

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76443

AT AUCKLAND

Before: A N Molloy (Member)

Counsel for the Appellant: Ms Craven-McLeay

Appearing for the Department of Labour: No Appearance

Date of Hearing: 17 February 2010

Date of Decision: 22 April 2010

DECISION

[1] The appellant is a national of India. He has applied for refugee status, claiming that he will be seriously harmed if returned to India because he is suspected by the police of being connected with a group of Muslim terrorists.

[2] The appeal is from the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the appellant's application for refugee status. It turns upon the appellant's credibility, which is assessed following the summary of his claim which appears below.

THE APPELLANT'S CASE

[3] The appellant, a Hindu, is a married man in his early 40s. He was born and raised in Z, a small village within the state of Punjab. His wife, child and his mother still reside in Z.

[4] The appellant's predicament turns entirely upon his association with a family of Muslims who have lived in his village for many decades.

[5] From the early 1990s until mid-2008, the appellant spent most of his time living in the United Arab Emirates, where he obtained blue collar employment in order to support his family. Two of his brothers still live and work in Dubai.

[6] The appellant returned to India in mid-2008 with the intention of remaining there permanently. His problems began during a visit to the neighbouring home of a Muslim family with whom his family had been friends for some years. Some of the men from that family had been arrested by the police earlier that year, on suspicion that they were associated with terrorists.

[7] The appellant's visit was interrupted by the arrival of several police officers. He was arrested, along with four men from the family, and taken to a police station in the vicinity. The appellant was accused of supporting terrorists, and was kept in custody for a month. He was severely mistreated during that period.

[8] The appellant was eventually released when representatives of his village council paid a substantial bribe to the police. The appellant then went into hiding. He stayed with relatives and friends in Jalandhar, but had to keep moving because the police began looking for him again.

Departure from India and arrival in New Zealand

[9] In September 2008, while the appellant was hiding in Jalandhar, he saw an advertisement posted on a noticeboard by an agent, Abdul Kalam. The advertisement offered the opportunity to obtain a work permit and travel to New Zealand. By that time the appellant felt that he had to leave India for his own safety. A friend had approached officials in Jalandhar and Kapurthala on the appellant's behalf, in the hope of finding a resolution to his predicament. He met with no success. In that context, the appellant paid Abdul Kalam Rs600,000 to help him to come to New Zealand.

[10] The appellant was eventually able to depart India by air without difficulty and he arrived in New Zealand in late June 2009. It then became apparent that the job he had been offered did not exist and the appellant was left without any means of supporting himself.

[11] The appellant was one of almost two dozen Indian nationals who arrived in New Zealand at around the same time. He did not know any of them before they

arrived in New Zealand. Each has applied for refugee status on different grounds.

[12] The appellant lodged his application for refugee status in July 2009 after meeting a man called Kulwant Singh, a New Zealand citizen, who informed him about the process. After interviewing the appellant in September 2009 an officer of the RSB issued a decision declining his application on 29 October 2009. The appellant appeals against that decision.

[13] The appellant claims that he is at risk of being apprehended and seriously mistreated by the local police if he were to return to India. He does not believe that he could live safely anywhere else in India. He says because he can only speak Punjabi, he would immediately be the subject of suspicion anywhere he tried to settle, and that eventually news of his location would reach the Z police.

Material received

[14] Prior to the appeal hearing, the Authority received a memorandum of submissions under cover from a letter from counsel dated 2 February 2010.

THE ISSUES

[15] 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."

[16] 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 CREDIBILITY

[17] In order to address the issues as framed, it is first necessary to determine whether the appellant is a credible witness. For the reasons set out below, the Authority finds that he is not.

Inconsistent evidence

[18] At the core of this appeal is the appellant's claim that he was arrested and mistreated by the police because of his association with a Muslim family. He claimed that he was arrested once, in July 2008, along with several members of that family. However, the manner in which the appellant described that pivotal event to the RSB was inconsistent with his description to the Authority

[19] When describing his arrest to the RSB, the appellant said that four members of the Muslim family were arrested with him. However, the appellant told the Authority that only three men were arrested with him. More importantly, when asked to name the men, only one of the names he provided to the Authority matched the names he had given to the RSB.

