

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

**REFUGEE APPEAL NO 76329**

**AT AUCKLAND**

<b><u>Before:</u></b>	B A Dingle (Member)
<b><u>Counsel for the Appellant:</u></b>	D Mansouri-Rad
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Dates of Hearing:</u></b>	4, 5 & 6 May 2009
<b><u>Date of Decision:</u></b>	3 June 2009

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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 Nepal.

**INTRODUCTION**

[2] The appellant is a single man in his late 20s. He arrived in New Zealand in February 2008 and entered on a limited purpose visa which expired on 28 June 2008. He remained in New Zealand unlawfully and when identified later by New Zealand Police and Immigration New Zealand as an unlawful migrant in September 2008, he subsequently lodged a refugee claim.

[3] He claims that he has a well-founded fear of being persecuted by the Maoist Party in Nepal because he escaped from their custody in 2006, having been previously abducted by them to train in a camp in late 2005. He claims that since his escape in 2006, the Maoists and associated groups have been

continuing to search for him in Nepal, as recently as late 2008. He fears that if returned to Nepal he would be located by the Maoists, tortured and possibly killed.

[4] The determinative issue in this appeal is whether or not the appellant has presented a credible account.

[5] The appellant's appeal has been heard consecutively with the appeal of his paternal uncle, AA, with the consent of them both. The evidence of each of them is considered as evidence in each appeal. This procedure was proposed by the Authority and consented to by counsel for each of them, Mr Mansouri-Rad, because the arrangements for their travel to New Zealand were made together and there were various aspects of their appeals which were relevant to the other. Both the appellant and AA have had the opportunity to comment on any apparent discrepancies arising out of the evidence of the other.

[6] Furthermore, for the sake of expediency the evidence of the appellant's uncle, NN, was heard by the Authority during a single interview but is considered in relation to both the appellant and AA. Again, NN's evidence related to events which pertained equally to the appeals of the appellant and AA. This was explained to NN, the appellant and AA and consented to by each of them.

### **THE APPELLANT'S CASE**

[7] What follows is a summary of the evidence given by the appellant in the appeal hearing. The credibility of this evidence will be assessed later in the decision.

[8] The appellant was born in a rural area in the east of Nepal. While still an infant, he moved with his parents and older brother to live in Kathmandu. His two younger sisters were born once the family moved to Kathmandu. His father owned a grocery business which required him to travel between Nepal and India on a regular basis.

[9] The appellant completed 14 years of primary and secondary school education before he undertook further education intended to culminate in "A" level examinations. However, the appellant did not make sufficient progress and he left the course before sitting those examinations.

[10] From 2001 until September 2005, the appellant variously had periods of employment, further study and unemployment. For the purposes of this decision, that part of his life was unremarkable.

[11] In September 2005, as he walked in an inner-city area of Kathmandu, the appellant was approached by a group of Maoist men who encouraged him to join the Maoist Party. When the group approached the appellant, they gave no indication that they knew his identity or anything else about him. Having asked him to join them, the group then left the appellant and he continued on his way.

[12] Approximately one week later, when the appellant was walking in the same area, a stranger attracted his attention and told him that he was being called by someone else. When the appellant walked towards a van to see who wanted to talk to him, he was grabbed by 10 to 12 men and pushed forcefully into the van. The men belonged to the Maoist Party and all got into the van with him. They explained that he needed to join their Maoist group and that if he resisted their demands "it would be bad for him". The appellant was not aware of any of the group carrying weapons, although there may have been some hidden in the van.

[13] The appellant was immediately driven out of Kathmandu city in a northerly direction. They drove for approximately one hour at which point the van parked beside the road. The group then exited the van and walked with the appellant on a trail through the forest to a Maoist camp. The walk took approximately 30 to 45 minutes. Once there, the appellant was taken to see the chief commander of the camp, a man called TT. TT explained the rules and regulations of the camp and encouraged the appellant to obey them if he wanted to avoid serious consequences.

[14] The camp was approximately the size of a football field, all of which was enclosed within a brick wall of approximately 1.6 metres height. There was one two-storied brick building in the camp, the top floor of which was occupied by the senior camp commanders and the bottom floor of which served as sleeping quarters for the recruits and ordinary soldiers. For the next week, the appellant was required to participate in the training programme along with other recruits.

