

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

**REFUGEE APPEAL NO 75319**

**REFUGEE APPEAL NO 75320**

**AT AUCKLAND**

<b><u>Before:</u></b>	K B F Hastie (Member)
<b><u>Counsel for the Appellant:</u></b>	R Chambers
<b><u>Appearing for the NZIS:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	19 May 2005
<b><u>Date of Decision:</u></b>	12 September 2005

---

**DECISION**

---

[1] These are appeals against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellants, Indian nationals from the Punjab.

**INTRODUCTION**

[2] The appellants are husband and wife. For ease of reference, throughout this decision they will be referred to as “the husband” and “the wife” respectively.

[3] The appellants arrived in New Zealand on 5 November 2003 and claimed refugee status on 30 January 2004. They were interviewed by the RSB on 16 March 2004, and their applications were declined in a joint decision dated

29 June 2004. It is against that decision that the appellants now appeal to the Authority.

[4] The appellants claim they have a well-founded fear of persecution by the authorities in India because of their membership of a social group. They are members of a scheduled caste, namely Ad Dharmi, also known as Dalits, and “untouchables”.

### **THE APPELLANT’S CASE**

[5] What follow is a summary of the appellants’ case as presented to the Authority. The credibility of their account will be assessed later.

[6] The appellants were born in small villages in the Punjab. The husband’s father came to live in New Zealand in 2000. His application for refugee status was declined by the RSB (in a decision dated 5 April 2002), and by the Authority (in a decision dated 21 March 2003). The husband’s mother and five siblings remain in India. The wife’s parents and siblings are also still in India.

[7] The appellants were born into the scheduled caste, Ad Dharmi. They have suffered discrimination and harassment as a result.

[8] The husband’s family were part of a small minority of Ad Dharmi families living in their village. Although his family owned their own home the Ad Dharmi families were forced to live in a separate area of the village in homes made of mud or tin. They were not allowed to go into the village. If they did so the higher caste villagers would beat them and accuse them of contaminating the water.

[9] The wife’s family were similarly treated. The wife never went into her village because she was scared that the higher castes would beat her. When the wife was a young girl her family were forced to flee their home by the higher caste villagers who wanted their land. They moved to live with other Dalits. The wife spent most of her childhood inside the family home as her parents wanted to protect her from the higher caste villagers.

[10] The husband attended a private primary school because his parents wanted him to get a good education. They paid a small monthly fee but the husband is not sure how much. He attended a government secondary school. At both schools he was, because of his caste, made to sit apart from the other students and his teachers excluded him from participating in the classes. If he asked questions, he was beaten with a stick.

[11] Other students (of a higher caste) would regularly harass and abuse him. On one occasion, when he was 15 or 16 years old the husband was beaten with sticks by a number of other students as he made his way to school.

[12] The wife's experiences at school were similar. High caste students would bully and taunt her and she attended segregated classes. Teachers regularly beat any Dalit who asked a question. The wife left school in 1992 having passed her matriculation exams. Thereafter she continued to live with her parents. She did not go on to college because she did not want to go through the same experiences and her family could not afford it in any event.

[13] When he left school in 1994 (having passed his matriculation exams) the husband tried to get a job as an apprentice electrician, but he did not succeed in doing so until some two years later. He left that job after approximately eight or nine months as his employer (who was of a higher caste) treated him badly. He was given difficult, unpleasant tasks and was poorly paid. Although the husband tried to get another job he was unsuccessful, because of his caste.

[14] In 1996 the husband decided to further his education, and he was encouraged by friends to go to college. He was introduced to some higher caste students who belonged to a group called the Sikh Students Federation. He was told that these students wanted to help the Dalit community by raising funds so that people such as the husband could obtain a college degree.

[15] The husband did not know if this group had any political aims, and although he had heard of the All India Sikh Student Federation (AISSF) he knew nothing about it.

[16] The husband began to collect money for the group. Approximately two months later he found out that the group was using the money for themselves, so he refused to collect any more money for them.

[17] As a consequence the group accused the husband of stealing money from them and he was arrested by the police.

[18] The husband was detained by the police overnight. During that time he was tied up and beaten and his face was submerged in water. He was released when the village *panchayat* intervened on his behalf.

[19] As a result of the beatings he received the husband suffered injuries to his legs and is now slightly deaf in his left ear.

[20] After his release the husband had no more contact with the group.