[20] The appellant's entirely inadequate explanation for these discrepancies was that he had simply made a mistake. However he had claimed that the family to whom the men belonged were long-standing friends of his family, and he did not hesitate when naming the men to the Authority. In addition, this was the only time he was ever arrested.

[21] In the circumstances, it is implausible that the appellant would make such a fundamental error if he was truthfully recounting actual events.

[22] Other aspects of the appellant's account were also inconsistent. He told the RSB that the Muslim men in question had been arrested on several occasions and described this as an "ongoing issue" for the men. In direct contrast, he told the Authority that as far as he knew the Muslim men were only ever arrested once; at the same time he was arrested.

[23] The appellant also told the RSB that the other men were released from custody on the intervention of the village council. Yet he told the Authority that they remained in custody right up until the time he left India, some 10 or 11 months after their arrest.

[24] The appellant's claim that he had been detained by the police for one month also contradicted evidence he had previously given.

[25] Before his interview with the RSB, the appellant lodged a statement in which he outlined the problems which caused him to leave India in mid-2009. The statement records that the appellant was released by the police the day after he was arrested; in short, he was kept in custody for one day, not one month.

[26] When asked to explain, the appellant said that the statement must have been mistaken. However, he had already confirmed to the Authority that the statement was written on his behalf by an acquaintance who recorded the appellant's concerns as relayed by the appellant. He also confirmed that the statement had been read back to him in Punjabi before he signed it.

[27] The appellant could not properly account for any of these discrepancies beyond asserting that they were "mistakes". That explanation is rejected.

[28] There are additional factors which concern the Authority. The first is the fact that there is no obvious reason why the Muslim family were identified as terrorists, given that the appellant had never heard of any 'terrorist' activity in the area. Even taking into account the fact that the appellant spent many of the previous 15 years outside India, it is almost inevitable that such incidents, if they had occurred, would have arisen for discussion as his family and friends tried to make sense of the appellant's predicament.

[29] A further matter relates to the appellant's failure to give any consideration to returning to the UAE when he first got into trouble. If he was truly in fear for his life, it is extraordinary that he would not have considered such an obvious, familiar and apparently straightforward means of ensuring his own safety. The appellant had lived there for many years and had brothers who still lived there. He knew what steps he would have needed to take in order to return there and could presumably have pursued opportunities for work as he had in the past. In addition, the cost of obtaining a visa and going was, at approximately Rs50,000, a fraction of the sum he paid the agent to enable him to come to New Zealand.

[30] Instead, according to the appellant, he waited several months before deciding to pay a previously unknown agent a considerable sum of money (Rs600,000) in order to travel to New Zealand, an unknown country.

[31] It is also significant that the appellant told the RSB that Abdul Kalam helped him to obtain a visa which would enable him to work in New Zealand for seven

months. He said that he thought that things would have settled down by then so that he could return. When reminded of this by the Authority, the appellant could not explain why he had said this or why he might have expected his concerns to settle down in seven months, given that at the time he left India his problem with the police had already been ongoing for more than a year.

Summary of findings

[32] The appellant's account concerns a factually straightforward set of circumstances about which the Authority would expect his evidence to be relatively consistent. His inability to consistently recall these aspects of the core reasons for his predicament fundamentally undermine his credibility and his core account is rejected in its entirety. The Authority finds specifically that the appellant was not detained by the police in mid-2008 as a suspect of being a cohort of Muslim terrorists; it rejects his claim to have been mistreated in custody; it rejects his claim to have been pursued by the police subsequently, and it rejects his claim that he would be apprehended and mistreated by the police if he were to return to India.

[33] The only relevant aspect of the appellant's claim the Authority accepts is that he is a national of India from the Punjab and that he has a genuine Indian passport. It finds that the appellant departed India without difficulty and that there is no credible evidence that he is at risk of serious harm in India. The appellant does not have a well-founded fear of being persecuted in India for any reason.

CONCLUSION

[34] For the reasons mentioned, 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 N Molloy"
A N Molloy
Member