

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76501

AT AUCKLAND

Before: B A Dingle (Member)

Counsel for the Appellant: I Chorao

Appearing for the Department of Labour: No appearance

Date of Hearing: 25 May 2010

Date of Decision: 19 November 2010

REASONS FOR DECISION

INTRODUCTION

[1] This is an appeal against the 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 Fiji.

[2] The appellant claims that if she returns to Fiji she will suffer ongoing domestic violence at the hands of her husband and will receive no meaningful protection from police or other state authorities. She also claims that if she separates from her husband, he will attempt to persuade her and her family, through traditional means, to return to the marriage and that if she refuses to do so, he will use serious physical violence against her.

[3] The central issue to be determined in this case is whether or not the appellant's claim is well-founded.

THE APPELLANT'S CASE

[4] A summary of the appellant's evidence in support of her appeal follows. The credibility of the evidence will be assessed later in the decision.

[5] The appellant is an indigenous Fijian woman who was born, raised and has always lived in Fiji. She was raised in the Christian faith and has continued to be a practising Christian in her adult years. The appellant has eight siblings, seven of whom still live in Fiji. Her mother also lives in Fiji.

[6] The appellant attended primary and secondary school in Fiji, leaving secondary school at the end of Form 6. Following school, she completed a one-year computing course and since then she has attended various other formal courses through the Fiji Institute of Technology ("FIT").

[7] In 1991, the appellant met her husband, AA, a Fijian police officer. They married in November 1991 and between 1992 and 2002 they had four children.

[8] The first incident of domestic violence between the appellant and AA occurred in 1992 when she was pregnant with their first child. AA was intoxicated after drinking with the appellant's father and, for no apparent reason, he threatened the appellant's father and then claimed that the appellant was pregnant with another man's child. AA attempted to hit the appellant but her mother intervened. The appellant was shocked and could not understand why AA accused her of being unfaithful when he had been her only boyfriend. AA did not attempt to harm the appellant from that time (when she was approximately four months pregnant) until after the first child was born. The appellant believes that was because the appellant moved to her parents' house until the child was four months old.

[9] In 1992, AA was stationed to another island and the appellant and the first child accompanied him. The family lived there until early 1998. While on the island, the appellant was subjected to frequent incidents of domestic violence from AA. Some of them were relatively minor, involving arguments where he would shout at her, abuse her and slap her arm or her face. However, there were also more serious incidents when she was beaten with a stick or punched repeatedly. As a result of more serious incidents she sustained black eyes, bruising, swelling and lacerations to her face and body.

[10] The appellant recalls one particular incident when her second child was three or four months old. Because she was tired and feeling vulnerable, the appellant asked AA to forego drinking with his friends to stay at home and assist

her. He became very angry, switched off the light in the room, picked up a stick and hit her repeatedly with it. As a result, she had a black and swollen eye, as well as swelling to her face and bruises on her body. She did not immediately seek medical treatment for her injuries because she was embarrassed to admit the abuse and she believed the injuries would quickly heal. However, some weeks later, when her eye had still not healed properly, she consulted a local doctor. She did not take up the doctor's advice to report AA.

[11] In 1998, the appellant and her family moved to another island where the husband was stationed as a police officer. During this time, the appellant's son was beaten by AA. When the appellant returned from a day out, her son was unable to walk properly and had bruises and swelling on his legs and other parts of his body. When she confronted AA about it, he simply said that the child had been naughty. He would not allow the appellant to take the child to the doctor and so she did not. The son's injuries recovered over the course of the next week but for one or two days after the incident, he found it difficult to walk normally.

[12] The appellant only lived on the island for a few months before she discovered that AA was having an affair. AA had frequently been unfaithful during the marriage but this was an ongoing relationship and the appellant confronted him about it. AA refused to terminate the affair and so the appellant took her youngest child and returned to live with her sister in Suva. AA's parents and other extended family members lived on the island and so they helped him to care for the two older children. The appellant remained apart from AA for approximately two months before they reconciled and moved again to her husband's new post.

[13] In late 1998 or early 1999, the appellant and AA moved back to Suva. However, AA was continuing to have an affair with a colleague and asked the appellant to allow him to do so. She refused and chose to take custody of her three children and move into her mother's house. She stayed with her mother for approximately six months and during that time, filed for child support to help her look after the children. During that time, she had very little contact with her husband. He called to the house on the telephone but the appellant's mother or sister would answer and talk to him.

