

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

**REFUGEE APPEAL NO 76439**

**AT AUCKLAND**

<b><u>Before:</u></b>	B A Dingle (Chairperson) S Aitchison (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>	9 February 2010
<b><u>Date of Decision:</u></b>	15 March 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 married man in his mid-30s with two children. He arrived in New Zealand on 28 June 2009 and was issued with a Limited Purpose Visa valid until 28 January 2010. His application for recognition as a refugee was lodged with the RSB on 9 July 2009 and he was interviewed by them on 15 September 2009. The RSB declined his application for refugee status in a decision dated 23 October 2009. It is from that decision the appellant now appeals.

[3] The appellant's claim is made on the grounds that if returned to his home state of the Punjab, he will be subjected to ongoing harassment, arrest, detention

and physical mistreatment from the Punjabi police because they suspect him of involvement with Kashmiri militant groups. The appellant also claims that he cannot relocate to another part of India because he will come under immediate suspicion as a Punjabi living outside the Punjab and his identity and profile with the Punjabi police will then become known.

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

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

[5] What follows is a summary of the evidence given by the appellant in support of his refugee appeal. The credibility of the evidence is assessed later in the decision.

[6] The appellant is one of three children born to Sikh parents in the state of Punjab. His parents remain living in the family home in Z village. The appellant's father is a farmer and his mother is a housewife. The family have traditionally been involved in agriculture and own their own farmland from which they make a living. The appellant's brother and sister have both emigrated from India - his sister to the United Kingdom and his brother to Australia.

[7] The appellant attended school for approximately 10 years and completed his matriculation.

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

[9] After completing school, the appellant initially went farming. In 1995, he decided that he would establish a textile business in nearby Y town. He had a friend, AA, who knew something about textiles and he decided that this would be a good business to go into. His father lent him some capital to establish the business and he went about renting premises and obtaining a business licence.

[10] The appellant had two premises which he utilised for his business. One was the "store" which was a small warehouse where the shipments of textiles were delivered and from where they collected material once it was required for sale. The other was the "shop" which was the retail location where the textiles were sold to the public. The appellant employed one man (AA, who knew about textiles) for

the full 15 years of operation and employed a second man, BB, from approximately 2005. BB was a Muslim from Kashmir who had expertise in woollen textiles and retail sales.

[11] The appellant's business operated from 1995 to 2006 without any incidents of relevance.

[12] In December 2006, the appellant was arrested for the first time. The police were alerted to a textile delivery being made and they arrived at the store to inspect it. They found three pistols wrapped in bolts of cloth. The appellant was arrested and detained in the local police station overnight. He told the police he knew nothing about the weapons and he had no idea who had arranged for their delivery. AA was also questioned by police but was not detained. The appellant had no suspicions that AA was involved at this time.

[13] Throughout 2007 the police continued to visit his shop and store to inspect some of the textile deliveries. In November 2007, the police raided his shop and detained the appellant for four hours at the police station during which time they questioned him about deliveries. Once they had searched the store and found nothing, they released him.

[14] In January 2008, the police arrived at his shop and made an inspection. They found some empty cardboard packaging on which they identified a white substance that they claimed was ammunition powder. The police alleged the appellant had received a delivery of ammunition and possibly weapons and accused him of links with Kashmiri Muslim militant groups. They arrested the appellant and AA. The appellant was beaten and interrogated at the police station. After approximately three days, he was released when his village *Panchayat* and family paid a bribe of Rs30,000. The appellant does not know what happened to AA as he never saw him again.

[15] Subsequently, the police searched the appellant's premises approximately once a week. They continued to accuse him of having links with Kashmiri militants although no further evidence was found and he was never formally charged. As a result of the raids, the appellant's business began to suffer because clients did not want to visit the shop.

[16] In August 2008, the appellant saw an advertisement for an agent, CC, who could arrange for people to be sent overseas. The agent explained how he could

obtain a work visa for New Zealand for the appellant. The appellant agreed and the agent arranged all the documents and application forms to be completed, including a police clearance certificate. The appellant arranged for his own medical documents.

[17] In December 2008, the appellant decided to close his textile business due to the ongoing police harassment. To avoid the police, he went into hiding with relatives until he left India. The police visited his home several times each month to look for him, at which time they told his family that they thought he had joined Kashmiri militants either in the Punjab or in Kashmir.

[18] On 18 June 2009, the appellant was issued with a Limited Purpose Visa by Immigration New Zealand ("INZ").

[19] In late June 2009, he boarded a bus from Jalandhar to Delhi, from where he legally departed India. While at the airport, he was introduced to a number of other Punjabis who were also travelling to New Zealand. He did not ask their names and had never met them before.

[20] The appellant arrived at Christchurch International Airport on 28 June 2009. On arrival he was told that the arranged employment was no longer available and he was transported, along with other Punjabi arrivals, to Blenheim. By chance while he was there, he met a New Zealand resident of Punjabi origins, Kulwant Singh, who advised the appellant to claim refugee status.

[21] On 9 July 2009, the appellant lodged his claim for recognition as a refugee. He was interviewed by the RSB on 15 September 2009 and a decision declining his claim was issued on 28 October 2009.

