

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76440

AT AUCKLAND

<u>Before:</u>	M L Robins (Member)
<u>Counsel for the Appellant:</u>	R Chambers
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	15 March 2010
<u>Date of Decision:</u>	30 April 2010

DECISION

[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 India from the state of Punjab.

INTRODUCTION

[2] The appellant is a married man, nearly 50 years of age. He arrived in New Zealand in June 2009, having been granted a limited purpose visa to undertake agricultural work. The job offer was not genuine. He lodged his application for refugee status in July 2009. His application was declined by the RSB in September 2009. It is from this decision that the appellant appeals.

[3] The appellant claims that he has been detained and beaten by the Punjabi police on three occasions, in December 2007 and in April and June 2008. He asserts that the police accused him of giving money to Kashmiri/Muslim terrorists so that they could extort money from him. He believes that if he returns to India the police will resume their mistreatment of him. The essential issue to be determined in this appeal is whether the appellant's claims are credible.

THE APPELLANT'S CASE

[4] This is a summary of the appellant's case as presented to the Authority. It is followed by the Authority's assessment as to the credibility of that account.

[5] The appellant grew up in the Punjab, working on the family farm.

[6] In 1990, aged 29, he went to another country where he set up a business as a moneylender. He married his Indian-born wife there and had a son and daughter born there in 1993 and 1994 respectively. In 1995 the appellant's brother joined him in business there and in 1996 he gained permanent residence in that country.

[7] The appellant returned to India to visit his family four or five times until June 2006 when he and his family returned to live in India on a permanent basis. His brother remained overseas. Back in the Punjab, the appellant and his family moved into his childhood home where his mother still lived. The house was on the family farm which was worked by another of the appellant's brothers.

[8] The appellant opened a cattle-feed shop in a building beside the family home and started working there full-time. The people in the village thought he was relatively wealthy because he had a vehicle and a motorcycle. They assumed (correctly) that he had accumulated funds from his business overseas.

[9] Occasionally, the local police would arrive at the family farm and ask the appellant whether he was giving money to terrorists. He would say no and the police would leave. The appellant assumes that these enquiries were generated by somebody in the village who was jealous of the appellant and who was making false complaints about him to the police. He also thought the police made these accusations hoping he would bribe them to leave him alone.

[10] In December 2007, four policemen arrived at his house and arrested him. They were from the Kapurthala police station in the city of Kapurthala, about 16 kilometres from the appellant's village. The appellant estimated there were about 40 or 50 police officers stationed in Kapurthala and he did not know the identity of the four who arrested him.

[11] They took him to the Kapurthala police station where they beat him with sticks and made him lie on his stomach while they stood on a roller that was placed behind his knees. They accused him of giving money to Kashmiri/Muslim terrorists (no other details were given) and said "so you give money to us". The

appellant denied knowing any terrorists or giving money to any terrorists and said he would not, therefore, be giving any money to the police. He was kept in custody that night and was left alone the following day and the following night. He was released on the third day after the *sarpanch* secured his release by paying a bribe of Rs2,000-3,000. The appellant showed the Authority bruise-like marks on both of his shins which he said were caused when the police beat him with sticks.

[12] After the first arrest, the appellant continued to live at home and to work at his shop but whenever he saw a police vehicle approaching the village he would run across the fields and hide. Usually the police would question the *sarpanch* or the appellant's wife as to his whereabouts. Occasionally, he stayed in the fields all night although never more than three kilometres or so from the family home.

[13] In April 2008, five months after his first arrest, five police officers arrived at the house and took him to the local police station, about three kilometres away. These police officers made the same accusations as those levelled against him on the first occasion – that he was giving financial support to terrorists. They beat him and used the roller on him. He was kept in custody overnight and was released the next day after intervention by the *sarpanch*. The appellant is not aware whether the *sarpanch* had to pay any money to secure his second release.

