

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76475

AT AUCKLAND

<u>Before:</u>	S A Aitchison (Chairperson) B A Dingle (Member)
<u>Counsel for the Appellant:</u>	R Chambers
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	18 March 2010
<u>Date of Decision:</u>	19 May 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.

INTRODUCTION

[2] The appellant claims to have been arrested, detained and physically mistreated by the Indian police because he has been linked with Muslim terrorists, and because of his status as a *panchayat* member in his village.

[3] The central issue to be determined in this case is whether or not the appellant's account is a credible one.

THE APPELLANT'S CASE

[4] A summary of the appellant's evidence in support of his appeal follows. An assessment of this evidence will follow later in the decision.

[5] The appellant is a married man aged in his mid-40s with two daughters and one son. He was born in Z village in Kapurthala District in the Punjab. He was raised in the Muslim faith, his family being the only Muslims living in the village. He is one of five children. His mother is deceased and his father continues to live in the family home with the appellant's wife and three children. Until some months just prior to his departure from India, the appellant always lived with his parents in Z village.

[6] For the purposes of this appeal, the appellant's early life was unremarkable.

[7] In 1985, having left high school three years earlier, the appellant began working as a taxi driver, driving taxis from the local taxi stand on a contract basis. He also worked as a casual farm hand.

First arrest

[8] In 1988, the appellant experienced his first difficulties with the police. His difficulties began when his eldest sister was taken forcefully by a Sikh man ("AA") from their village. This man returned to the village with her some 10 to 15 days later. The two had become legally married during their absence. The appellant's family complained to the police but they would not listen and took no action. The appellant considered it significant that the Badal government was ruling at this time.

[9] AA's brother then laid a false allegation against the appellant and some of his family members, including his mother, father, elder brother, wife, younger sister and her husband. The police, consequently, arrived at the appellant's home on 28 August 1998 and arrested his mother, wife and sister, the only persons at home at this time. The family were charged with "causing injury up to the bone" to AA's brother, allegedly attacking him at night *en masse*.

[10] When the appellant arrived home later that evening he was advised of the arrests by an elderly aunt who lived with the family, whereupon he fled for a period of three days. During this time he sought advice from the head of the village who advised him to present himself at the police station. Two persons from his village visited the station and arranged for the release of the appellant's mother, wife and sister, on the condition that the appellant present himself. Four days later the appellant surrendered himself to the police. The appellant's mother, wife and sister were released. His wife was held for a total of 14-15 days in jail. The appellant was detained for four and a half months in jail.

Second arrest

[11] In November 2006 the appellant experienced further difficulties with the police. The police accused him of transporting two persons in his taxi to his home and of having Muslim terrorist links. They arrested him and held him at the police station for two days. While held in detention the police twisted his arms, stood on his legs, chained his ankle, punched him and beat him with belts. The *sarpanch* paid a bribe of some Rs10-11,000 and secured the appellant's release. After this experience the appellant determined not to drive a taxi alone again and worked as an assistant in other taxis, acting as a relief driver on long road trips.

Third arrest

[12] In March 2007 the appellant was again arrested by the police and held in detention overnight. He was arrested on account of the poor character of a student ("BB") who associated with his son. BB had begun visiting the appellant's son at the family home in February 2007, and was reported to the police by his teacher. The appellant did not know what the issue was between BB and the teacher but thought that BB had probably threatened to kill the teacher. He also said that the teacher accused BB of using drugs. BB was arrested some four to five days prior to the appellant. The appellant was arrested because his son was underage and could not himself be arrested. The *sarpanch* again arranged for the appellant's release. Upon release from detention the appellant was told to inform the police if anyone visited his home in the future.

Fourth arrest

[13] In September 2007 the appellant was questioned by police about possible family connections in Kashmir. The police had arrested someone they believed was related to him. The appellant was arrested and held overnight at a police station. While in detention he was tortured, which involved having his arms and legs stretched. The *sarpanch* arranged for his release, and he was required to sign a document undertaking to report to the police any terrorists visiting his home.

