REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76611

AT AUCKLAND

Before:	A R Mackey (Chairman)
Representative for the Appellant:	The appellant represented himself
Date of Decision:	25 November 2010

DECISION

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[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, a national of Singapore of Han Chinese ethnicity and of the Christian faith.

INTRODUCTION

[2] The appellant is a 54 year-old man born in Singapore who arrived in New Zealand in March 2010 on a valid Singaporean passport that he obtained from the Singapore Embassy in Canberra, Australia.

[3] Prior to coming to New Zealand, he spent a period between 1996 and 2001 in Australia. In February 2006, he went to Kuala Lumpur, Malaysia. He approached the United Nations High Commissioner for Refugees (UNHCR) and attempted to lodge an application for refugee status. However, he was unable to lodge that claim although he received a receipt noting his attendance.

[4] In August 2007, the appellant returned to Australia on a visitor's visa. As he had been declared bankrupt in Singapore a few years earlier, he had to apply for

permission to leave. In September 2007, he made an application for refugee status with the Australian authorities. That application was declined. He appealed to the Refugee Review Tribunal (RRT) in Australia. That appeal was declined in May 2008. After losing his Singaporean passport when his bag was stolen in November 2009, he applied and obtained a new passport from the Singapore Embassy in Canberra in January 2010. Using that passport, he travelled to New Zealand, arriving in March 2010.

[5] On 29 March 2010, the RSB received a confirmation of claim for refugee status from the appellant. He was interviewed by a refugee status officer in June 2010 and, after providing them with additional submissions in September 2010, his application for recognition was declined by the RSB on 16 September 2010. He then appealed to this Authority on 27 September 2010.

[6] The Authority wrote to the appellant at the address he had provided on 26 October 2010, stating that the Authority had reached a *prima facie* conclusion that the appellant's claim was manifestly unfounded and/or clearly abusive. The appellant was given, after an extension had been allowed, until the close of business on 19 November 2010 to present submissions responding to the matters raised in the Authority's letter and advising that, following the deadline set out, the Authority, unless persuaded otherwise by the evidence and submissions presented, may determine the matter on the documents and information contained in the file without offering the appellant the opportunity to attend an interview.

[7] Over the period from 26 October until 19 November 2010, the Authority received from the appellant a number of comments relating to his claim and the RSB decision and a number of photographs. All this material has been considered, as best is possible, by the Authority.

JURISDICTION OF THE AUTHORITY TO DISPENSE WITH AN INTERVIEW

[8] In certain circumstances, the Authority is permitted to determine an appeal on the papers without the appellant being given an interview. This arises under ss129P(5)(a) and 129P(5)(b) of the Immigration Act 1987 (the Act) where the appellant was interviewed by the RSB (as happened in this case) and where the Authority considers the appeal to be *prima facie* 'manifestly unfounded or clearly abusive'. The Authority's jurisdiction in this regard was examined in *Refugee Appeal No 70951/98* (5 August 1998).

[9] The Authority, in this case, through its Secretariat, wrote to the appellant on 26 October 2010. That letter advised that, in the Authority's preliminary view, the appellant's appeal was *prima facie* manifestly unfounded and clearly abusive. The letter stated:

> Based on the matters and reasoning set out below, the Authority, after reviewing your file in detail, has formed a preliminary view that your appeal is *prima facie* "manifestly-unfounded or clearly abusive" in nature.
>
> Your claim appears to be based on fears that you may be maltreated or possibly poisoned on return to Singapore, either because of your failure, as a bankrupt, to seek permission before you left Singapore, or for other unspecified reasons.
>
> To fall within the provisions of the Refugee Convention, it is necessary for you to meet the provisions of Article 1A(2) of the Refugee Convention which states:
>
> > … 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.
>
> As stated in the decline letter from the RSB, the concept of "being persecuted" set out within Article 1A(2) of the Refugee Convention involves not only establishing, to the level of a real chance, that a claimant will suffer serious harm on return to their country of nationality, but also that there will be a failure of state protection by their country of nationality. In other words, the concept of refugee protection is about surrogate protection that can only be invoked, in a receiving state, when there is a failure by the person's own state of nationality.
>
> In your case, there is no evidence that the state of Singapore will not protect you from serious breaches of core human rights that go to the extent of establishing a risk of being persecuted. Beyond this, your claim does not appear to establish that, even if there was a risk of your being persecuted on return, this would not be for any one or more of the reasons set out in Article 1A(2) of the Refugee Convention noted above.
>
> Thus, on the basis of your claim and evidence now before the Authority, and also noting the conclusions of the RSB, the Authority has formed the view that your claim is a clearly abusive or manifestly unfounded one.