[15] During that first week the appellant became aware that at 5am every morning there was a change of the guards on duty around the camp, which resulted in a half hour period in which there were no guards on duty at all. The appellant decided to escape the camp at this time and did so after one week of

being detained there. Nobody saw him escape and he ran through the forest until he reached the road. There he waited for five minutes before being able to board a bus travelling into Kathmandu. The appellant did not need to pay a bus fare because he rode on the roof of the bus free of charge.

[16] After reaching Kathmandu city, the appellant first returned to his rented accommodation to make sure everything was in order there. He then went to see a friend of his, DD, who advised him that he should take a bus to India and that there would be one leaving the following morning. DD lent the appellant some money to make the trip to India. The appellant returned home and although very fearful that he may be located by the Maoists, he focused on his intended travel to India the next morning and decided to sleep the night in his own rented room.

[17] At about 4am of that first night following his escape, he was awoken by a group of Maoists breaking down his door and forcefully grabbing him. The Maoists were holding pistols and threatened him that if he did not accompany them, they would kill him. The appellant was transported back to the Maoist camp and obliged to walk again from the roadside park into the camp. A few minutes after beginning the walk, he tried to resist, at which point he was punched a couple of times, kicked and then dragged by the Maoists back to the camp.

[18] Once there, he was taken into a room in which the Maoists tortured people. His arms and legs were tied to a chair and he was beaten with sticks, metal rods and other implements until he became unconscious. When he regained consciousness, he found himself in another room with some of his wounds having been attended to. He had suffered lacerations to his head, eyes and knees and had wounds on his legs. It took approximately three months for the appellant to fully recover from his injuries, during which time he was required to do certain jobs around the camp such as washing clothes and dishes. When he did recover, he resumed the daily training regime for other soldiers and recruits.

[19] After approximately nine months of being at the camp, the appellant resolved to attempt another escape. Again he decided that he would leave during the half-hour period at 5am in the morning when no guards were on duty. He was aided in his escape attempt by some other camp recruits, one of whom gave him money. He scaled the perimeter wall and again made his way safely to the roadside. This time he had planned the escape specifically so that he could catch the bus to Kathmandu, which he did without difficulty. The appellant travelled to the central Kathmandu bus station where he purchased a bus ticket to a town on

the border with India. The bus departed soon after and when the appellant arrived at the border town, he walked across the border to an Indian town where he stayed the night.

[20] The following day, the appellant purchased a train ticket to Assam where he intended to stay with his uncle, KK. En route, he telephoned his uncle and explained his predicament and that he was coming to stay. His uncle agreed to the proposal and met him at the Assam train station.

[21] Within days of arriving at his uncle's house, the appellant rang his parents who informed him that the Maoists had come to their house seeking him. While staying in Assam, the appellant worked in the uncle's business in return for food and board.

[22] In May 2006, the appellant contacted the Maoist camp commander, TT, who had become a friend of his, to ascertain what danger he might face if he returned to Nepal. TT informed him that the Maoists would pursue him in Nepal and he would face serious harm as a consequence of his second escape.

[23] Throughout 2006 and 2007, the appellant also heard from his parents that the Maoists continued to seek his whereabouts during visits to their house.

#### Travel to New Zealand

[24] In early October 2007, the appellant received a call from another uncle, NN, who lives in New Zealand and who offered to sponsor the appellant to visit New Zealand to attend his son's wedding. The appellant agreed and they began making plans for the travel. The appellant was sent an application form for a Nepalese passport by his father and after filling out the forms, he returned them to his father, along with passport photographs. The appellant also arranged for a false employment document from an institution in Nepal because he believed that that would aid his success in receiving a New Zealand visa. The appellant was planning to travel to New Zealand, along with his father and AA, and all three had their visa applications considered together by the New Zealand Embassy in New Delhi, India.

