

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

**REFUGEE APPEAL NO 75775**

**AT AUCKLAND**

<b><u>Before:</u></b>	V J Shaw (Member)
<b><u>Counsel for the Appellant:</u></b>	Appellant represented himself
<b><u>Appearing for INZ:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	19 July 2006
<b><u>Date of Decision:</u></b>	18 April 2007

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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 Immigration New Zealand (INZ) declining the grant of refugee status to the appellant, a citizen of Fiji.

**INTRODUCTION**

[2] The appellant arrived in New Zealand on 24 October 2002. He did not file a refugee claim until 10 August 2005. He was interviewed by the RSB on 8 September 2005 and his refugee claim was declined in a decision dated 29 November 2005.

[3] The appellant fears that if he returns to Fiji he will experience discrimination on account of his Indian ethnicity.

**THE APPELLANT'S CASE**

[4] The appellant is an Indo-Fijian aged 26 years. His parents and two siblings continue to reside in Fiji where his father has a sugar cane farm. He was raised as a Hindu.

[5] During his high school years the appellant experienced harassment from indigenous Fijian boys who would also steal his money and other items. He also believed that he was discriminated against in that indigenous Fijian students with low marks similar to his would have their marks scaled up.

[6] On completing high school the appellant initially worked in a garage then assisted his father on the farm before finding work in a garment factory in Lautoka.

[7] The appellant's parents supported the Fijian Labour Party although they were not members of the party nor did they involve themselves in any activities in support of the party.

[8] During 2000, the appellant's father became involved in a group set up to combat crime in the locality committed by indigenous Fijians. On occasions this led to him receiving threats but no other problems eventuated. Indigenous Fijians would also sometimes come to the farm, in an intoxicated state, and threaten to steal vegetables. Petty theft was an ongoing problem because of the farm's proximity to an indigenous Fijian settlement and its inhabitants would often steal items as they walked past.

[9] In mid-2000 at the time of the coup led by George Speight, the appellant had returned to live on his family farm. Two of the family's cows were stolen and livestock was also taken from an uncle's farm in the same vicinity. Local shops were burned down by indigenous Fijians.

[10] On two occasions indigenous Fijians also came to the farm asking for food or money and fertilizer. The family complied with these requests as they knew the indigenous Fijians would simply take what they wanted in any event.

[11] Apart from these incidents of theft the family came to no harm in the period following the May 2000 coup.

[12] During 2000 and 2001, the appellant had several casual jobs returning to work on the farm between jobs.

[13] In late 2001, the appellant reported to the police that a group of indigenous Fijian youths from the local village had attempted to steal vegetables from the farm. He assumes the police must have spoken to the group of youths as later when he was going to the village shop he was set upon on the road by four young indigenous Fijians. As a result of the assault he fell down on a rock and broke his

front teeth. The appellant's father, worried that reporting the incident to the police might lead to further problems, decided instead to complain to the village elders. After the elders declined to cooperate a complaint was laid with the police and two of the youths were arrested. The appellant understands that the two youths were later fined but he himself received no reparation.

[14] In mid-2002 the appellant married a New Zealand resident, formerly from Fiji, in an arranged marriage. He was happy to come to live in New Zealand as he hoped it would offer him the prospect of obtaining a well paid job. He was issued a visitor's visa and in October 2002 entered New Zealand. On the basis of his marriage, which has now ended, he was issued a work permit in November 2002.

[15] In December 2004, INZ declined his residence application. On the expiry of his final temporary permit he unsuccessfully appealed against removal to the Removal Review Authority. After receiving notice from INZ in early May 2005 that he was to leave New Zealand he filed a refugee claim.

[16] The appellant maintains telephone contact with his family in Fiji. In the months prior to the hearing they had expressed their fears that another coup was imminent. They reported that life was difficult economically and that they are concerned as to whether the lease of their farm, which is due to expire in 2007, will be renewed. More recently his parents had complained at what they considered to be an extortionist price asked by an indigenous Fijian to allow them to use a particular road to take their sugar cane to the mill.

[17] The appellant has also learned from his family that his younger brother, who has now finished school and is working on the farm while looking for outside work, was assaulted by some indigenous Fijians youths while fishing at a local river.

[18] The appellant does not want to return to Fiji as he fears that he will not be able to live a good life in that country. There are few chances for Indo-Fijians and the better jobs in offices are given to indigenous Fijians even though they are not educated. Although the political situation appeared to be stable following the election in early 2006 the appellant still entertained fears for his life.

[19] As the political crisis in Fiji unfolded throughout the latter part of 2006, eventually culminating in a further coup in December 2006, the Authority continued to monitor the situation. On 22 February 2007 the Authority wrote to the appellant advising that it proposed to finalise the appeal. He was provided with a range of

media reports in respect of recent political events in Fiji and his comments invited. No response was received from him.

## **THE ISSUES**

[20] 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."

[21] 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 ACCOUNT**

[22] The appellant's account of his family background and life in Fiji is accepted.

### **Well-founded fear of being persecuted**

[23] 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 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 with their prospects many Indo-Fijians have chosen to migrate (*Refugee Appeal No 73373-5* (10 June 2002)).

[24] 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* (29 October 1999) at [65]-[67].

[25] In the past the appellant encountered what he believed was favouritism shown to indigenous Fijian students when at high school and he has also been the victim of harassment by local indigenous Fijian youths and on one occasion was assaulted and lost his front teeth. In addition in the period following the May 2000 coup the family's two cows were stolen and thefts occurred at the family farm. Local indigenous Fijians would also come to the farm demanding money or food.

[26] Even considered cumulatively these experiences do not remotely amount to persecution, that is, the sustained or systemic denial of core human rights demonstrative of a failure of state protection; see *Refugee Appeal No 71427* [2000] NZAR 545.

[27] Nor was the appellant able to point to any serious problems encountered by his family members during the four years since he departed Fiji apart from one assault on his younger brother by local indigenous Fijian youths. The Authority infers from the appellant's inability to provide any meaningful details of the assault that it was not serious.

[28] As the Refugee Convention requires an assessment of the prospective risk of harm, the absence of past persecution is not determinative. However, it may be a good indicator of the future risk of harm that a claimant will experience on return to their home country.

[29] 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).

[30] Over the following months the stand-off 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>.

[31] 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](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>.

[32] 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>.

[33] 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](http://www.asiapac.org.fj/cathaypacific/resources/aspac07/170107ramesh_coup.html), "Now the Good News" *Time Magazine* 5 February 2006 p44.

[34] 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.

[35] 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.

[36] Further even in the unlikely event of political violence, the likelihood that the appellant would experience anything beyond what he and his family experienced following the 2000 coup is remote.

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

## **CONCLUSION**

[38] 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