

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

**REFUGEE APPEAL NO 76438**

**AT AUCKLAND**

<b><u>Before:</u></b>	M A Roche (Member)
<b><u>Counsel for the Appellant:</u></b>	R Chambers
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	8 February 2010
<b><u>Date of Decision:</u></b>	17 February 2010

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**DECISION**

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[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.

**INTRODUCTION**

[2] The appellant is a single man aged in his mid-20s. He arrived in New Zealand on 22 June 2009, having been granted a limited purpose visa on 18 June 2009 to work as a vineyard worker for a corporation in the upper South Island. The job offer from the corporation was not genuine.

[3] On 9 July 2009, the appellant claimed refugee status. He was interviewed by the RSB on 14 September 2009. His claim for refugee status was declined in a decision dated 23 October 2009, against which he appeals to this Authority.

[4] The appellant claims to have been detained and beaten by the Punjabi police on two occasions in 2007 and 2008 because the police wrongly suspected him of involvement with terrorists. He believes that should he return 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**

[5] What follows is a summary of the appellant's evidence. It will be assessed later in this decision.

[6] The appellant is from a village in the Punjab. His family owned a profitable farm. In addition to farming, his father was the leader of the village *gurudwara* (temple).

[7] After completing high school, the appellant attended college for a year in the city closest to his village. He did not complete his studies and for his adult life, prior to his departure for New Zealand, he worked on the family farm.

[8] In December 2006, a group of four travellers stayed one night at the village *gurudwara*. The appellant did not see these travellers but his father told him about them. He did not learn until later that the four travellers were Afghani Sikhs.

[9] Ten days after the travellers had spent the night at the *gurudwara*, the appellant's father was arrested by members of the police force stationed in the city closest to the village. He was taken to the city police station where he was beaten and questioned about the Afghani Sikhs who had stayed at the *gurudwara*. He was held for eight days. When he was released he was so badly injured that he was unable to walk. He was taken to hospital and died two days later of his injuries.

[10] In December 2007, the police arrested the appellant and detained him at the police station overnight. He was physically mistreated in police custody. He was hit with a weapon with a wooden handle, approximately 1.5 metres long, and a metal blade fixed to the top. The policeman using the weapon against him swung it over his head in an axe-like chopping motion. The appellant attempted to defend himself and was cut on his finger, his forearm, his thigh, his forehead and the back of his head. The metal blade snapped off the wooden handle of the weapon and the appellant was thereafter beaten with the wooden handle, receiving internal injuries. While he was being beaten, the policemen were asking him for information about the "terrorists" his father had assisted and insisting that he had more information about them. In the same cell, another person was being tortured by the police who were electrocuting him and cutting him and pouring salt into his wounds. The appellant was also beaten on the soles of his feet with a cane, leaving him unable to walk.

[11] The appellant was released following the intervention of his village *sarpanch* who contacted the local Member of Parliament who, using contacts, arranged for his release.

[12] The appellant received medical attention on a daily basis for a week after his release. His wounds were stitched and the doctor changed his bandages daily. He also gave him an injection and medicine to take for his injuries.

[13] In February 2008, the appellant was arrested for the second time. Again, he was taken and held overnight at the city police station where he was beaten and questioned about his knowledge of the Afghani Sikh terrorists his father had assisted. Once again, he was released following the intervention of the *sarpanch* and the local Member of Parliament.

[14] After his second release the appellant seldom stayed at home because he was afraid that the police would return for him. He initially stayed with one relative in a nearby village but over the next year and a half, shifted several times to stay with relatives because he was afraid of being found by the police. He did, however, visit his mother and stay overnight with her in the family home and visit the farm in order to give instructions to the labourers relating to the management of crops. He made these visits approximately every four to 10 days.

[15] In April 2008, the police visited the appellant's family home and asked his mother where he was. They also visited on one other occasion while he was still in India, but he is unable to remember the date.

[16] In September 2008, the appellant met with an agent in Jalandhar to make plans to travel abroad. He was fearful that his local city police would find him and mistreat him again and thought that if he relocated within India, he would be identified and information about him would be passed back to his local police. The appellant visited the agent on approximately four occasions to make arrangements for his departure. He signed papers for the agent and also attended a medical examination for his visa application.

[17] On 21 June 2009, the appellant departed India using his own passport without any difficulties and travelled to New Zealand. He arrived at Christchurch and was collected, along with a group of other Indian nationals, by a person who took them to Blenheim. He waited there for approximately one week, expecting that he would be starting work. However, after a week he was told there was no work.

[18] The appellant had a friend from India residing in Christchurch. This friend told him that he should see a lawyer and claim refugee status. The appellant travelled to Auckland and told an immigration agent there about his problems. The agent helped him make a statement and prepare his claim which was then lodged.

[19] The appellant has kept in regular contact with his mother since departing from India. In November 2009, she told him that the police had raided the family home searching for him. They threatened her and she paid them a bribe to make them go away.

#### Documents filed

[20] The appellant filed written opening submissions and various items of country information.

### **THE ISSUES**

[21] 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."

[22] 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

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

[24] The Authority did not find the appellant to be a credible witness and rejects his entire account for the reasons which follow.