CONCLUSION ON WHETHER TO DISPENSE WITH AN INTERVIEW

[10] This appellant was interviewed by a refugee status officer on 28 June 2010. The documentation that he has presented to the Authority since the letter of 26 October 2010 was sent to him covers a wide range of issues relating to the appellant's health and his dispute with many of the points and conclusions set out in the RSB decision. However, none of this material appears to go any way towards establishing that the appellant has well-founded fear of being persecuted

for one of the five Convention reasons, nor that there would be a failure of state protection by his country of nationality. Indeed, at most, his claim establishes no more than a possible event of past persecution in 1982/84 and that he has a subjective fear of prosecution (not persecution), on return to Singapore, for breaching its bankruptcy and immigration laws.

[11] In these circumstances, the Authority is satisfied that the appellant's appeal is *prima facie* one that is either manifestly unfounded or clearly abusive and thus does not warrant an oral hearing, involving an appearance by the appellant before this Authority. The Authority therefore proceeds on that basis with the determination of this appeal.

THE APPELLANT'S CASE

[12] In the appellant's confirmation of claim, made to the RSB in March 2010, he made brief references to incidents that he claimed amounted to past persecution. These included:

(a) unjustly charged and jailed at 19 for consuming (smoking) drugs; and

(b) unjustly charged/jailed at 19 for smoking cigarettes (1976).

[13] All other issues, he stated, would be covered in a "statement". That statement, however, was not received until 1 Jun 2010. It appears to be in two parts, both having the same date. In the first part of that statement, under a heading "What do you fear would happen to you if you returned to your home country?", the appellant appears in substance to list:

> (a) non-uniformed civilian secret persecutions using colourless, odourless deadly poison in foods and drinks (see [witness's] statutory declaration)
> (b) tapping all communication devices, mobiles, telephones, email, internet, spy watch; gathering information; what, where, how and when to destroy and persecutions; in cooked and uncooked food, deadly poisoning in most fearsome and fearful - - -
> (c) persecutions continuously; deadly poisoning almost died, denied poison test, medical treatment, and falsification and report of paranoid delusion as medical history records etc.
> (d) any one target by Lee Kuang Yew (LKY), everyone fear interfere; no chance of security, alive: well-founded fear based on experience of food attack, poisoning and a number of other medical issues;
> (e) detention without trial; Internal Security Act - Singapore uses to frame, falsify suspicion and detain anyone under s55 for accuse, drug, criminal or political and religious detainees, all without trial, for as long as 33 years.

[14] Under the heading "What would happen to you?", the appellant sets out a further list. Summarised as best as possible, this states:

> (a) for political opinion, the gospel of God's truth, liberation, for promoting defending democracy liberty justice human rights etc
> (b) [the appellant] against Singapore LKY supporting secrets giving of China, collaboration of despotic regime tyrannical government etc
> (c) his selection of victims for persecutions
> (d) for knowing the structure in their minds of LKY, his associates and allies enemies of western democracy etc
> (e) they know the flowered and enlightened mind and philosopher cannot be tempted, bribed by money luxury fame race etc
> (f) he chose his victims secretly destroy them, … I was poisoned after I visited the early Malay settlements and make enquiries on the descendant of the early sultanate, who was ruler and owners of Singapore or Singaporia or Temasek, early name.

[15] There then follow a number of other generalised complaints which appear to be directed to the Lee Kwan Yew regime but are difficult to fully comprehend in a logical manner. The other fears set out in the statement appear to concentrate on the appellant's claim of secret poisonings in November 2005 and that the appellant supports the opposition Democratic Party of Dr Chee Sjuan and that he practises and is "a friend of *Falun Dafa*, yoga, meditations, Buddhism, Jehovah's Witnesses, all religions and so on".

[16] The main supportive evidence to these claims is stated by the appellant to be a statutory declaration from a witness. This lady, who appears to live in Singapore and possibly Australia, signed a document dated 20 August 2007, which is on the file. The letter has been witnessed by a Justice of the Peace from Western Australia. That "declaration" has attached to it a letter of reference about the appellant. The statement itself, given by the witness, "a sister in Christ" to the appellant, states that she is

> … a witness to severe poisonings experienced by the appellant on several occasions, he has had near death experiences, difficulty in breathing, breathlessness, bloating of the stomach and it has created fear and stress for him. Not only was he the victim of poisoning, but his business which was so successful suddenly saw a 90% drop in customers and it was obvious from this that there was a conspiracy to detect and destroy his talent.