[14] After approximately three months, AA visited the appellant's mother's house one night while he was drunk. He kicked in the door and collected the three children, taking them with him to his sister's house. He kept custody of the children for a few months. For part of that time, the children lived with his sister while he was living in the police barracks. The appellant went to the police for

assistance to have her children returned, but was advised that her husband had equal custody rights to the children and therefore the police could not take any action. The appellant did not pursue the matter further.

[15] Because AA was having an affair, the appellant felt able to go out with her friends and date other men. This made AA very angry and he threatened that if he saw her socialising in town, he would kill her. In approximately May 1999, AA did see the appellant socialising in town and he made her go back to the police headquarters with him. Once there, AA punched her so that her head hit a wall and tried to strangle her. He then broke a bottle and threatened to harm her with it. He did so because he had heard that she had had sexual relations with somebody else. The appellant was able to escape the barracks eventually, but she did not report the incident because again she thought she would get an inadequate response from the Fiji police.

[16] Within approximately a month of the bottle incident, AA approached the appellant and her family in a traditional ceremony, seeking forgiveness and reconciliation with the appellant. Although the appellant did not want to reconcile with AA, her family considered his apology and approach to be genuine and told her that she must go back to him. The appellant's mother, in particular, pressured her to do so so that she (the mother) would not have to support the appellant. The appellant also hoped that AA had changed his behaviour and would no longer harm her. She agreed to resume living together, provided AA rented a house where they and the children could live by themselves. AA did so and the appellant and her children moved into the house.

[17] However, within a short time, various members of AA's family, including his mother, father and a sister, moved in with them. Within a relatively short time, AA also resumed his violent ways. He became upset about the relationship the wife had had while they separated and tried to strangle her with the collar of her t-shirt. AA was interrupted by his mother-in-law who came into the room when she heard the noise of the altercation. The appellant did not report the strangling incident.

[18] In approximately March 1999, when the appellant was separated from AA, she had obtained employment at a tertiary institution in Fiji. She continued that employment in various positions until her departure from Fiji in 2008.

[19] In 2002, the appellant suffered a further serious incident of domestic violence. AA persuaded her to go out to a night club with him one night when he was intoxicated. On the way into town, AA drove the car into a ditch. Because he

was frightened about being identified as a drunk driver, he ran away from the scene and the appellant was left to seek assistance from another police officer. When she was driven home by that police officer, AA accused her of having sexual relations with him and beat her badly. She had two black eyes, severe bruising and swelling on her face, as well injuries on other parts of her body.

[20] She was so concerned for her safety after that incident that she did attempt to report it to the police. However, when she went to the station and talked to an officer, he asked her whether her husband knew she was making a complaint. The officer then rang AA who immediately came to the station to pick her up. He assured her that he would take care of her and so she returned home with him. He did look after her and it was not until some months later, when some of her injuries had not healed, that she went to the doctor. The woman doctor offered to help the appellant report the matter to the police authorities. However, the appellant was fearful of the consequences and believed that no meaningful protection would be forthcoming from the police. She also believed she would be beaten further or possibly killed if she reported her husband and the true circumstances of the accident and her beating.

[21] By this time, the appellant felt trapped in her relationship but she could not see a way to escape it. In 2002, she still had a breast-feeding baby and she did not see how she could support herself and her children if she left AA. The appellant had some family support but her family believed that she should stay with AA and she could not rely on them for ongoing financial support. The appellant prayed that either AA would die or she would find a way to escape overseas to get away from the violence.

[22] Since the 2002 incident, the appellant has suffered ongoing incidents of violence from AA, although none as serious as the 2002 incident. He has continued to verbally abuse her, slap her face and hit her arms or body when he becomes angry. He is violent both when he is drunk and when sober and the prevalence of violence increases when he feels under stress at work. He also threatens violence as a means of persuading her to do as he wishes.

[23] In early 2005, the appellant was issued with a genuine Fijian passport. She obtained the passport because she hoped to find work overseas and escape her situation. She told AA that she wanted to find short-term work overseas to help their financial situation.

[24] In 2006 and 2007, the appellant occasionally applied for positions

advertised overseas (via the Internet) but she was not successful in securing one.