*Identity and number of Afghani Sikhs*

[25] Early in his evidence the appellant stated that his troubles started when two Kashmiri Muslims came and stayed at his father's *gurudwara* in December 2006. He then corrected himself and said that they were Afghani Sikhs and that he had been making a mistake when he had said that they were Kashmiri Muslims. He reiterated, however, that there were two of them. The Authority then asked why at his RSB interview, he had said that there were four. He stated that he was having problems with his memory and that there were four of them. Towards the end of the hearing, he stated that there were three although, when asked, he corrected himself again and said there were four. He also said that his father had told them that they were bearded. Later, he stated that one had a beard and "the other two" were clean shaven.

[26] The appellant's inability to consistently recall the number and identity of the *gurudwara* visitors, who were central to his claim, left the Authority with the clear impression that he was having difficulty remembering the details of a fabricated account.

[27] In his evidence before the Authority, the appellant claimed for the first time that another prisoner had been present in his cell during his first detention and that this prisoner was tortured in his presence. When asked why he had not mentioned this in his written statement or at the RSB interview, he simply said that he had not been asked. The details of the appellant's cellmate's torture session given by the appellant were graphic and gruesome. Had he really witnessed this, the Authority would expect him to have raised it at an earlier point in the refugee claim process.

[28] In a similar vein, the appellant described his mistreatment to the RSB in terms of a beating. He claimed to have internal injuries but also a number of cuts from which he had a series of scars on different parts of his body. He told the RSB that the wooden implement he had been beaten with had a metal part on it. When the Authority asked him to draw and describe the implement he had been beaten with, he drew something that resembled a medieval weapon with a blade affixed on top of a wooden handle that he estimated was between one and a half and two metres in length. He described how the police officer had raised this

implement and swung it over the top of his head using a chopping motion, much as one wields an axe when chopping down on wood. He claimed to have received the various cuts on his finger, forearm, thigh and head when attempting to defend himself. He then said that the metal head broke off the implement and thereafter he was beaten with its long wooden handle.

[29] The Authority finds the appellant's evidence in this regard to be wholly unreal and finds that the appellant has concocted a story to match some minor scarring on his body which could have been obtained in any number of ways. The dramatic "axe" attack he described in his evidence bore little resemblance to the account of a "beating" he gave at his RSB interview. Furthermore, although the appellant was asked at his RSB interview about the nature of his mistreatment and the nature of the injuries that arose, he claimed for the first time before the Authority to have been beaten on the soles of his feet with a wooden cane rendering him unable to walk. Again, had this really occurred, the Authority would have expected the appellant to have given details about it at an earlier stage in the refugee determination process.

*Problems with the appellant's visa documents*

[30] The appellant's account was contradicted by three documents filed by him.

[31] First, there is the police clearance certificate filed in support of his visa application. This certificate, which is dated 3 October 2008 and includes a photograph of the appellant, states that there is nothing adverse against him as per the police record of "police station [name of appellant's city]". When asked how it was he was able to obtain a police clearance certificate if he was, in fact, wanted, and in hiding from, the Punjabi police, the appellant disavowed knowledge of the certificate which he said his agent had obtained.

[32] The appellant attended a medical interview in connection with his visa. The medical certificate filed recorded that his father had died suddenly a year and a half previously. This appeared to be at variance with the appellant's claim that his father died of injuries in hospital. When asked, the appellant claimed not to be able to recall why he had told the doctor that his father had died suddenly and suggested that perhaps that had been what his agent had told him to say.

[33] A death certificate for the appellant's father was filed in support of the appellant's refugee claim. The place of death recorded on the certificate is the appellant's village and not the city where the hospital where he claimed his father

died, is located. The appellant's explanation for this discrepancy was that the family had been very frightened and did not wish to have the manner in which his father had died recorded on the certificate and that in any case, the doctors and nurses at the hospital were in collusion with the police.

[34] Although it is possible for a "clean" police certificate to be irregularly obtained through bribery, the appellant's documents which provide information about the manner and place of his father's death clearly contradict his claim that his father died in hospital of injuries inflicted by the police. The Authority rejects the appellant's explanations for the disparity between these documents and his account.

#### *Timing of police attention*

[35] The appellant claims to have been arrested for the first time 11 months after his father's death, to have been released without charge having only been held for a single night, to have been re-arrested three months later and again questioned about the Afghani Sikh terrorists but released without charge the following day. He did not claim in his evidence to have been asked for a bribe and asks the Authority to believe that the police had a genuine interest in him. It seems implausible that, had the police genuinely suspected that the appellant was involved with terrorists or had information about them, that they would have waited for 11 months before questioning him, they would then arrest and question him again several months later, and, after he had been in hiding since February 2008 and left the country in July 2009, that in November 2009 they would suddenly raid his family home searching for him. The timing of the claimed arrests is a factor which suggests that the account is untrue.

#### *Appellant's presence at home and farm*

[36] The appellant also gave evidence that although he claimed to fear torture or worse at the hands of the Punjabi police, he regularly returned to his farm to give the labourers instructions on matters such as spraying pesticides on the crops and that, on these occasions, he would spend the night at his mother's home. Had he really feared the police, it seems unlikely that he would have kept visiting in this manner.

[37] Taking all the matters referred to above into account, the appellant's account is rejected in its entirety. It is not accepted that the appellant has been of

interest to the Punjabi police because of Afghani visitors to his father's *gurudwara* in December 2006. 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**

[38] 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 A Roche"  
M A Roche  
Member