[25] In mid-February 2008, the appellant left Assam and travelled by bus and train back to Kathmandu. He arrived in Kathmandu on 23 February 2008. The appellant did not stay at his parents' house because he feared being located there

by the Maoists and so he took lodgings in an hotel near the airport. However, he was required to sign some documents and send them by facsimile through to his father who was in Delhi trying to secure the visas for travel to New Zealand. So, for the purposes of signing those documents, he returned to his parents' house one morning for a few hours. He signed the required document, along with his uncle, AA, and, as a result, all three of the applicants were granted visas for New Zealand.

[26] On 25 February 2008, upon the visas being granted, the appellant's father immediately flew back from Delhi to Kathmandu.

[27] The following day, on 26 February 2008, the appellant and his father departed Kathmandu by air and travelled to New Zealand. Both travelled on their Nepalese passports. The appellant did not have any difficulty leaving Nepal. He arrived in New Zealand on 27 February 2008 and was issued with a limited purpose permit. His intention had always been to try to remain permanently in New Zealand because of his fear of being persecuted in Nepal and soon after his arrival in New Zealand he and his family began planning for that to happen.

[28] In March and April 2008, NN and the appellant's father travelled to Wellington to talk with the then Associate Minister of Immigration, the Hon Shane Jones on behalf of the then Minister, the Hon Clayton Cosgrove, about the situation in Nepal and why the appellant and his family members could not return there. They requested that the appellant, AA and the appellant's father be issued with work permits so that they could stay in New Zealand until the situation in Nepal stabilised. There was no final decision made by the Minister by the end of June 2008, at which time the appellant's limited purpose permit expired and he became an unlawful migrant in New Zealand.

[29] While still waiting for the outcome of their request to the Minister, the appellant and AA were stopped at a police checkpoint in September 2008. When police enquiries established that they had both overstayed their permits, they were taken to a police station and detained for three days. On the third day, they were taken to court where it was determined that they would be released on conditions that they reported weekly to a nominated police station in Auckland. They were given a further court date on which to appear.

Contact with people in Nepal

[30] Throughout 2008, the appellant kept in touch with his friend, SS, who continued to live in Kathmandu. SS reported that the Maoists were still looking for the appellant in Kathmandu. As recently as October 2008, SS informed him that the Maoists had visited his previous rented room to see if he still lived there. SS knew about this visit because he lived only two or three houses down the road from where the appellant had lived.

[31] The appellant also had contact with another friend in Nepal, DD, who is a friend of TT's (the Maoist commander) and was able to pass on information from TT about the appellant's likely predicament in Nepal should he return there. He spoke to DD most recently in December 2008.

[32] On 22 October 2008, the appellant lodged his confirmation of claim to refugee status form with the Refugee Status Branch. He was interviewed by a refugee status officer on 12 December 2008 and again on 22 December 2008. His legal representative was present at both interviews and he was interviewed in Nepali.

[33] On 3 March 2009, the RSB issued a decision declining his claim for refugee status. It is from that decision which the appellant now appeals.

## **NN'S EVIDENCE**

[34] As noted in the introduction, NN appeared before the Authority as a witness in respect of both the appellant's appeal and that of his uncle, AA, on 6 May 2008.

[35] NN is the appellant's paternal uncle and has lived permanently in New Zealand since the 1970's. In that time he has sponsored his mother (also the appellant's grandmother) and his sister to travel to New Zealand and attain permanent residence here. NN sponsored the appellant, the appellant's father and the appellant's uncle to travel to New Zealand on temporary visitor's visas in February 2008 to attend NN's son's wedding.

[36] NN's evidence focused on the process during 2008 through which he and the appellant's father attempted to secure work permits for the appellant, his father and AA by way of special application to the Minister. Put briefly, NN had requested the Minister to exercise his Ministerial discretion that work permits could be issued for the appellant and AA despite the fact that they had originally entered New Zealand on a limited purpose visa. NN had done so by petitioning the

Minister, both in writing and during a meeting in the Associate Minister's office. After some months of waiting, the Minister declined to allow work permits to be issued. However, NN maintains that while they waited for the Minister's decision they received informal updates from one of the Minister's office staff which gave them some hope that the work permits would be issued. NN explained that it was because the appellant and AA were hopeful of receiving work permits and thereby extending their stay in New Zealand that they did not lodge their claims for refugee status until October 2008.

[37] NN produced photographs of himself and the appellant's father during their visit to the Associate Minister's office.