[17] Additionally, the appellant:

> … suffered from the effect of germs released intentionally on public trains, buses and public places and on many occasions we noticed people taking his photograph subtly from their mobile phones even recording our conversations.

[18] She summarises the situation by stating:

> It is very clear that the above sufferings are a sign of persecution because of his love for humanity, democracy, human rights and Jesus Christ.

[19] The added letter of reference, dated 27 June 2006, sets out that the appellant is a "brother in Christ" to her and that it has been her privilege to know him for a period of 17 years and half a month, that he was "a young convert back in 1999 and has been upright of just spirit and speaks only the truth" and because of his fervent love and zeal for the work of the Lord and the church, she decided to support him in every way she could. Recently, she states, the Lord impressed upon the appellant to do his work in Australia and she prays for the Lord's blessings and protection as he responds to the Lord's call.

[20] The additional material provided by the appellant to the Authority, as stated, principally sets out a list of complaints about the RSB decision, but does not appear to state any additional basis for a claim of refugee status. The only new item raised in this is in respect of a 22 month detention in the Singapore Drug Rehabilitation Centre between 1982 and 1984. He complains that this was a violation of international human rights, an invalid trial and in the presence of a negative urine test showing no drug in his body.

[21] He also refers to his Australian RRT decision and claims that the checking by the RSB into the RRT website for the month of May 2008, which revealed that there were no cases concerning Singapore, was wrong and in fact, the date of July 2008, not May 2008.

[22] The letter of 16 November 2010, which responds to the Authority's invitation to present additional submissions to support his case and/or that an oral hearing was warranted, appears to complain, in the main, that the decision of the RSB officer was wrong and suffered from "misinterpretations, twisting, distortions of the facts and the truth". Again, he repeats that his subjective fears are based on an almost death experience of secret deadly poisoning and his flight from death, knowing that Lee Kwan Yew's secret police also bankrupted other people and not because of his failure as a bankrupt to seek leave to leave Singapore.

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 can be noted from the above, all aspects of the appellant's case, from its very inception in New Zealand, have lacked any form of clarity or definition, making the assessment of credibility of his claims extremely difficult. The Authority has however proceeded, as best is possible, accepting the information provided as credible for the purposes of determining this appeal. The Authority concluded that it would not offer an interview to this appellant because any claim, that could be coherently deduced from the material provided, did not reach a level beyond that of a manifestly unfounded claim and for that reason, an interview was not carried out.

[26] From the material provided, the best the Authority can deduce is that this appellant may have been imprisoned for short periods of time in the 1970s for offences related to smoking and then, in 1982/1984, he was possibly detained on offences relating to misuse of drugs, although he claims his urine tests were clear and therefore he should not have been detained. His claims of poisoning after that time and for the period between 2002 and 2005 are not substantiated in any form and there is no apparent nexus to any of the five Refugee Convention reasons put forward by the appellant in that regard.

An objective test, not a subjective test

[27] As noted in the issues set out above, and in *Refugee Appeal No 70074/96* (17 September 1996) and many other later decisions of this Authority (and indeed, it is now well-settled international refugee law), set out the clear view that provisions in Article 1A(2) of the Refugee Convention: "well-founded fear of being persecuted" refer only to an objective standard of fear, certainly not a subjective

one. As eloquently expressed by Lord Templeman in *R v Secretary of State for the Home Department, ex parte Sivakumaran* [1998] 1 ORL ER193:

> …in order for a fear "of persecution" to be "well-founded" there must exist a danger that if the claimant for refugee status is returned to his country of origin he will meet with persecution. [The Convention] does not enable a claimant to decide whether the danger of persecution exists.

[28] As will be noted from this, a subjective test depends far too much on the individual. An objective focus on future reality of serious harm gives this correct assessment of the prospective predicament of the claimant. Professor James Hathaway, in his seminal text "The Law of Refugee Status" (Butterworths 1991) explains that persons facing the same harm should not face differential protection based on individual temperament or tolerance as this implication gives substantial weight to an appellant's subjective fear. The central issue is whether or not the individual can safely return to his or her state. It is for this reason that objective human rights standards common to all must be used.

