Zealand but after some months the husband returned to Fiji with the child who henceforth was raised by the appellant as her own daughter. In 1987 the appellant permanently separated from her husband. In order to support herself and her children the appellant worked in a garment factory.

[6] In the years following the 1987 coup the appellant experienced harassment from local indigenous Fijians. Youths would throw stones at her house in a settlement not far from Suva and harass her when on the streets. Having recently separated from her husband she felt especially vulnerable. On one occasion the youths snatched her bag which contained her passport. Her house was also broken into on three occasions. The appellant would complain to the police but nothing concrete resulted from their investigations.

[7] Around 1997 the appellant's daughter went to a shop and did not return home. The appellant reported her disappearance to the police who immediately initiated a search and made public broadcasts seeking information. After one week the daughter reappeared. She had been abducted by a group of six or seven indigenous Fijian men who had kept her captive in a house on the edge of a nearby village and repeatedly raped her.

[8] The appellant took her daughter to the police station where she was interviewed and a written statement prepared. The daughter could not identify her assailants as they had all covered their faces.

[9] The police investigation did not result in any charges being laid. The appellant considers that the investigation was inadequate and attributes this to the fact that her daughter was an Indo-Fijian. The incident was widely reported in the local media. As a result of her experience the daughter was severely traumatised.

The appellant, fearing for her daughter's safety, arranged for her to come to New Zealand where she married and had three children.

[10] After her daughter's departure the appellant, afraid also for her own safety, rented a house in Suva. However, she continued to experience theft of food from her home by indigenous Fijians and verbal harassment on account of her race particularly in the period following the May 2000 coup. Also around this time the louver windows on one side of the house were twice broken by indigenous Fijian youths.

[11] During this period one of the appellant's sisters' milking cows was killed and the sister and her children assaulted by indigenous Fijians carrying sticks. Apart from these incidents none of the appellant's other family members experienced any serious problems.

[12] Some three or four months after the coup the appellant, unable to afford the high rent in Suva, returned to her previous locality outside the city. She still had her three youngest sons living with her.

[13] There she continued to be plagued by indigenous Fijians harassing her on the street on her way to and from work during the one mile walk between her home and the bus stop. They would grab at her, pull her hair and her clothes and sometimes threaten to do the same to her as had been done to her daughter. She estimates that such incidents would have occurred at least twice a week over the two and a half years that she lived in the locality up until early 2003. If she had money she would take the van to her home in the evenings after returning from work but she could not always afford to do so. Sometimes she had other people to walk with her but they did not always accompany her the full distance to her home.

[14] The appellant became increasingly anxious to leave Fiji. In February 2003 she was able to obtain a visa to enter New Zealand because her daughter living in this country had become very depressed and needed family support. After about seven months the daughter reconciled with her husband from whom she had temporarily separated and went with her children to live in Australia.

[15] The appellant married a New Zealand citizen in November 2003 and on the strength of her marriage was able to obtain a work permit. The marriage did not last and she separated from her husband during 2004. When her final temporary

permit was due to expire she filed a refugee claim as she did not want to return to Fiji.

[16] When her daughter had been raped the appellant felt as though it had happened to her. Thereafter she had always lived in fear. In New Zealand she had at last felt free of fear and she does not want to return to Fiji where she will experience the same harassment as before and be reminded of the past.

[17] During the months following the hearing the Authority continued to monitor the developing political crisis in Fiji which culminated in another coup in December 2006. On 22 February 2007 the Authority wrote to the appellant's representative, Mr Singh, advising that it was proposed to finalise the appeal and enclosing various media reports and commentaries on events surrounding the coup. Further comments and submissions were invited.

[18] On 16 March 2007 the Authority received a letter from Mr Singh in which he advised that he had spoken to the appellant and that she was still finding it hard to come to terms with what had happened to her daughter. She feared the recent coup will have increased "macho" behaviour amongst Fijian males and that the plight of Indo-Fijians will have worsened so that if violence flares again Indians will be blamed for creating tensions amongst Fijians.

THE ISSUES

[19] 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."

[20] 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

[21] The Authority accepts the appellant's general account of her life in Fiji including her daughter's rape although has some doubts as to the actual details of the rape. The appellant was not always precise and some details varied from that given to the RSB.

[22] The Authority does not accept the appellant's evidence concerning the nature and frequency of the harassment she claims to have suffered from local indigenous Fijian males when walking between her home and the bus stop. It is accepted that the appellant may well have suffered some harassment on occasions and that there may well have been an incident when a disturbing reference to her daughter's rape was made but it is not accepted that these incidents were other than occasional.

[23] Clearly the claimed harassment when walking from the bus stop was not sufficient to deter the appellant from continuing the walk over a period of more than two and a half years, including walking alone and in the early evening. If she entertained any genuine concerns for her safety it is not plausible that she would have not made some arrangements to ensure that she was accompanied on the walk especially in the evening. It must be recalled that the appellant had six sons in Fiji, three of whom were living with her in the same house.

Real chance of serious harm

[24] The abduction and rape of the appellant's daughter during 1997 was understandably a traumatic experience for the appellant. That the incident, including the failure of the police to make any arrests, left her with fears for her own safety and disillusioned was also understandable. It must be noted however that, despite her anxieties, during the next five years up until the appellant departed Fiji in February 2003, she was not seriously assaulted or otherwise physically harmed.

[25] The Authority rejects the appellant's contention that if she returned to Fiji she would be at real risk of serious harm.

[26] The appellant may well experience some occasional harassment from local indigenous Fijian youths when walking in the street as has happened in the past but the Authority finds that, irksome though such harassment might be, it would not rise to the level of persecution, that is, the sustained or systemic violation of

core human rights demonstrative of a failure of state protection: *Refugee Appeal No 71427/99* [2000] 545.

[27] Similarly there is always the possibility that the appellant would again be the victim of a theft and/or robbery. Again, although being the victim of such behaviour is unpleasant and sometimes even frightening, if it were to occur, the Authority finds that there is only a remote chance that the appellant would suffer serious physical harm. A remote or speculative chance falls below the real chance required for a well-founded fear.

[28] Over the years the Authority has regularly assessed the political situation in Fiji and the position of the Indo-Fijian community in light of the 1987 and 2000 coups which aimed to consolidate the political prominence of the indigenous Fijians. In the immediate period of lawlessness that followed the coups many Indo-Fijians also 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 application of public service jobs and the ability to benefit from government-sponsored affirmative action programmes. Disillusioned with their prospects many Indo-Fijians have chosen to migrate; see (*Refugee Appeal No 73373-5* (10 June 2002)).

[29] 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; see *Refugee Appeal No 71404/99* (29 October 1999) at [65]-[67].

[30] 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 came from army" *Fiji Times* (2 June 2006).

[31] 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* 18 October 2006 <http://www.saag.org/papers20/paper1995.html>.

[32] 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>

[33] 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>.

[34] 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.

[35] 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 appellant's fears about the coup encouraging "macho" behaviour amongst indigenous Fijian males are without foundation.

[36] 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.

[37] Further, even in the unlikely event of political violence, the likelihood that the appellant would experience serious harm rising to the level of persecution is at best a speculative or remote chance.

[38] The Authority concludes that in the event of the appellant returning to Fiji there is no real chance that she will suffer serious harm because of her race. Her fears of being persecuted are not well-founded.

CONCLUSION

[39] 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.

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V J Shaw
Member