[38] NN did not provide any detailed evidence as to the nature of the appellant's refugee claim. When asked what he (NN) knew of the claim, he simply stated that he understood it was related to problems with the Maoists but that he would leave it up to the appellant to give the details of his claim.

#### **FURTHER DOCUMENTS AND SUBMISSIONS**

[39] The Authority and the appellant have been provided with the file of the Refugee Status Branch, including copies of all documents submitted by the appellant at first instance. On 29 April 2009, in advance of the appeal hearing, counsel filed a memorandum of submissions on the appellant's behalf. Counsel also made oral closing submissions. The Authority has given consideration to all of this material in the determination of this appeal.

#### **THE ISSUES**

[40] 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."

[41] 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**

[42] The appellant was an unimpressive witness. His evidence was mobile, inconsistent and implausible to such an extent that no part of his account is believed. The Authority rejects the appellant's account in its entirety for the reasons which follow.

[43] In making these findings, the Authority notes the appellant's suggestion that his memory of true events is impaired as a result of the assault on him by the Maoists. No medical evidence on this point has been received by the Authority. This assertion is undermined by his lack of credibility as to his abduction by the Maoists. In any event, the Authority finds that a general memory impairment could not sensibly explain the extent of mobile and inconsistent evidence such as is outlined below.

[44] The decision now addresses specific credibility concerns in the appellant's account.

#### **First abduction by Maoists**

[45] The appellant told the Authority that he was approached once by the Maoists before being abducted. The first approach was while he was in the central area of Kathmandu. He was approached by a group of men and told that he should join the Maoist organisation. The men then left immediately and the appellant continued on his way. He claimed that his second interaction with them was approximately one week later and also occurred when the appellant was walking in a central city area, having just visited the vegetable market. It will be recalled that he says a stranger indicated to him that he was being called by someone and when he went over to talk to the person calling him, he was grabbed, forcibly pushed into a van and immediately driven out of Kathmandu to the camp. The appellant was not aware of any of the abductors possessing weapons during the abduction incident.

[46] His account of the first abduction given to the refugee status officer was markedly different. He told the refugee status officer that he was visited twice by Maoists and asked to join their organisation before the incident in which he was abducted. He said that on a third occasion, when he was at home one evening preparing his meal, a group of Maoists, some of whom were armed with pistols, came to his rented room and demanded that he join them immediately and go with them. The Maoists told the appellant that if he resisted their demands, they would kill him. The appellant duly went with them. He was transported out of the city by van and went with the Maoists to their camp.

[47] When asked to explain the discrepancy as to the location from which he was abducted, the appellant insisted that he had told the refugee status officer he was abducted from the street. He agreed that he had told the officer about being abducted from his home but stated that it was in relation to the event of his recapture after his first escape. The Authority does not accept the appellant's explanation because it is wholly contradicted by the written record of the account of his first abduction given to the refugee status officer. The relevant parts of the interview record are reproduced below:

- “Q: How many times were you asked by Maoists to join them?  
 A: The first instance they asked twice and a third time they warned me if I don't join they will kill me.  
 Q: Where were you the third time when the Maoists threatened to kill you if you didn't join?  
 A: It was at my place, where I lived separately from my parents.  
 Q: What did you do in response to that threat – on this 3<sup>rd</sup> time you were asked to join?  
 A: Everyone have a love for their life, I had to join their organisation.  
 Q: So, on 3<sup>rd</sup> time they asked and threatened to kill you you went with them?  
 A: Yes I did.  
 Q: Did the Maoists have weapons at the time?  
 A: Yes.  
 Q: What kind?  
 A: They were carrying pistols.  
 Q: Did they point pistols at you?  
 A: Simply threaten but not point pistol at me.  
 Q: When approximately month/year – 3<sup>rd</sup> time – go with them?  
 A: They asked me almost weekly, 1<sup>st</sup> week 2<sup>nd</sup> and 3<sup>rd</sup> week I joined the Maoist team. I think it was end of May, sorry September sorry, it happened in September 2005.

...