[25] In late 2008, she applied for a visitor's visa to New Zealand and was sponsored by a cousin. She was not successful in securing a visa at that time but when she applied again in May 2009, she did obtain a New Zealand visitor's visa. Again, she convinced AA to agree to this, on the understanding that she would work and send money home. However, her real intention was to remain away from Fiji for two years so that then she could apply for a divorce under Fijian law.

[26] In June 2009, the appellant arrived in New Zealand at Auckland International Airport. She had arranged her travel through an agent in Fiji and her mother and sisters had helped her pay for the air ticket. The appellant left her children in Fiji in the care of her mother.

[27] Since being in New Zealand the appellant has maintained erratic contact with AA in Fiji by way of telephone calls and email. She has not told him that she wants to stay permanently in New Zealand or that she has established a relationship with another man in New Zealand because she fears his reaction. AA continues to threaten and humiliate the appellant during these contacts, including accusing her of adultery. The appellant has written one email to AA expressing her dissatisfaction with his behaviour and suggesting that she does not wish to tolerate his behaviour any further.

[28] The appellant believes that if she now returns to Fiji she will be forced to return to live with AA because her family will pressure her to do so and because she will not have the economic means to support herself and her children without him. If she does resume the marriage she has no doubt that the pattern of domestic violence will continue and that she will not get adequate protection from the Fiji police. In the alternative, the appellant believes that if she separated from her husband he would become jealous and paranoid about her and would also seek to do her serious physical harm.

Documents

[29] The Authority received counsel's opening written submissions on 20 May 2010. Oral submissions were also made during the appeal hearing. Documents submitted after the hearing include:

- (a) a psychiatric report on the appellant prepared by Dr Sara Weeks of Clinic 92 in Mt Eden. The report summarised the appellant's account of domestic abuse and opines that she currently suffers from post traumatic stress

disorder as a result of serious and ongoing domestic violence from her husband. The report also suggests that, on the basis of the appellant's account, AA may be pathologically jealous. The report summarises the appellant's symptoms in the following way:

[The appellant] currently suffers from post traumatic stress disorder symptoms. She experiences recurrent intrusive memories and images of the physical, sexual and emotional abuse she has suffered from her husband. She has experienced some perceptual disturbance in the form of seeing her husband and hearing him call her name. Her sleep is severely disrupted on the basis of habits learned while she was with her husband in that she did not feel safe to sleep if he was not himself home and asleep. She experiences hypervigilance and hyperarousal. There is also evidence of emotional numbing and avoidance. She finds it hard to believe that she is really safe in New Zealand. ...

[The appellant's] current symptoms are serious enough that I suggest she start low dose antipsychotic medication, namely quetiapine, as this will help her sleep and is likely to reduce the intrusive post traumatic phenomena that she experiences.

- (b) a copy of an email the appellant wrote to her husband while she was in New Zealand, expressing her dissatisfaction with his behaviour;
- (c) a copy of the appellant's marriage certificate to AA; and
- (d) a photograph of the appellant in which she appears to have bruising around her neck, an injury the appellant says was caused by AA

[30] All of these documents and submissions have been considered in determining the appeal.

THE ISSUES

[31] 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.

[32] 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

Credibility

[33] Prior to determining the identified issues, it is necessary to make an assessment of the appellant's credibility.

[34] The Authority finds the appellant to be a credible witness. She presented as a quiet under-stated witness whose account was broadly consistent with her previous evidence. Where discrepancies arose, the appellant was able to respond with open and straightforward explanations which were plausible and consistent with her account. It is accepted that she has been the victim of domestic violence from her husband over a period of 17 years. It is also accepted that she has been unable to access meaningful protection from the Fijian police, a situation exacerbated because of her husband's position as a sworn police officer. This evidence accords with available country information and the Authority has no reason to reject it.

[35] On that basis the decision now turns to assess whether the appellant has a well-founded fear of being persecuted in Fiji should she now return.

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Fiji?

[36] It is well established in the Authority's jurisprudence that the standard for establishing that a fear of being persecuted is well-founded is an entirely objective one. See for example *Refugee Appeal No 72668/01* NZAR 649 at [111] to [154]. A subjective fear, however strong, is not sufficient to establish the well-founded element of the refugee definition. There must be a real or substantial basis for the harm which is anticipated.

[37] The appropriate question to be considered is whether, considering the totality of the evidence, an individual having the appellant's characteristics would face a real chance of serious harm if returned to Fiji. See *A v RSAA* (CIV 2004-4-4-6314, 19 October 2005, HC, Auckland, Winkelmann J) at [38].

