

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

**AT AUCKLAND**

Application No 76189

**IN THE MATTER OF** An application pursuant to s129L of the  
Immigration Act 1987 to cease to  
recognise a person as a refugee

**BETWEEN** A refugee status officer of the Department  
of Labour

**APPLICANT**

**AND**

**RESPONDENT**

**BEFORE** B L Burson (Member)

**Counsel for the Applicant:** R Henshaw

**Representative for the Respondent:** The appellant represented himself

**Date of Decision:** 9 April 2008

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**DECISION**

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[1] This is an application by a refugee status officer in accordance with s129L(f)(ii) of the Immigration Act 1987 ("the Act") for a determination that the Authority should cease to recognise the respondent, who claimed to be a national of the Russian Federation when he was granted refugee status in this country in 1998, on the grounds that recognition may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information (hereinafter "fraud and the like").

[2] The Department of Labour (DOL) alleges that at the time of the determination of his refugee status in 1998, the respondent actually held Kazakh citizenship, whilst his refugee claim had been based on his Chechen/Ingush ethnicity (Russian citizenship) and fear of returning to the Russian Federation because of his Chechen origins and his past refusal to fight for Chechen independence. Subsequently inquiries made by the DOL of the embassy of the Republic of Kazakhstan identified that the respondent was indeed a citizen of Kazakhstan, who was born in Kokshetau, north Kazakhstan, in February 1961, and was issued with Kazakh citizenship in February 1992. As a result, his recognition as a refugee by this Authority may have been obtained by fraud and the like.

[3] It is further alleged that having subsequently obtained New Zealand citizenship by grant and a New Zealand passport, the respondent has left New Zealand and may be evading service of these proceedings brought by the DOL seeking, in effect, the cancellation of his refugee status.

[4] On 11 February 2008, the DOL lodged with the Authority an application seeking a determination that the Authority cease to recognise the respondent's refugee status. The Authority then attempted to serve notice of these proceedings on the respondent at all three addresses held on the files of the DOL, including the last known address. In a statement from the process server engaged by the Authority and sworn on 31 March 2008, the process server advised that on 7, 10 and 12 March, he called at all of the three supplied addresses without being able to serve the respondent. At one of the addresses, he spoke to the occupant who advised that he knew the respondent and had been involved in a business relationship with him importing cars into Kazakhstan, but had not seen him for over a year. The occupant advised he thought the respondent had returned to Kazakhstan.

[5] Before proceeding further, it is necessary for the Authority to determine whether the service requirements set out in s129S of the Act and Regulation 18 of the Immigration (Refugee Processing) Regulations 1999 (the Regulations) have been satisfied.

[6] In addition to the attempted service set out above, the Authority was advised that the Application Management System (AMS) of Immigration New Zealand records that the respondent departed New Zealand on 24 December

2007 and there was no record of his return.

[7] The Authority therefore concludes that it is highly unlikely that the respondent will be personally served or these proceedings brought to his notice at any address in New Zealand. Furthermore, the Authority is unaware of any recent address outside New Zealand to which notification of this application could be sent for the purpose of bringing it to the respondent's notice.

[8] Having noted all of the provisions of the Immigration Act in relation to the requirements for service of these proceedings, and following the detailed reasoning of the Authority in *Refugee Application No 75539* (29 June 2007), the Authority must now conclude whether reasonable steps have been taken to effect personal service. In this regard, the Authority notes the terms of the General Policy statement in s140 of the Immigration Amendment Act 1999 that the intention of the Act was to "strengthen the mechanism to manage the risks associated with migration" and that steps have been taken to effect personal service, not only at the address for service provided by the respondent to Immigration New Zealand but also to subsequent addresses notified to government departments. The Authority finds that the steps taken by the Authority in this case are reasonable.

[9] The Authority therefore concludes that in the present circumstances it has taken all reasonable steps to effect personal service and thereby has fulfilled its obligations to notify the respondent of these proceedings.

#### **DISPENSATION OF AN INTERVIEW**

[10] The Authority now turns to consider whether it may determine this application pursuant to s129P(6) of the Act, which provides:

**"129P Procedure on appeal —**

(6) Despite subsection (5), the Authority may determine an appeal or other matter without an interview if the appellant or other person affected fails without reasonable excuse to attend a notified interview with the Authority."

[11] Having taken all reasonable steps to effect personal service and to notify the respondent, the Authority has concluded that the respondent is a person who falls within the provisions of s129P(6) of the Act as a person who fails, without reasonable excuse, to attend a notified interview with the Authority. The Authority has therefore proceeded without an interview.

## **NATURE OF THE APPLICATION CONSIDERED**

[12] Pursuant to s129L1(f)(ii) of the Act, a refugee status officer may apply to the Authority for a determination as to whether the Authority should cease to recognise a person as a refugee where that status may have been procured by fraud and the like. The Authority has the function of determining such an application pursuant to s129R(b) of the Act.