- Q: What happened 3<sup>rd</sup> time when you were forced to accompany the Maoists and were taken to their camp?
- A: That time at my home and they come to my home “if you don’t join we’ll kill you, also I come to know they have guns in possession so I was forced to follow them.
- Q: So you went with them – how did you get to the camp?
- A: Actually they were having a van, and they forced me inside and took me.
- Q: Any others as well at that time? On that journey to the camp?
- A: No, at that time I was alone.
- Q: Did you attempt to run or get help when they threatened you?
- A: That time I didn’t have chance to think, because of threats forced to enter the van, I was having feelings that they kill me if I make attempt to run away.
- Q: What time of day were you taken by Maoists and taken to their camp?
- A: It was at evening time approximately 6pm and at that time I was preparing my meal for the night.”

[48] The account given to the Authority is plainly irreconcilable with that presented to the refugee status officer. It is rejected.

[49] Strengthening that view, the Authority observes that on the second day on which the appellant gave evidence, and in relation to questions about how his friend, SS, knew he had been abducted, he momentarily reverted to the first version of his evidence, namely that the initial abduction occurred at his rented accommodation. However, when asked for further clarification he changed his evidence again and said that he was abducted from the street. The mobility in his evidence illustrates his confusion in recalling which account was now being presented as the “genuine account” and reinforces the view that the events claimed have been fabricated.

#### Maoists searching for the appellant and contact with friends in Nepal

[50] The appellant’s evidence as to whom he has been in contact with in Nepal since his second escape from the Maoist camp (in May 2006) was highly inconsistent. This evidence was core to his account because the appellant claims that it is through these contacts he has had news about his likely predicament on return to Nepal and ongoing attempts by Maoists to find him, as recently as late 2008.

[51] Initially, the appellant told the Authority that since he left Nepal in 2006, he has only had contact with his parents and two friends, SS and TT. He said that he contacted TT once, in April or May of 2006, to ascertain what his situation was

with regard to the Maoists. He stated he had no further contact with TT after that, had never heard any further news of him and was never given any further information by TT either directly or through a third party. He also confirmed that TT did not know and was never in contact with any of his (the appellant's) other friends or associates in Nepal.

[52] The appellant told the Authority that he had been in regular contact with SS since arriving in New Zealand in February 2008, using both telephone and email. In October 2008, SS had told him of a visit the Maoists made to the appellant's former rented room looking for him. He confirmed that SS did not know TT and that SS was not known by any other name. The appellant repeated his assertion that since his escape in 2006, he had not had contact with anyone other than his parents, TT (on one occasion) and SS.

[53] The appellant's evidence to the refugee status officer about contact with friends in Nepal was inconsistent in the following respects.

[54] First, he did not mention being in contact with SS at all since escaping Nepal or coming to New Zealand. When asked by the Authority to account for the omission to the refugee status officer the appellant simply stated that he forgot to mention him. When asked why he would forget the friend with whom he had had the most regular recent contact, the appellant then claimed that, since he arrived in New Zealand, he mostly had contact with family members and did not have much contact with SS. This explanation is in direct contrast with his evidence given minutes earlier that since arriving in New Zealand he had communicated with SS with "frequent emails and one or two times by phone". In any event, the Authority does not accept that the appellant would have failed to mention to the officer the contact he had with SS throughout 2008 had that contact genuinely occurred. He now claims that SS told him about the Maoists looking for him at his former home in October or November 2008, just weeks prior to his interview with the refugee status officer. It is implausible that, when asked repeated specific questions about contacts and the Maoists looking for him by the officer, he would have failed to recall this crucial evidence.

[55] Secondly, he told the refugee status officer about contact with another individual, DD, which he failed to recall in his initial account to the Authority. To the refugee status officer he claimed that he spoke to DD in approximately November 2008 about the likely situation should he return to Nepal. He told the officer that: DD knew the Maoists were looking for him; DD had information about

the Maoists from TT who used to inform DD about it; and, that TT and DD were friends and in regular contact, most recently in September 2008. DD and TT had also been in contact in June and July 2008 at which times DD had passed on the information to the appellant.