[38] The Authority now turns to consider the country information against which the risk to the appellant is to be assessed.

Country Information

Summary of country conditions

[39] Fiji is a republic with a population of approximately 837,000. The 1997 constitution provided for a ceremonial president selected by the Great Council of Chiefs and an elected prime minister and Parliament. However, in 2006 the armed forces commander, Commodore Voreqe (Frank) Bainimarama, overthrew the elected government of Fiji in a bloodless *coup d'état*. In 2007 the interim military government was replaced by a nominally civilian interim government headed by Commodore Bainimarama as Prime Minister.

[40] On 9 April 2009, the Court of Appeal declared the coup and the interim government unlawful. On 10 April, the government abrogated the constitution, imposed a state of emergency, and began to rule by decree. That situation continues. Commodore Bainimarama and his Military Council control the security forces.

[41] As regards the general situation in Fiji the United States Department of State, *Country Reports on Human Rights Practices for 2009: Fiji* (11 March 2010) (hereafter "the 2009 DOS report") provides the following summary:

Bainimarama's de facto government denied citizens the right to change their government peacefully. In April the de facto government dismissed the entire judiciary and replaced it with its own appointees. It censored and intimidated the media and restricted freedom of speech and the right to assemble peacefully. Other problems during the year included police and military impunity; poor prison conditions; attacks against religious facilities; the dismissal of constitutionally appointed government officials, as well as elected mayors and town councils; government corruption; deep ethnic divisions; violence and discrimination against women; and sexual exploitation of children.

[42] Public Emergency Regulations (PER), initially promulgated on April 10 for a three-month period, were repeatedly extended and remain in effect at the time this decision.

Domestic violence

[43] Country information indicates that the issue of violence against women and girls is one of significant concern in Fiji. Typical of the information available is the 2009 US DOS report which records that:

Rape, domestic abuse, incest, and indecent assault were significant problems... In August the government promulgated a decree creating a specific domestic violence offense; however, the decree had not come into force by year's end, and domestic violence cases continued to be prosecuted as assault. Police claimed to practice a "no-drop" policy, under which they pursued investigations of domestic

violence cases even if a victim later withdrew her accusation. However, women's organizations reported that police were not always consistent in their observance of this policy. Courts dismissed some cases of domestic abuse and incest or gave the perpetrators light sentences. Women's organizations reported an increase in abuse and violence against women after the abrogation of the constitution in April. They stated that the practices of selecting judges supportive of the government and censoring news stories critical of police and judges had led to poorer handling of abuse cases. Incest was widely believed to be underreported. Traditional practices of reconciliation between aggrieved parties were sometimes taken into account to mitigate sentences in domestic violence cases, and in many cases offenders were released without a conviction on the condition they maintain good behavior, rather than jailed.

[44] Similarly, the *Amnesty International Report 2010 – Fiji* (28 May 2010) records the following statement which was compiled after a visit to Fiji by an amnesty delegate:

Violence against women remained high with police failing to address the issue effectively. Police refrained from arresting or filing charges against suspects. Instead they forced survivors to reconcile with their violent partners as part of the police's "Christian crusade".

[45] A two year research project conducted by the Fiji Womens Crisis Center - studying and reporting on the incidence, nature and prevalence of domestic and sexual violence in Fiji (1997-1999) - reveals that 80 percent of survey respondents had witnessed some form of violence in the home. Sixty six percent of women surveyed reported that they had been abused by their partners; 30 percent of these suffered repeated physical abuse; 44 percent reported being hit while pregnant. Seventy four percent of female victims did not report violence to the police or seek medical attention. See Fiji Women's Crisis Centre *National Research on Domestic Violence and Sexual Assault: Executive Summary* (undated) (www.fijiwomen.com). Other research indicates that Fijian women have the highest suicide rate in the world and in 1992, an estimated 41 per cent of suicides in Fiji were related to domestic violence. See Organisation for Economic and Cultural Development, *Social Institutions and Gender Index: Fiji* (www.genderindex.org).

[46] The Authority is not aware of any country information which indicates the prevalence of domestic violence has changed significantly since the publication of the country information above.

