

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76430

AT AUCKLAND

Before: A R Mackey (Chairman)

Representative for the Appellant: The appellant represented himself

Date of Decision: 14 December 2009

DECISION

[1] This is an appeal against a 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 Bangladesh.

INTRODUCTION

[2] The appellant arrived in New Zealand in November 2008 and lodged his first application for recognition as a refugee with the RSB in December 2008. He was interviewed in January 2009. That application was declined by the RSB in April 2009. His credibility was rejected in its entirety, apart from him being a national of Bangladesh. He then appealed to this Authority for the first time. In its decision, *Refugee Appeal No 76347* (6 August 2009), the Authority declined his appeal. He was not found to be a credible witness.

[3] Seven days after the Authority published its first decision, the appellant lodged a subsequent claim for refugee status with the RSB. He was interviewed on the second application by the RSB in September 2009. The RSB found that it did not have jurisdiction to consider the second claim on the basis that neither the

circumstances in Bangladesh, nor his grounds for the second claim, had changed significantly since the determination of his previous claim.

[4] On 20 October 2009, the appellant lodged this second appeal with the Authority.

[5] On 24 November 2009, the Authority, through its Secretariat, wrote to the appellant at the address he notified on his second application, stating that the Authority had reached a *prima facie* conclusion that his claim was 'manifestly unfounded and/or clearly abusive'. The appellant was given until 4pm on Wednesday, 9 December 2009 to present submissions responding to the matters raised in the Authority's letter. He was advised that following that deadline, the Authority, unless persuaded otherwise by evidence and submissions presented, may determine the matter on the papers only, without offering the appellant an opportunity of attending an interview with the Authority. No response has been received to the Authority's letter within the time set out in the letter. However, on 11 December 2009, the Authority received a request from the appellant to "give me one week time than I will submit my papers" (sic). No indication of any grounds was supplied. The Authority has considered the request but, in the light of the totality of the appellant's two claims and their assessment to date, finds no reason to extend the time. The extension is refused.

JURISDICTION OF THE AUTHORITY TO DISPENSE WITH AN INTERVIEW

[6] Under the circumstances, the Authority is permitted to determine an appeal on the papers without the appellant being given an interview. This arises under ss129P(5)(a) and 129P(5)(b) of the Immigration Act 1987 (the Act) where the appellant was interviewed by the RSB (or given the opportunity to be interviewed but failed to take that opportunity) and where the Authority considers the appeal to be a *prima facie* 'manifestly unfounded or clearly abusive' one. The Authority's general jurisdiction in this regard is examined in *Refugee Appeal No 70951/98* (5 August 1998).

[7] The letter from the Secretariat set out all the issues involved in a brief summary of the Authority's reasons for concluding that on the face of it, if the appellant returned to Bangladesh there would be no failure of state protection and thus this was a 'manifestly unfounded or clearly abusive' appeal.

[8] The letter from the Secretariat stated also that the appellant bore the

responsibility for establishing his refugee claim, pursuant to ss129P(1) and 129P(2) of the Act as further explained in *Refugee Appeal No 72668/01* (Minute No 2) (5 April 2002) and *Anguo Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA).

CONCLUSION ON WHETHER TO DISPENSE WITH AN INTERVIEW

[9] The appellant was interviewed by a refugee status officer on 28 September 2009. Despite being given the opportunity to submit reasons to the Authority that an interview with the Authority was necessary and could assist in establishing his appeal, the appellant has failed to make any such submissions within the time allowed and the Authority considers an extension is not justified.

[10] In these circumstances, the Authority will determine the matter on the papers without giving the appellant the opportunity to attend a further interview

THE APPELLANT'S CASE

[11] The appellant is in his late 20s. He claims he was born in Dhaka, Bangladesh. He is a single man. In both his first and second claim, the appellant appears to state that he was a supporter of the Bikoloa Dhara Bangladesh (BDB) party and he claims that he had been a "potential victim" of an attack on the Hotel Taj Palace in Dhaka.

[12] With the subsequent claim, he states that his circumstances have changed in Bangladesh because his family has had to pay a bribe to the police and that the murderers of his cousins were again actively trying to find him. This had been reported to him in a letter from his mother. The RSB, in its assessment of his second claim, noted that the letter from his mother appeared to be postmarked 15 September 2009 which, in the circumstances of the date originally scheduled for his interview with the RSB (which predated 15 September), appeared to set out another attempted deception and further undermined his credibility.

THE ISSUES

[13] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly 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, is unable or, owing to such fear, is unwilling to return to it."

[14] 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

[15] In the letter sent to the appellant, the Authority stated:

"In your second claim you now appear to have perpetuated your original claim in terms that are not substantively different from the original claim.

After your interview with the RSB, they declined your second application, finding that since the previous determination, circumstances in Bangladesh had not changed to such an extent that your subsequent claim was now based on significantly different grounds. They considered that your claim that the killers of your cousins were actively seeking you out again, merely repeated and provided additional evidence to your original claim which had been rejected by this Authority. Accordingly, they found no jurisdiction to consider your subsequent claim.

It is the preliminary view of the Authority that you do not have a valid basis for an appeal and, in the alternative, your claim, as presented, is clearly abusive or manifestly unfounded."

[16] As noted, the Authority has determined it will not interview the appellant and thus an assessment of credibility will not be made.

[17] Accordingly, the account presented by the appellant is accepted for the purpose of determining this appeal.

[18] At the outset, the Authority notes the provisions of s129P(9) of the Immigration Act 1987, which states:

"129P. Procedure on appeal—

(9) In any appeal involving a subsequent claim, the claimant may not challenge any finding of credibility or fact made by the Authority in relation to a previous claim, and the Authority may rely on any such finding."

[19] The Authority notes the complete rejection of the appellant's credibility in the first decision made by this Authority (*Refugee Appeal No 76347*). His second claim largely restates the original claim and thus, the Authority is placed in the position where, apart from accepting this appellant is from Bangladesh, there is no credible evidence upon which to consider the issues set out above.

[20] It is the responsibility of the appellant to establish his own case. The Authority considers that this appellant has not, at any point, established that he has a real chance of being persecuted on return to his home country. The appellant has available to him the same level of protection as all other Bangladeshi citizens in his home country.

[21] In this situation, the first issue is answered in the negative. It is unnecessary thus to proceed with consideration of the second issue.

CONCLUSION

[22] The Authority finds that 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 R Mackey"
A R Mackey
Chairman