Fifth arrest

[14] The appellant was further arrested in February 2008 and taken to the police station. A group of Muslim leaders had been visiting his house for five to six days to educate his children and the police considered them suspicious. The appellant

was transferred from the station to a policeman's house. He was released the following day. During this detention the police stood on his back, beat his leg with a baton, and threatened him with electric shocks. He was detained a total of two days.

Sixth arrest

[15] In June 2008 the appellant was arrested for the sixth time. Police visited his home and asked for his car. His wife told them that the appellant did not have a car, but drove a taxi for a living. The police then requested the taxi. The appellant was taken to the police station and held overnight. Upon release he went into hiding, staying at times with his sister and also with his in-laws.

Difficulties as panchayat member

[16] The appellant claimed that he was appointed a *panchayat* member in Z village, and has experienced difficulties with the police since 1991 as a result. He stated that many false allegations were laid against him on account of his holding the position of *panchayat* member. He did not know who was responsible. A First Information Report ("FIR") was filed against him before he left India for New Zealand. He produced a copy of the FIR, the first paragraph being in English, the rest in Punjabi. No translation was provided but the Authority was told that the FIR relates to a matter of theft, charging a group of accused, including the appellant. The appellant advised that the FIR has since been withdrawn against all accused except for the *sarpanch*.

Wife's ill-health

[17] The appellant stated that his wife suffered cervical problems and that she was taking prescription medication for this condition. He was the primary person responsible for taking care of her up until the time he departed India for New Zealand.

Arrival in New Zealand

[18] The appellant arrived in New Zealand on 6 July 2009. He lodged his claim for refugee status with the RSB on 9 July 2009. He was interviewed by a refugee status officer on 15 September 2009. By decision dated 21 December 2009 the RSB declined the appellant's claim. The appellant duly appealed to this Authority.

Other documents filed and representation by counsel

[19] Counsel for the appellant filed written opening submissions under cover of a letter dated 5 February 2010. Counsel appeared before the Authority on the morning of the hearing and excused himself following the introduction to proceedings. Counsel advised that legal aid had not been granted for the appeal and that the appellant would represent himself throughout the remainder of the hearing.

[20] At the hearing, the appellant produced two documents, including a FIR registered against him, dated 19 May 2009, and a medical prescription, dated 10 May 2009, for his wife.

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

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

Credibility

[24] The Authority does not find the appellant to be a credible witness and rejects his account in its entirety. His evidence is characterised by multiple inconsistencies going to the core of his claim. When provided an opportunity to explain these inconsistencies, he became vague, evasive, and his evidence grew mobile. He could not provide any convincing explanation for the discrepancies, leaving the Authority with the impression that he could not recall the details of a fabricated account, which continued to evolve during the course of the hearing.

[25] In addition, he raised a number of matters in evidence for the first time at the appeal hearing. He was unable to provide a proper explanation for not having previously raised these matters. These new claims were either vague, or laced with further inconsistencies.

[26] Detailed reasons for the finding that the appellant was not a credible witness are as follows.

New claims

[27] Before the Authority, the appellant raised an entirely new claim. He stated that a false allegation had been laid against him and other family members on 28 August 1998, leading to him spending four and a half months in jail. When asked why he had never raised this claim before he stated that he had tried to explain this to the RSB but they would not listen. When asked why he had not mentioned it in his Confirmation of Claim to Refugee Status in New Zealand he stated that he did not know how to lodge a refugee application. When the Authority put to him that he had mentioned in his statement that he was arrested five times in total but had not mentioned the new evidence which would make a total of six arrests, he merely stated: "The story was told. There was no other way of saying anything else".

[28] The new claim was itself characterised by multiple inconsistencies. For example, the appellant first stated before the Authority that he heard about the police allegation and then left home for a few days. When he returned home he found that his mother and wife had been arrested. Later in the hearing this evidence changed, the appellant claiming that he simultaneously heard about the police allegation and the arrest of his mother and wife, now with his sister included, when he returned home the same day of the arrests and learnt this news from an elderly aunt staying in the family home.