[47] Much of the country information refers to the traditional practice of *bulubulu* (traditional reconciliation) which, put simply, means that a perpetrator of an offence (including domestic violence) may approach the victim's family with an apology and compensation and ask for forgiveness and reconciliation without consulting the victim. If the victim's family accept the apology then the victim is expected to

reconcile with the perpetrator. As noted by Florence T Fenton, (then) Director of the Fiji Law Reform Commission, such an approach means the need to maintain communal cohesiveness takes priority over the victim's right to claim legal redress. See Florence Fenton "Ethnic Diversity – Challenges for Courts" (Paper presented at the Family Court of Australia Third National Conference (21 October 1998)). This practice was, prior to the 2009 abrogation of the Constitution, incorporated to some extent into the formal legal structure of Fiji through Article 186 (1) and (2) of the Fiji Constitution which directs *inter alia* that Parliament must make provision for traditional dispute resolution processes and social traditions. The Fiji Criminal Procedure Code also has a statutory provision (Section 163) that promotes reconciliation in certain cases including for offences which are used to prosecute domestic and other physical violence against women. *Ibid* at p.3.

[48] Therefore the traditional approach to reconciliation in domestic violence cases permeates both family life and the attitude taken by some, though not all, police and judges. In late 2009 the Director of FWCC Shamima Ali is reported as objecting to a magistrate judge who removed a restraining order against a husband against the wife's wishes, so that the husband would have a chance to reconcile. See "Fiji domestic violence concern" *Raw Fiji News* (6 October 2009). Ms Ali is reported as expressing a general disquiet at the handling of domestic violence cases by newly appointed judges and to the media censorship which prevented any public criticism of such cases.

[49] As noted in the DOS report, in the decade leading up to the 2006 coup there were developments to address issues of domestic and other violence directed at women. In 1995, the Fiji police adopted a "No Drop Policy" whereby all domestic violence cases would be heard by a magistrate judge no matter whether the victim chose to press charges or not. The policy was intended to limit the extent of family pressure on complainants (almost always women) to withdraw complaints against perpetrators of violence in favour of reconciliation. See Immigration and Refugee Board of Canada, *Fiji: Domestic violence, including legislation and protection available to victims (2005 - September 2006)* (30 August 2006). Additionally, in 1995 there were four Sexual Offences Units set up by the police to provide a specialised group of officers who could deal with victims of sexual violence, including those who were harmed by their partner or family. While undoubtedly leading to some positive outcomes, both of these efforts have been criticised as having been inconsistently implemented and undermined by training and funding deficiencies. See AusAID *Violence against Women in Melanesia and East Timor: Fiji Country Supplement* [2008].

[50] Outside of the Fiji police force, the Ministry for Women is mandated to develop and carry out programmes on violence against women but it is reported to have no budget to do so: United Nations Population Fund, *An Assessment of the State of Violence against Women in Fiji [2008]* p.35 (www.un.org/womenwatch).

[51] Also working against positive developments is ongoing political instability which has had a retrograde effect on implementing programmes and action to safeguard women domestic violence victims. Research carried out by the Fiji Women's Crisis Center (FWCC) indicates that domestic violence increases during and following the coups in Fiji. Simultaneously, the capacity and willingness of police to respond diminishes. See *AusAID Violence against Women in Melanesia and East Timor: Fiji Country Supplement [2008]* at 153. The political volatility has also contributed to a breakdown between government agencies and the civil society organisations which advocate for women's rights and provide much of the training and support for both women and those who provide services to them. One recent example is the cessation of an Inter-Agency Task Force on Violence Against Women - established to follow up on Fiji's commitments in relation to the Beijing Platform of Action and the Fiji Women's Plan of Action (1998-2008) - which has been discontinued. As a result, there is little systematic coordination between different government agencies and between government and non-government organisations resulting in a lacuna of legal and social support for victims of domestic violence.

[52] A further effect of the political situation is that international aid donors such as UN agencies and AusAID, who have historically funded relevant projects, have significantly reduced their engagement with the government of Fiji as a result of the 2006 coup.

Findings as to real chance

[53] It will be recalled from above that the Authority accepts that the appellant has been a victim of domestic violence at the hand of her husband for a period of 17 years prior to her arrival in New Zealand. This violence was perpetrated by him both while they lived together and during periods of marital separation. The husband has threatened to seriously harm or kill the appellant should she return to Fiji and not resume the marriage or develop a relationship with another man.