[21] The husband was detained by the police for the second time one month later. He was not told why he was being detained, but he assumed he was detained because he was an Ad Dharmi. It was (he said) common practise for the police to detain and beat Dalit boys. He was again kept overnight and beaten in much the same manner as his first detention.

[22] On his release the husband went into hiding for a few months, staying with relatives. During that time the police came looking for him and took his family back to the police station where his father was beaten and his sisters were "slapped around".

[23] The husband's father sold some of his shops and with the help of an agent arranged for the husband to go to Greece. The husband left India legally, travelling on his own passport and flew to Greece in October 1996.

[24] The husband remained in Greece until the end of 2003. He did not, on the advice of friends, apply for refugee status in Greece.

[25] While in Greece the husband returned to India on two separate occasions. He encountered no problems with the police on either occasion.

[26] The first occasion was in February 1999. The husband returned to India for three weeks to get married. Although he returned to the Punjab he did not go to his village or see his parents. He saw only his wife and in-laws. The marriage was not a traditional celebration because the husband did not want the police to find out he had returned. The wife did not return to Greece with her husband because it was difficult to get a visa for her.

[27] A few months after the wedding the wife went to stay with her in-laws. While she was there the police came to the village. They had found out about the marriage and wanted to know where the husband was. The wife was threatened and pushed around, but she did not tell them where he was.

[28] The husband returned to the Punjab for the second time, for six weeks, in October 2000. He was in the Punjab for one week, the rest of the time he stayed in Delhi. Again, he had no contact with his family. His in-laws told him that the police had come to their home looking for him on several occasions.

[29] The wife left India and joined her husband in Greece in February 2003. They left Greece for New Zealand on 3 November 2003 and arrived here two days later.

[30] The husband has had no contact with his family in India since he has been in New Zealand, as he has no means of contacting them. Although his father lives here, he has very little to do with him. The wife has contact with her parents, but she has not asked them if the police are still looking for the husband.

[31] The husband left India in 1996 because he feared the police wanted to kill him because he is of the Ad Dharmi faith and Dalits are killed by the police with impunity.

[32] The husband believes he is still of interest to the police in the Punjab because they "haven't caught me".

[33] As his wife, the wife fears she is in similar danger.

[34] Counsel for the appellants filed comprehensive submissions and extensive country information dated 13 May 2005. Additional country information including

various news items, press releases and editorials were filed on 25 May 2005. In considering this decision the Authority has had regard to all the material provided by counsel.

## **THE ISSUES**

[35] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:

"...owing to a 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."

[36] 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 APPELLANTS' CASE**

[37] To determine these two issues the Authority must first assess the appellants' credibility.

[38] The Authority does not accept the husband was detained and beaten by the police on two occasions in 1996. His account that he was, and continues to be of interest to the police in the Punjab is rejected. In all other respects the appellants' accounts are accepted.

[39] The husband made no mention of his involvement with the students, consequent accusation of theft or of his being detained by the police in either his

confirmation of claim form dated 5 January 2004, or in his accompanying statement. This claim was made for the first time at interview in March 2004.

[40] When asked why he had failed to mention this earlier the husband said that he thought what he had said (in his application and statement) was enough and that he would be able to elaborate later.

[41] This explanation is rejected. The husband told the Authority that his mistreatment at the hands of the police was one of the reasons why he left India in 1996 and why he feared returning (the other reason was because life, as a Dalit, was difficult). It is an integral part of his claim.

[42] As such, the Authority has no doubt, were it true, the husband would have referred to it immediately.

[43] Moreover the husband's willingness to return to the Punjab on two separate occasions in 1999 and 2000 casts doubt on his claim to be in fear for his life. That he encountered no problems on either occasion further serves to strengthen the Authority's view that the police in the Punjab have no interest in him at all.

[44] Accordingly these claims fall to be determined solely on the basis that the appellants are of the Ad Dharmi faith.

[45] The caste system in India is over 2,000 years old. It is a defining feature of Hinduism, encompassing a complex order of social groups on the basis of purity. A person born of a particular caste remains a member of that caste for life. Dalits technically fall outside the four principle caste categories. It is this fact that has traditionally rendered them "untouchable." They are literally *without caste*. See Human Rights Watch *Broken People: Caste Violence Against India's "Untouchables"* (1999).