[13] In considering an application for determination, there are two stages to the Authority's enquiry. First it must be determined whether the refugee status of the respondent may have been procured by fraud. If so, the Authority moves to the second stage where it must determine whether it is appropriate to recognise the person as a refugee. The determination will depend on whether the respondent currently meets the criteria for refugee status set out in the Refugee Convention. The Authority follows the jurisprudence set out in *Refugee Appeal No 75392* (7 December 2005) at [10]-[12].

[14] Given that these are inquisitorial proceedings, in the main, it is not entirely appropriate to consider the matter in terms of burden or onus of proof. Nonetheless, it is the Authority's view that in cancellation proceedings, it is the responsibility of the DOL to present such evidence in its possession by which it can responsibly be said that the grant of refugee status may have been procured by fraud. It is also the Authority's view that the term "may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information" is deliberately imprecise and signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion: *Refugee Appeal No 75563* (2 June 2006) at [20].

## **BACKGROUND TO REFUGEE STATUS**

[15] The respondent arrived in New Zealand in June 1997, together with his brother-in-law, AB. Both applied for refugee status at the airport. The respondent's application was declined by the RSB in January 1998. He then appealed to this Authority. After a hearing which took place on 7, 8 and 24 April 1998, a decision, published on 17 December 1998, allowed the appeal and granted refugee status to the respondent.

[16] In his refugee appeal before the Authority, which was heard jointly with that of AB, the respondent claimed that he was a widower in his mid-30s who had

originally come from north Ossetia, that his father, who was Ingush, had died of natural causes, and that his mother, an ethnic Chechen, had died in 1992. He further stated that his sister, together with his wife and daughter, were all victims of the Chechen war having died in a bombing raid on Grozny in early 1995. He claimed he had no other living relatives. He stated that his paternal grandfather had been a famous general under the Tsar and had been extremely well-to-do. A castle which was known previously to belong to his family remains in Chechnya. He also claimed that his surname or clan name was significant as it readily identified him should he return to Chechnya, which is part of the Russian Federation. His prediction was that on return, he would be arbitrarily detained by the Russian authorities or subjected to discriminatory treatment amounting to persecution from the local populace, given his Chechen origins. He also feared he would be persecuted for his refusal to fight for the Chechen independence freedom fighters during the Chechen war. He claimed there was a real chance he would be identified in all regions adjacent to Chechnya because of his surname which revealed his aristocratic family background and was well-known in the region.

[17] Significantly, although the respondent travelled to New Zealand on a Kazakhstani passport, he claimed to the Authority that this passport was false, obtained on his behalf by an acquaintance of AB while they were both temporarily in Kazakhstan in order to facilitate their onward departure for New Zealand.

[18] The respondent was subsequently granted a New Zealand residence visa, New Zealand citizenship and a New Zealand passport.

[19] As stated, he departed New Zealand in December 2007 and there is no record of his having returned.

### **RECOGNITION PROCURED BY FRAUD**

[20] In August 2007 the DOL made enquiries to the embassy of the Republic of Kazakhstan, relating to whether or not the respondent was a citizen of the Republic of Kazakhstan. A positive response to that enquiry was received. The embassy provided information from the documentary database of the population of the Republic of Kazakhstan, which included a photograph of the respondent and set out his full name.

[21] While some details, such as the passport number and date of issue differed

from that in the passport upon which the respondent arrived in New Zealand, the details of his place and date of birth are identical. Furthermore, the name given by the appellant was substantially the same as that on the official records – the only difference was that the official records included a middle name. The likelihood of AB's acquaintance coincidentally selecting the same date and place of birth for use in the claimed "false" Kazakh passport as appears in the genuine population database of the Kazakh authorities in respect of a different person bearing substantially the same name as the respondent is so improbable as to be implausible.

[22] It is therefore apparent that there is substantial basis for considering there exists some element of fraud in the respondent's claim to refugee status in this country and, in fact, he is not a Russian national born in Ossetia, but in fact a citizen of Kazakhstan born in Kazakhstan.

[23] In view of the above findings, the Authority is satisfied that the respondent did advance his claim to refugee status based on facts he knew to be untrue. The Authority therefore finds that the grant of refugee status to the respondent may have been procured by fraud and the like for the purposes of s129R(b) of the Act.

## **WHETHER THE RESPONDENT SHOULD CEASE TO BE RECOGNISED AS A REFUGEE**

[24] Having found that the respondent's grant of refugee status may have been procured by fraud or the like, it is necessary to move to the second stage, that is, whether the respondent currently meets the criteria for refugee status.

## **THE ISSUES**

[25] 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."

[26] 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?

[27] The Authority reiterates its findings that this respondent has apparently provided a completely false identity and that he has citizenship of Kazakhstan, not Russia. In this situation, his claim must be seen as manifestly unfounded, false, and lacking in credibility.

[28] Given a complete absence of evidence before the Authority to establish that the respondent now faces a real chance of being persecuted in Kazakhstan for any reason, the Authority finds that the first issue must be answered in the negative and the second issue accordingly does not arise. It is therefore appropriate to cease to recognise him as a refugee.

### **CONCLUSION**

[29] The following determinations are made:

- (a) The refugee status of the respondent may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information.
- (b) It is appropriate to cease to recognise him as a refugee.

[30] The application is therefore granted.

"B L Burson"

B L Burson  
Member