

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

**REFUGEE APPEAL NO. 73667/2002**

**AT AUCKLAND**

**Before:** D J Plunkett (Member)

**Representative for Appellant:** J Hikuwai

**Date of Decision:** 8 July 2002

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**DECISION**

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**INTRODUCTION**

[1] The appellant is a Thai national. This is his second refugee application, made within nine months of the first one. His second application, like the first one, is one of several hundred almost identical cases lodged with the Refugee Status Branch of the New Zealand Immigration Service and which, for the reasons given in *Refugee Appeal No. 72752/2001* (15 November 2001), are an abuse of the New Zealand refugee determination system. It is not intended in this decision to repeat those reasons. They are adopted for the purpose of this decision.

[2] The appellant arrived in New Zealand on 14 March 1999. The basis and procedural history of his first refugee application are set out in the decision of this Authority in respect of that application: *Refugee Appeal No. 72756/2001* (30 November 2001). An issue arose in that application concerning the language in which he would be interviewed as he objected to the Thai language, a language in which he is fluent. His second application was filed on 3 December 2001. The Authority notes that in his second completed application form, he has confirmed his fluency in the Thai language. A refugee status officer wrote to him on 5 December 2001 advising the acceptance criteria of second claims. His

representative replied on 10 December 2001 to say that the claim was based on significantly different grounds but providing no further information. He was interviewed by a refugee status officer using a Thai language interpreter on 24 January 2002. The officer issued a decline decision on 12 February 2002, leading to his second appeal to this Authority, which was made out of time.

[3] The Authority wrote to the appellant's representative on 12 June 2002, setting out its jurisdiction in relation to second claims and also advising that his appeal might be *prima facie* manifestly unfounded or clearly abusive and could therefore be determined without an interview. It was also noted that the appeal was filed out of time and he was invited to lodge an affidavit explaining why the time limit was not complied with, the facts of his substantive refugee case and identifying the special circumstances relied upon in this regard. His attention was drawn to the decision of the Authority in *Refugee Appeal No. 72752/2001* (15 November 2001). He was invited to comment on the issues raised in the letter and to provide any other evidence or submissions by 21 June 2002.

[4] There was no reply to the Authority's letter.

#### **JURISDICTION OF THE AUTHORITY TO DETERMINE THE APPEAL**

[5] The time limit for an appeal is 10 working days after notification of the decision; section 129O(3)(b) Immigration Act 1987. The decision on his second application was sent to the appellant, at his last notified address, on 12 February 2002. The Authority and the refugee status officer are entitled to rely on the address provided by the appellant; sections 129G(4) & 129P(3). The decision in this case was sent by recorded delivery, a form of registered post, and is therefore treated as having been received five working days after its despatch; R23 Immigration (Refugee Processing) Regulations 1999/285. His notice of appeal was received by the Authority on 25 March 2002. It was therefore more than two weeks after the statutory deadline.

[6] The Authority's jurisdiction to extend the time limit for lodging an appeal is stipulated in section 129O(4) of the Act. It must be satisfied that "special circumstances" exist. The Authority will consider *inter alia* the length of the delay, the reasons for the delay and the merits of the substantive appeal; see *Refugee Appeal Nos. 46/91* (19 August 1991) & *59/91* (19 May 1992) which, while dealing with the Authority's jurisdiction prior to the enactment of section 129O(4), set out

the relevant principles. An affidavit must be filed setting out *inter alia* the reasons as to why the time limit was not complied with and identifying the special circumstances; see the Authority's Practice Note 2/99 [26.3].

[7] In the event that the Authority finds that special circumstances exist, its jurisdiction in relation to second or subsequent claims is set out in section 129O(1) of the Immigration Act 1987:

"A person whose claim or subsequent claim has been declined by a refugee status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that circumstances in the claimant's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer's decision."

[8] In respect of this appeal, the relevant change of circumstances must have occurred since 30 November 2001, being the date upon which his first appeal was dismissed. The Authority notes that it may rely on findings of fact made by it in relation to his previous claim; section 129P(9).

[9] In determining any appeal, including assessing whether the jurisdictional criteria for second or subsequent claims are met, the Authority may dispense with an interview (pursuant to section 129P(5)) only if both:

- (a) The appellant or other affected person has been interviewed by a refugee status officer in the course of determining the relevant matter at first instance or, having been given an opportunity to be interviewed, failed to take that opportunity; and
- (b) The Authority considers that the appeal or other contention of the person affected is *prima facie* manifestly unfounded or clearly abusive."

### **THE APPELLANT'S CASE**

[10] The appellant's second application form and the accompanying "Statement of Circumstance" amount to a *pro forma* "Wat Thai/Thammagay Group" claim, identical or similar to hundreds of others filed with the New Zealand Immigration Service. He says he is Buddhist and a member of the Thammagay Buddhist Trust in Auckland. He is a voluntary worker for the "Wat Thai New Lynn". It is claimed that the Thai government has announced that the Thammagay group is:

"Unlawful in New Zealand and against all membership of Thammagay Buddhist group is illegal migrant scam in New Zealand."

He is also against:

“... the law of patriarch council and Buddhist clergy Act (*sic*).”

They consider there are:

“... not the human rights in Thai people under the religious freedom for woman (*sic*).”

He also stated he feared his life was threatened by Muslims.

### **ASSESSMENT OF THE APPELLANT'S CASE**

[11] The appellant has a responsibility to establish his claim (section 129P(1)) and he has not discharged that responsibility. There is no merit in this appeal. The following findings are made:

1. There are no special circumstances and leave to appeal out of time is refused.
2. The appeal is *prima facie* manifestly unfounded and clearly abusive. Accordingly, no interview will be offered.
3. In the event that such leave was granted, the Authority would find that there has been no relevant change of circumstances in the appellant's home country since 30 November 2001, the date of the Authority's decision on his first claim, let alone to the extent that this claim could be said to be based on significantly different grounds from the previous claim. It is apparent that the substance of his claim (an alleged fear of the Thai government and Muslims due to his Buddhism/Thammagay group membership) is indistinguishable from his first claim.

### **CONCLUSION**

[12] This appeal is dismissed.

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D J Plunkett  
Member