[29] The appellant also gave inconsistent evidence about the timeframe within which he presented himself to the police and was arrested. Initially, he stated that he had gone to the police station three days after the arrest of his mother, wife and sister on 28 August 1998 and was placed in prison. Later, he gave evidence that he was arrested on 3 September. When advised that this would mean that he presented himself to the police station some seven days after the charge was laid on 28 August 1998, the appellant continued to assert that he was arrested on 3 September. When this inconsistency was explored further by the Authority he stated that two villagers appeared at the police station three days after the police arrested his family members to arrange for their release, and that he was arrested seven days after the arrests.

[30] Further inconsistencies in the appellant's claim concern the period of time his wife was imprisoned. Early in the hearing the appellant stated that they were both imprisoned for four and a half months in jail. Later in the hearing this evidence changed, the appellant claiming that his wife was only detained for 14 to 15 days in jail. The appellant's only explanation for this inconsistency was to reaffirm that he had said that he spent four and a half months in jail, his wife only 14 to 15 days.

[31] The appellant also claimed for the first time before the Authority that he was a *panchayat* member, and that he had been targeted by the Indian police since 1991. He stated that many false allegations had been laid against him as a consequence of this position. When asked why he had never raised this matter before he attempted to divert the question by stating that the abduction of his sister was shameful and he had not produced evidence of this because he was ashamed. He stated that he did not know who was behind the difficulties he was encountering but that he believed they were because of his race and for not being financially well-off. He was not sure if someone was secretly making allegations to the police.

First arrest

[32] At his RSB interview, the appellant claimed that the police beat him with a baton during his first arrest. Before the Authority, however, he claimed that he was chained by the ankle and punched by police. Later in his evidence on appeal he added that the police twisted his arms, beat him with belts and stood on his legs. When asked to comment on the evolving nature of this account he stated

that he had mentioned that he was beaten and that he had simply answered what he had been asked.

[33] The appellant's explanation is unsatisfactory. He has had numerous opportunities and every encouragement to advance a fulsome account of his experiences, including an application form which sought explicit detail, a statement which could be as detailed as he wished, an RSB interview which, the Authority is satisfied from the officer's notes, repeatedly invited detail and, if that were not enough, the opportunity to comment on the officer's interview report in his own time and at such length as he wished. To assert that he simply "answered what he had been asked" belies the truth.

[34] The appellant gave further inconsistent evidence about the allegations made by the police at the time of his first arrest. At his RSB interview, the appellant claimed that the police had accused him of receiving visitors to his home, whereas before the Authority he said that the police were concerned with persons he was transporting in his taxi. When asked to explain the discrepancy he stated that the police asked about people in his taxi that he had brought to his home. The Authority finds that this explanation is a spontaneous attempt to mend a flaw in his evidence.

Second arrest

[35] The appellant gave vague evidence to the Authority concerning the cause of the police interest in him at the time of his second arrest. He began with an explanation that he was harassed by the police because his son's teacher had complained to them about one of his son's friends, BB. When asked by the Authority what interest the police had in BB, he stated that it was a personal issue between the teacher and BB. He then stated that he did not know what that issue was. When pressed by the Authority for a reason he stated that BB had probably threatened to kill the teacher. When reminded that, at the RSB interview, he had said that BB was suspected of being linked to drugs, he agreed that the teacher had accused him of this.

[36] At his RSB interview, the appellant claimed that upon release from detention the police told him to report whoever visited his home. When asked by the Authority whether he had been released with any instructions or conditions he responded in the negative. When reminded of his earlier evidence to the RSB he stated that he had forgotten this.

[37] Before the Authority, the appellant also claimed that the police had injured his leg during his second detention. When asked later in the hearing whether he had been physically mistreated during his second detention he stated that he had been threatened and sworn at only. When asked to comment on this discrepancy he denied having stated earlier that he had received an injury to his leg. He then added, confusingly, that police mistreatment is well-known and that he was punched and kicked in the head during his second detention.

Third arrest

[38] At his RSB interview, the appellant stated that, on his third arrest, the police had questioned him about alleged relatives who lived in Kashmir. To the Authority, he stated that the police had told him they had arrested a relative, and then questioned him about his alleged relatives in Kashmir. When asked why he had not mentioned the arrest of an alleged relative at the RSB interview he could only state that he had not been asked for these details.