[46] In 1950 the Indian Constitution attempted to address the serious problem of caste related discrimination. Article 17 specifically abolished "untouchability". Other legislation including The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (designed specifically to protect Dalits) followed.

[47] Nevertheless, despite the large body of affirmative discrimination legislation and agency mandates designed to improve the position of scheduled castes, country information establishes caste based prejudices persist.

[48] The totality of the country information submitted by counsel establishes that there continues to be a high level of harassment, discrimination and violence against those of the Ad Dharmi faith in India by both the authorities and members of higher castes. Deaths of Dalits in police custody are not uncommon.

[49] In its paper (provided by counsel and undated) on the status of Dalit human rights "Broken Promises and Dalits Betrayed", the National Campaign on Dalit Human Rights (NCDHR) lists six basic rights that are denied Dalits. These are the right to livelihood, education, land and labour, gender equality, life and security and reservation and employment.

[50] Counsel submitted that the inter caste violence (between Jat Sikhs and Ad Dharmi) that broke out in Talahan, Jalandhar in June 2003 had and continues to have serious consequences for Dalits throughout the Punjab. However, country information indicates that the situation has calmed substantially and there have been no further incidents of a similar nature in the Punjab since.

[51] The situation for Dalits in the particular region of the Punjab where both appellants come from can, however be contrasted with the position of Dalits elsewhere in India. Although they still experience some forms of discrimination Dalits enjoy relative prosperity, including political representation and there are hardly any Ad Dharmi children who do not go to school. See *The Hindu* "Dalits battle in a Punjab Village" (9 May 2003) [www.hinduonnet.com](http://www.hinduonnet.com); *Economic and Political Weekly* "Caste Tensions in Punjab-Talahan and Beyond" (24 July 2003).

[52] Discrimination *per se* does not amount to persecution and will not on its own bring the appellants within the scope of the Refugee Convention. A distinction must be drawn between the breach of human rights and persecution. See *Refugee Appeal No. 2039/93* (12 February 1996).

[53] While the appellants have suffered discrimination because they are Ad Dharmi the Authority finds that there has been no breach of their core human

rights so as to amount to serious harm for the purposes of the Refugee Convention.

[54] Both appellants attended school and passed their matriculation exams. While the harassment and bullying at school would not have been pleasant the wife was not subjected to any physical harm and the husband was the victim of one minor assault.

[55] Although the husband was unemployed for a time, he was (with perseverance) able to find work. He left of his own volition. Thereafter, he travelled to Greece and returned without consequence on two occasions. As for the wife, while she chose to remain at home because of the discrimination she suffered at school, and because of financial constraints, this falls far short of providing a basis for concluding that she suffered serious harm as a result.

[56] Both have had adequate housing, and the husband's family appear to have been relatively well off (school fees were paid and his father owned a number of shops).

[57] The Authority concludes that neither the husband nor the wife has suffered serious harm as a result of their past experiences of discrimination. Their cumulative experiences do not amount to persecution for either of them. Past experiences may be indicative of future treatment: On their return to India they may well encounter similar sorts of treatment, harassment, discrimination and verbal abuse from those of a higher caste however, social discrimination of this nature does not *per se* amount to serious harm for the purposes of the Refugee Convention.

[58] Counsel submitted the wife, because of her gender, and quite apart from the difficulties associated with her status as a Dalit, faces additional problems. These problems are unspecified and the wife made no mention of them to the Authority. Country information establishes Dalit women do suffer discrimination and violence because of their gender by both higher castes and within their own communities. See the statement by the Asian Legal Resource Centre on '*Violence against Dalit women in India and Nepal*' released by the UNCHR on 6 April 2004. While the chance of the wife being at risk of discrimination as a Dalit cannot be discounted in an absolute sense, the wife has, in the past, suffered no

discrimination or physical harm because of her gender. The chance of her suffering discrimination and violence as a woman is entirely speculative and does not reach the threshold requirement of a real chance.

[59] To conclude, the Authority finds that neither appellant has experienced discrimination amounting to serious harm in the past and there is no chance they will do so on return.

[60] Accordingly, the first issue is answered in the negative. That being so, the second issue does not need to be determined.

**CONCLUSION**

[61] The Authority finds that the husband and the wife are not refugees within the meaning of article 1A(2) of the Refugee Convention. Refugee status is denied and the appeals are dismissed.

.....  
K B F Hastie  
Member