[56] When asked by the Authority to explain the differences in his evidence, the appellant could not give a sensible explanation and, in fact, undermined his evidence further. When the Authority reminded him that he had mentioned a person called DD to the refugee status officer, the appellant conceded that he had a friend called DD with whom he had contact but said that the contact was only while he (the appellant) was in India in 2006. He stated that he had not contacted DD since May 2006 and gave specific reasons for the break-down in communication (the appellant was busy and DD did not have his contact number). When the Authority then summarised for him the details of the evidence he gave to the refugee status officer (see [55] above), the appellant initially said “no comment”. When reminded that this was his opportunity to explain what appeared to be a significant discrepancy, the appellant simply stated that “I forget everything”. He then amended his evidence and said that DD and TT were childhood friends and that he had last had contact with DD in December 2008, contradicting his evidence given minutes previously that he had not communicated with him since 2006.

[57] The inconsistencies in the appellant’s evidence are irreconcilable. The evidence is rejected.

#### Appellant’s whereabouts prior to travelling to New Zealand

[58] In the course of making his refugee claim the appellant has given at least three inconsistent versions of events as to how he travelled from India to New Zealand via Nepal in February 2008.

[59] In his statement (dated 8 December 2008 and submitted in advance of the RSB interview) he stated that he went with his father to Delhi in mid-February 2008 where he collected his passport and visa. He then states that “straight away I arrived to Kathmandu Airport and headed to New Zealand from a flight”. This narrative was adopted in his first RSB interview where his evidence is recorded in the interview report as follows:

“On 25<sup>th</sup> [February] I was in Delhi, and straight away went straight to the airport – it was 8 o’clock am; and we caught night bus that time and we arrived at

[Kathmandu] airport on morning of 26<sup>th</sup>, have to catch flight at 12 o'clock and wait inside airport for 4 hours where there was full protection of policemen."

[60] In other words, the appellant claimed to have travelled from India to Nepal only so that he could fly out immediately from the Kathmandu airport. He also claimed to have remained in Kathmandu only for a matter of hours and within the protective confines of the airport.

[61] In his second interview with the refugee status officer, the appellant changed his evidence and conceded that he had been in Kathmandu for two days prior to his departure for New Zealand on 26 February 2008. This change in evidence was to explain how he had personally signed and sent a facsimile document (on file), along with his uncle AA, from a communications centre in Kathmandu on 25 February 2008. Notwithstanding the change in evidence, the appellant maintained that he did not visit his parent's house for fear that the Maoists would locate him there. When asked by the officer to explain the false evidence provided in his statement and in the first interview, the appellant simply stated that he had "forgotten at that time".

[62] Both the first and second versions of events were inconsistent with evidence presented by the appellant's uncle, AA, to the Authority. AA said that he had visited the appellant's parents' house on 25 February 2008 to enquire as to how the visa applications were proceeding. He said that the appellant was present at the house and they went from the house to the communications centre to send the required documents back to the appellant's father in Delhi. When the appellant gave his evidence to the Authority (a day after AA's evidence was given) he changed his evidence again (from the versions above) and said that he had visited his parent's house to sign the documents. When asked why he would take such a risk when he could just as easily have arranged to meet AA elsewhere the appellant said he had to go there because his parents' told him to. When asked again, he said he had no option but to go. The appellant then said he had to go home because his father was too sick to leave the house. When reminded that his father had in fact left the house to fly to Delhi and collect the passports and visas, the appellant changed his evidence again and stated that he had to sign the documents there. Again the Authority suggested that the documents could have been signed anywhere, such as in the communications shop, at which point the appellant said he "had to go and see his parents".

[63] The appellant's evidence was so inconsistent, mobile and implausible that it is wholly rejected. His constant attempts to mend flaws in his evidence by presenting a series of invented explanations simply served to underline the fabricated nature of the account. He could give the Authority no more compelling reason as to why he had presented two different accounts previously, one in his first RSB interview and another in his second interview. It is the Authority's view that the only plausible explanation is that the appellant is giving completely fabricated evidence and is unable to recall his lies accurately or align them sufficiently with the evidence of AA.