[14] After this second arrest the appellant continued to hide on or near the farm whenever he saw the police approach the village. Then in June 2008 five police officers, again from the local police station, arrived at the house. They accused him of giving money to terrorists and arrested him. At the police station he was beaten and the roller was applied. He was released the following day after the *sarpanch* gave a guarantee that the appellant would behave himself.

[15] Shortly after this, the appellant saw a newspaper advertisement. A man by the name of AA was advertising for recruits to do agricultural work in New Zealand. The appellant wished to avoid the attention of the Punjab police and wanted to earn good money so he contacted the advertiser and, in August 2008, AA visited the appellant in his home to discuss this opportunity.

[16] AA explained that he required Rs700,000 as his fee for arranging the travel, the documentation and the employment. The appellant negotiated the amount down to Rs500,000 and borrowed the money from his relatives. In September, the appellant signed a number of documents at AA's request and in February 2009 AA brought BB (the New Zealand employer) to the village to introduce him to the appellant.

[17] In June 2009, after a limited purpose visa was issued by Immigration New Zealand, the appellant travelled from his village to New Delhi where he boarded an aircraft to New Zealand. When he arrived, he met other Punjabi men whose travel had been arranged by AA. They travelled to a small town ready to start work at the vineyard. There, they were told that their employer had closed down and there was no work for them.

[18] A few days later, a man by the name of CC – who the appellant described as “Mr Chambers’ lawyer” – arrived in the town and told the men that because their lives were in danger in India (because of their individual problems) they could, and should, apply for refugee status. He helped the men write their refugee statements and fill in their refugee application forms, all of which were duly lodged with the RSB.

[19] Shortly after arriving in New Zealand the appellant had telephoned his wife to let her know he had arrived safely. She told him the police had continued to visit the house looking for him. She said that although she had told them the appellant was in New Zealand they kept returning, asking where he was. The appellant believes that someone in the village is jealous of him and was telling the police that he had returned home. In this first telephone call, the wife also said that their daughter was too frightened to go to school because of the police attention and also because the relatives who had lent money to the appellant for his travel to New Zealand were pressuring the family to repay that money.

[20] Since his interview at the RSB in September 2009 the appellant has had many telephone discussions with his wife. She has told him that the police continue to visit the house and ask about him. Both children now attend school regularly but the relatives are continuing to press the wife to repay the money.

[21] The appellant said he was too frightened to return to the Punjab because the police will continue to harass and arrest him. He said he cannot live safely outside the Punjab because police in other districts will ask where he has come from and what is he doing living in this different place.

Submissions

[22] Mr Chambers relied on, and the Authority has considered, his written submissions filed on 24 February 2010.

THE ISSUES

[23] 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."

[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] It is necessary first to make an assessment of the appellant's credibility. The appellant's counsel, Mr Chambers, attended the start of the appeal hearing, leaving after the Authority made its introductory comments.

[26] After Mr Chambers' departure, the Authority asked the appellant whether he had met the other 22 Punjabi men who had arrived in New Zealand to work at the vineyard. He said they had all come together. The Authority asked whether some of them were from the appellant's village. He answered:

"The agent told a lie. He told us to say that and told us not to tell the truth. He told us to take refugee cases and took money from us. I don't wish to waste your time or my time. If you want me to go back, my visa expires in May. I am ready to go back to [the country in which I used to work]. I have a passport. I don't wish to waste your time. I have told the truth."

[27] The appellant continued:

"If you can get an affidavit for me so I can leave and go to the [other country]. The money is wasted now anyway. I don't wish to waste your time. We have been pushed around. The agent has wasted our money. You can do what you wish to do."

[28] The appellant showed the Authority his Indian passport. It contained a residence permit issued by the government of the country in which he had formerly worked.

[29] The Authority asked the appellant whether he had ever been arrested by the Punjabi police. He answered:

“Nothing. It is all lies.”

[30] The appellant said he was “taking it [his refugee claim] back because the case is all lies”. After clarifying that the appellant wished to withdraw his refugee claim, the Authority briefly adjourned. Upon resumption, the Authority provided the appellant with a “Withdrawal of Refugee Appeal” form and advised him of the consequences if he signed it – that the appeal hearing would finish, that the Authority would advise the DOL that he had withdrawn his appeal, and that the DOL may revoke his work permit.