[39] At his RSB interview, the appellant did not claim any mistreatment during his third arrest, but before the Authority he claimed to have been tortured, explaining that his legs and arms had been stretched by police. When asked to comment on the discrepancy between this and his RSB evidence the appellant responded that he had told the RSB about this torture. His explanation cannot be reconciled with the RSB record of interview however. Also inexplicable is his failure to address such an omission in his response to the interview report.

Fourth arrest

[40] At his RSB interview, the appellant stated that he was arrested and taken directly to a policeman's home and detained there. Before the Authority, he stated that he had been arrested and taken directly to Kapurthala police station. When the inconsistency was pointed out, the appellant attempted to reconcile these two diverse accounts by stating that he had been taken first to the station and then to the policeman's house.

[41] During the RSB interview, the appellant stated that the police mistreated him by hanging him up by a chain. Before the Authority, however, he stated that he was threatened with electric shocks, hit with a baton on his leg, and stood on by policemen. Reminded of his evidence to the RSB, the appellant could only respond that all police treatment is bad.

Fifth arrest

[42] The appellant told the Authority that he was arrested on the fifth occasion in July 2008. He provided the same details of this arrest – relating to assertions made by the police over a taxi – which he had provided to the RSB for his fourth arrest in February 2008. Similarly, the details that he provided to the Authority for his fourth arrest in February 2008 – relating to police assertions over Muslim guests in his home – he had provided to the RSB in connection with the July 2008 arrest. When asked to explain this discrepancy, he stated that he had not lied.

[43] At the RSB interview, the appellant stated that he was detained at the police station on this occasion for four to five hours, and then released upon the condition that he appear at the station again the next day. Before the Authority, however, he claimed to have been detained at the police station for two days. Invited to explain this discrepancy, the appellant responded that he had been held for five hours at the station then taken and detained at the policeman's home.

[44] To the RSB, the appellant stated that the police wanted to arrest him because he had given his taxi to the wrong persons. Before the Authority, in contrast, he stated that the police wanted to use his taxi for their own purposes. Confronted with his account to the RSB, he changed his evidence again and responded that he did not know what the police wanted his taxi for.

Other inconsistencies

[45] In addition to the credibility findings given above, other aspects of the appellant's account concern the Authority.

[46] The appellant produced his wife's medical prescription, dated 10 May 2009. When asked who had been taking care of his wife since May 2009 he responded that he had been taking care of her. It concerns the Authority that the period of his wife's poor health and the appellant's claimed care of her overlaps the very period of time that he alleged to be in hiding away from home.

Conclusions on credibility

[47] The concerns outlined above, taken cumulatively, lead the Authority to conclude that the appellant's claimed difficulties in India are untrue.

[48] The Authority does not overlook that the appellant has produced an FIR that has subsequently been withdrawn against him. The reality is that such documents are readily fabricated in India, as in many countries, for a fee. It follows that the weight to be given to such documents tends to follow the credibility of the appellant's account; see *Refugee Appeal No 71733/99* at [47]. Where, as here, the appellant has presented an account so replete with inconsistencies, implausibilities and other concerns that it is rejected in its entirety, the weight to be given to such a document is little. There is no reliable evidence before the Authority that the appellant has experienced difficulties at the hands of the police on account of being a *panchayat* member.

[49] The Authority accepts only that the appellant is a national of India who departed India on a genuine Indian passport without difficulties.

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to India?

[50] "Being persecuted" comprises two elements – serious harm and the failure of state protection; see *Refugee Appeal No 71427/99* (16 August 2000) at [67]. Further, the appropriate standard is a sustained or systemic violation of core human rights. See in this regard J C Hathaway *The Law of Refugee Status* (Butterworths, Toronto, 1993) at p108 and *Refugee Appeal No 2039/93* (12 February 1996).

[51] The evidence does not disclose that the Indian authorities have any adverse interest in the appellant. He does not face a real chance of serious harm if he returns to India. It follows that he does not have a well-founded fear of being persecuted there.

[52] The first issue having been answered in the negative, the second issue does not therefore arise for consideration.

CONCLUSION

[53] For the above reasons, 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.

"S A Aitchison"

S A Aitchison
Chairperson