[64] The Authority also notes that another document on the file was signed by the appellant and sent by facsimile to the New Zealand Embassy in Delhi from Kathmandu on 11 December 2007. Asked why he did not send the document from India (where he claims to have been living at the time), the appellant suggested he did not have the money to send the facsimile and so he posted the document to his father in Kathmandu who then sent it through to the Embassy on his behalf. The Authority finds that this is a facile attempt to explain how the document containing his signature was sent from Kathmandu in early December 2007 when he claimed to be in Assam. The documents in the appellant's file, considered in light of the other credibility concerns, give a strong indication that the appellant was himself in Kathmandu in December 2007 and February 2008. This view also accords with the appellant's Confirmation of Claim form where he describes how he applied for and received his passport in Kathmandu in late 2007. He later changed his evidence to the refugee status officer by stating that his father made the application in Kathmandu for him, presumably to align with his claim not to have been in Nepal at the time. The Authority finds that the appellant was living in Kathmandu in late 2007 and early 2008 and going freely about his business preparing for travel to New Zealand.

#### Other credibility issues

[65] A number of other credibility concerns arose in the appellant's evidence, including the following:

- (i) He claimed to have returned to his rented accommodation after having escaped from the Maoist camp despite fearing they would locate him there and conceding that that was the first place they would look for him. He could give no sensible reason for not having stayed with a friend or gone into hiding somewhere else.

- (ii) He could not provide a sensible explanation as to how the Maoists knew where he lived in Kathmandu when they had (in his latest version of the account) abducted him from a city street. When asked, he suggested that “they got the information from other people”. In clarification, the appellant suggested that everyone in that area of the city knew everyone else, impliedly asserting that therefore they could have asked anybody where his room was and received the information. Not only does the Authority find this implausible in a city where the population density is almost 10 times that of central Auckland, it contradicts the appellant’s own evidence that he did not know the names of the other individuals who rented rooms beside him in the ground floor of the house.
- (iii) When asked why he did not attempt to contact his parents after his first escape, he claimed that SS had actually witnessed his abduction and so his parents already knew that he was with the Maoists. This fails to explain why he did not contact them and tell them he had escaped. Furthermore, in the course of giving the explanation the appellant first said that SS was at his (the appellant’s) home when he was abducted and then amended his evidence to say SS was at his own home at the time but that somehow he nevertheless witnessed the abduction on the street. He could not explain this mobility in his evidence.
- (iv) The appellant could not sensibly explain why, having successfully escaped from the Maoist camp at 5am the first time, the Maoists continued the practise of leaving the camp unguarded for approximately half an hour at 5am every morning, thus allowing the appellant to escape in the same way a second time. The Authority finds it is yet another implausible feature of his false claim.
- (v) It is also implausible that the appellant was able to develop and maintain a friendship with TT, a Maoist commander, when he had twice escaped from the camp and had betrayed the Maoist cause by leaving them and departing Nepal. His claim to have received information from TT via DD throughout 2008 relating to his risk from Maoists is a fanciful notion which underlines the false nature of the appellant’s evidence.

#### Medical evidence



[66] Finally, it is necessary to refer to the medical evidence. The findings of Dr Wansborough as to the appellant's various scars are not controversial and the Authority has no doubt that the appellant bears such scars. Dr Wansborough's report, however, does not presume to do more than note the presence of such scars and suggest that they are not inconsistent with the appellant's claims as to how they were acquired. It is not, and could not be, determinative of the manner in which such scars were acquired. Given the credibility findings noted above, no weight is placed on the medical evidence.

### **CONCLUSION ON CREDIBILITY**

[67] Throughout the processing of his refugee claim, including the appeal hearing, the appellant's evidence has been so mobile, inconsistent and, at times, implausible that the Authority has no hesitation in concluding that it is a complete fabrication. The appellant's attempts to explain inconsistencies inevitably led to yet more inconsistent evidence being presented, often contradicting what had been claimed only moments before. The appellant's fictional account is undoubtedly a final attempt to remain in New Zealand, when all other alternative immigration possibilities have been closed off.

[68] For all of the above reasons the Authority rejects the appellant's account of having been abducted by Maoists, escaped their custody and fled Nepal for India. There is no credible basis on which the appellant can be said to have a well-founded fear of being persecuted should he now return to Nepal.

[69] Therefore, the first issue framed for consideration is answered in the negative and the second issue framed does not arise for consideration.

### **CONCLUSION**

[70] For the reasons listed above, 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.

"B A Dingle"  
B A Dingle  
Member