[29] The decision of this Authority in *Refugee Appeal No 72668/01* (5 April 2002) sets out this issue in more detail at [132] to [159]. In more recent times, this Authority has adopted "The Michigan Guidelines on Well-founded Fear". This set of Guidelines flowed from a colloquium set up by Professor Hathaway at the University of Michigan.

Subjective claims by the appellant

[30] To explain the difference between a subjective and objective test in perhaps more simple, or layman's language, it is helpful to look at the following two statements:

> "I fear it will rain tomorrow."
> and
>
> "I am in fear of the rain tomorrow."

[31] In the first statement, the word "fear" is used in the predictive objective sense. It is in this regard that the word "fear" is used within the Inclusion Clause (Article 1A(2) of the Refugee Convention).

[32] The second statement is clearly fully subjective, a test based on the entirely personal and individual temperament or tolerance of the individual concerned. That test has no place within the Inclusion Clause. Sadly, in this appellant's case, virtually all of the evidence and submissions he has presented relies on the

subjective use of the word “fear”, not the required objective assessment of prospective risk that would allow his claim to fall within the Refugee Convention.

[33] Virtually all of the grounds and submissions put forward by this appellant are of a subjective nature, with the very minor exception, which will be addressed later, of this appellant’s detention for alleged smoking or drug offences some 25 to 35 years ago. The evidence, submissions and additional material that he has presented to the RSB and to this Authority are all of a subjective nature. They are not supported in any way by objectively sourced country information in relation to Singapore. All of the submissions fail to indicate the essential nexus required in Article 1A(2) where it states “owing to a well-founded fear of being persecuted *for reasons of* race, religion, nationality, membership of a particular social group or political opinion …”. This appellant’s evidence and submissions simply do not provide the necessary nexus or “for reasons of” element. It is for this reason also that the appellant’s claim and appeal is a manifestly unfounded one.

[34] Turning to the detentions and, in particular, the term of imprisonment of some 22 months (1984 - 1986) which the appellant refers to in his evidence, the Authority considers that these detentions give only the most remote and tangential evidence of possible past maltreatment. This occurred a very long time ago. The Authority is provided with no evidence of the prosecutions being invalid under Singaporean law, and corroborative evidence from those incidents is simply not provided or available. Beyond that, given the length of time that has passed, such incidents of possible past persecution must have only the remotest of effect on the forward-looking test required under Article 1A(2) of the Refugee Convention.

[35] Additionally, the appellant’s claimed fears of being detained because of past bankruptcy offences and possibly leaving the country illegally are, at most, risks related to the likelihood of being prosecuted on return to Singapore, not “being persecuted”. While the objective country information sourced from authorities such as Human Rights Watch (January 2010) *Country Summary* and the United States Department of State *Country Reports on Human Rights Practices 2009: Singapore* (March 2010) (DOS report) does show that Singapore continues to perpetuate an authoritarian state-controlled legal framework under the ruling People’s Action Party, as noted in the DOS report, under the section “Denial of fair public trial”:

> The constitution provides for an independent judiciary, and the government generally respected judicial independence.

[36] Under the heading “Trial procedures”, the same report states:

> The law provides for the right to a fair trial, and independent observers viewed the judiciary as generally impartial and independent, except in a small number of cases involving direct challenges to the government or the ruling party. The judicial system generally provides citizens with an efficient judicial process.

[37] There are no reports of excessive penalties, politically-motivated disappearances, or torture, other cruel or inhumane or degrading treatment, although caning can be used in a discretionary manner.

[38] The Authority is therefore satisfied that, in the remotest possibility that the appellant was prosecuted for bankruptcy, which the evidence provided by the appellant certainly has not substantiated to a level beyond a remote risk, any penalties from such a prosecution would not rise to the level of being persecuted.

Summary

[39] Accordingly, on the totality of the evidence provided by this appellant, and the objective country information made available, the Authority is satisfied that the appellant has not established any objectively assessed real chance of being persecuted for reasons of any of the five Convention reasons on his return to Singapore. His appeal is a manifestly unfounded one.

[40] In this situation, the first issue is answered in the negative. Accordingly, the second issue need not be addressed. However, even if it were, there is no nexus between the appellant's subjective fears and any one or more the Refugee Convention reasons.

CONCLUSION

[41] 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