[54] The Authority finds that, if the appellant returns to Fiji, whether to live with her husband or separately from him, she would be at risk of serious harm in the form of serious and ongoing physical assault, to the real chance threshold.

[55] The issue as to whether state protection is available for the appellant in this case is answered in the negative. With regard to the practical enforcement of protection from domestic violence, the country information reveals a systemic failure by the Fiji police to provide effective and consistent protection for victims of family violence, both in terms of initial physical protection and long-term case outcomes. Consistent with the country information is the appellant's own experience of attempting to lay complaints against her husband when individual police officers have pressured her to return to the family home and reconcile with him.

[56] The Authority finds that meaningful protection for victims of domestic violence is not available to the extent that the risk of harm to the appellant would fall below the real chance threshold. Notwithstanding that some developments in domestic violence law and programmes have taken place, the Authority cannot satisfy itself that, were this appellant to try and access protection from the Fiji police, the court or other family members, she would have any success. On that basis, the Authority finds that the real chance of physical harm faced by the appellant from her husband will be accompanied by further harm in the form of inadequate avenues of redress and protection. This outcome meets the threshold of persecution as it is a breach of the fundamental human rights not to be subjected to cruel, inhuman or degrading treatment or punishment (Article 7 of the International Covenant on Civil and Political Rights).

Convention ground

[57] The persecution that the appellant faces is for reason of her membership of a particular social group, namely women; see *Refugee Appeal No 71427* (16 August 2000).

[58] In making that finding the Authority is mindful that a finding that women constitute a particular social group is necessarily country specific and that, as stated by Lord Steyne in *R v Immigration Appeal Tribunal; Ex parte Shah* [1999] 2 AC 629 (HL):

Generalisations about the position of women in particular countries are out of place in regard to the issues of refugee status. Everything depends on the evidence and findings of fact in the particular case. On the findings of fact and unchallenged evidence in the present case, the position of women in Pakistan is as follows...

[59] Also well established in the jurisprudence of the Authority is the principle that the convention reason invoked by the refugee claimant need not be the sole reason for her predicament of being at risk of being persecuted, but must be a

contributing factor: see *Refugee Appeal No 72635* (6 September 2002) at [173] and *Michigan Guidelines on Nexus to a Convention Ground* (2002) 23 Mich. J. Int'l L. 210.

[60] The country information concerning the status of women in Fiji establishes that the specific social and cultural position of women, combined with the absence of effective state protection from police and the judiciary in cases of domestic violence, is such that they are appropriately recognised as a particular social group for the purposes of the Refugee Convention. Notwithstanding the legal framework of gender equality set out in the Fijian constitution and the various legal and policy developments outlined above, women continue to face intense social and familial pressure to reconcile with violent partners and to maintain marriage notwithstanding the violence. Such pressure is also manifest in women's interactions with the police and judiciary.

[61] The social background is summarised in a report by the United Nations Population Fund, *An Assessment of the State of Violence against Women in Fiji* (2008) p.35 (www.un.org/womenwatch):

Cultural, ethnic and religious fundamentalism is on the rise in Fiji. This promotes conservative ideas and negative myths about women and their rights. Some traditional leaders, such as chiefs, religious leaders and community leaders, are reinforcing the view that women's roles should be restricted to the realm of domesticity. According to community research undertaken by FWCC, women who lay claim to their rights are often blamed for family breakdowns, and implicated as blameworthy should they be subjected to violence or sexual abuse within the family.

[62] As noted above at [47], traditional cultural and social practices permeate the legal framework through the constitutional recognition afforded them pursuant to Article 186 (1) and (2) and through the incorporation of traditional reconciliation practices into the prosecution sentencing of criminal offenders. By these means, women remain subject to a traditional hierarchy in which men exert dominance in the private sphere (including through domestic violence) and rely on traditional socio-cultural practices incorporated into the criminal law to deflect legal and criminal consequences.

[63] Accordingly, the Authority is satisfied that the appellant faces a real chance of being persecuted because she remains at risk of serious harm at the hands of her violent husband and state protection from such violence is not available at least in part because of the ingrained social attitudes to women in the state of Fiji. The appropriate Convention ground is therefore the appellant's membership of a particular social group, namely women.

[64] Accordingly, the framed issues are answered in the affirmative.

CONCLUSION

[65] For the above reasons, the Authority finds that the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"B A Dingle"

B A Dingle
Member