[31] The Authority then offered the appellant an opportunity to contact Mr Chambers to seek advice, and permitted him to utilise the services of the Punjabi interpreter provided for the hearing to obtain that advice. The appellant responded that he did not wish to speak to Mr Chambers, that he was afraid of going back to India, that he had, in fact, been arrested by the Punjabi police, and that he wished to continue with his refugee appeal.

[32] The Authority then proceeded to ask the appellant questions about his refugee claim. His answers were vague, his manner evasive. For example, the Authority asked the appellant who “the agent” was, to which he answered “I don’t know”. When asked who made up the lies he said “it just happened”. When asked to explain why he had said that his case was all lies, he answered:

“What I meant was that all the agent said was untruthful in that he took money from us. By selling our land and jewellery we wasted money which I will try and earn so I can feed my children.”

[33] There were numerous inconsistencies between the evidence the appellant gave to the RSB and the evidence he gave to the Authority. For example, he told the RSB that he had been detained in December 2007 for two days but told the Authority it was three days. He told the RSB that he had been detained in April 2008 for one day but told the Authority it was for two days. He told the RSB the *sarpanch* had paid Rs2,000-3,000 on each of the three occasions to get him released. He told the Authority that the *sarpanch* had paid that amount only on the first occasion, that he did not know anything about the second occasion and that on the third occasion the only thing the *sarpanch* offered was his guarantee. His explanation for all these inconsistencies was that the events happened a long time ago and he was finding it difficult to remember them.

[34] He told the RSB that because of the ill-treatment he was forced to confess to the police that he was supporting terrorists but to the Authority he denied having ever made such a confession. His explanation for this inconsistency was “No, I did not make that statement [to the RSB]”.

[35] The appellant’s evidence was mobile in many respects. For example, he first claimed that when he saw the police coming he would hide on the other side of his shop. When the Authority questioned whether hiding on the other side of his shop amounted to “going into hiding”, the appellant said he would hide on the farm. When the Authority asked how the police failed to find him if he was hiding on the farm he said he would also hide on neighbouring farms but not further than three kilometres away. Later still, he claimed that he would hide a “long way” from the farm, implying that it was further than three kilometres (although he later denied this implication). Another example of the mobility of his evidence is that he first asserted that the second arrest occurred “at night time”. When later asked when the arrest occurred, day or night, he said he did not know. When reminded of his previous answer he said “Maybe it was night time”. The Authority was left with the clear impression that the appellant was spontaneously embellishing his account as he gave his evidence.

[36] The appellant frequently asserted, when giving his evidence, that the only reason the police were interested in him was because he was relatively wealthy and they saw him as a lucrative source of bribe money. He would then appear to remember the requirement for a political connection and would add that the police also believed he was supporting Muslim terrorists. He was unable to explain why the police would suspect him, a relatively wealthy Sikh, of supporting Muslim terrorists. Nor could he explain why the police could not or did not apprehend him when he was living and working on his farm in the 12 months between his last arrest in June 2008 and his departure for New Delhi in June 2009. The appellant appeared to be struggling to plausibly maintain a wholly fabricated account.

Conclusion on credibility

[37] The appellant admitted at the beginning of the appeal hearing that his entire case was lies and that he had never been detained by the Punjab police. In light of both this admission (notwithstanding its retraction) and his subsequent inconsistent, mobile and implausible evidence, the Authority concludes that the appellant is not a credible witness. The Authority does not accept that the

appellant has been of interest to the Punjabi police or that he has been arrested and detained in the manner he has claimed.

[38] The appellant has not established that he has a well-founded fear of being persecuted in India. The first issue framed for consideration is answered in the negative. It is unnecessary, therefore, to consider the second issue of Convention ground.

CONCLUSION

[39] For the reasons mentioned above, the Authority finds 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.

"M L Robins"

M L Robins
Member