[22] Since he has been in New Zealand, the appellant has had contact with his family in the Punjab who inform him that the police continue to visit and ask for news of the appellant. The police still think he is actively involved with the militants in the Punjab or Kashmir.

[23] The appellant fears that if he returns to India he will be arrested and detained indefinitely by police because of his alleged links with the militant groups. He says that he will suffer beatings, interrogations and severe mistreatment with no realistic prospect of defending those charges or being able to live a normal life. He claims that he cannot relocate to another part of India because he will be identified as an outsider and upon further investigation, his police record will

become known to the local police who will send him back to the Punjab.

Further documents submitted

[24] Counsel filed written opening submissions accompanied by country information on 3 February 2010. He also submitted a map of the relevant area of the Punjab at the opening of the hearing. These documents have been considered in the determination of the appeal.

**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?

**ASSESSMENT OF THE APPELLANT'S CASE**

**CREDIBILITY**

[27] The Authority finds that the appellant has not given a credible account as to his claimed difficulties in India. His account was marked with inconsistencies and implausibility to the extent that none of the evidence is accepted. The specific reasons for this finding follow.

First arrest

[28] The appellant told the Authority that his first arrest in December 2006 occurred at his store which he had previously explained was the warehouse space

for his business where shipments of textiles were delivered before they were then transferred, piece by piece, to the retail shop. In contrast, he told the RSB that he was arrested from the shop. When asked to explain the inconsistent evidence, the appellant told the Authority that the distinction between the store and the shop was not clear at the RSB hearing and that when he said “store” in his evidence there, they may have recorded that as “shop”. The transcript of the RSB interview, however, clearly indicates that the appellant had distinguished between his shop and his store and the rest of the transcript indicates that that distinction was maintained throughout the interview. The Authority finds that the inconsistent evidence is not the result of confusion at the RSB interview, but rather indicates that the appellant has been unable to recall his fabricated account.

[29] The appellant also gave inconsistent evidence about where the police searched the delivery van. To the Authority, he said that the police search occurred at his store while he (the appellant) was present. He told the RSB, however, that the delivery van was searched at a police checkpoint. When asked to explain the discrepancy, he stated that he had told the RSB about a police checkpoint which was located close to his store and he asserted that he had told the RSB the van was searched at the store. However, the appellant’s assertion does not explain why he confirmed at the RSB interview that his van was stopped and checked at a police checkpoint.

[30] With regard to his employee, BB, the appellant told the RSB that, during his first detention, he told the police that he suspected BB might have something to do with the smuggled weapons and that was why the police then questioned BB about the incident. In contrast, the appellant told the Authority that he did not suspect BB at that time and that he did not suggest to the police that he might be involved. When asked to explain the difference in his evidence, the appellant told the Authority that even now he has suspicions of BB but he did not have suspicions of him at first and that they developed later. This does not, of course, explain why he would have told the RSB he mentioned BB as a suspect on his first arrest.

### Second arrest

[31] The appellant told the Authority that at the time of his second arrest, the police first searched the shop and then they went and searched the textile store. In contrast, he told the RSB that the police searched just the shop. When asked to

explain the inconsistent evidence, the appellant stated that during his RSB interview, when he said they searched the shop, he meant both the shop and the store. He told the Authority that he was not asked to be as specific during the RSB interview as he was in the appeal hearing. However, his evidence to the RSB was clear and unequivocal and cannot sensibly be interpreted in the manner the appellant suggests. The record of the RSB interview is as follows:

- “Q: Arrested in December 2006, did you have any more problems with the police?  
A: Again police arrested me in 2007.  
Q: When arrested?  
A: November.  
Q: What happened?  
A: After 2006 the police started keeping a watch over the shop. And they raided the shop in November 2007 and arrested me. First they arrested me and then they carried out a check of the shop. They didn't find anything from the shop except the cloth and after checking they released me.”

[32] As noted above, early on in the RSB interview the appellant had distinguished between the shop and the store. If the appellant had intended to tell the RSB that the store was also searched, he could easily have done so.

### Third arrest

[33] The appellant told the Authority that when the police arrived to search his shop before the third arrest, the cardboard packaging at issue had been completely emptied of clothes and textiles and was simply lying on a table, empty, ready to be discarded. He confirmed to the Authority that earlier that day he had completely emptied the package himself and there was nothing left in it. In contrast, when he explained the event to the RSB, he is recorded as stating the following:

- “The bundle was lying, they took out the gloves and mufflers, out of that packet they said that the powder was on the parcel that's why this parcel must be containing the powder because of this only they arrested me. ...”

[34] The RSB interview record clearly shows the appellant's evidence that the package was still containing gloves and mufflers at the time the police inspected it. He had no sensible explanation for this discrepancy.

### The agent

[35] The Authority also finds the evidence as to the appellant's use of the agent to be inconsistent with the documentary evidence relating to his visa application which is on file.

[36] When first asked by the Authority about the agent, the appellant asserted that the agent had prepared all the documents and acted as an agent with INZ in all matters. When asked whether the appellant himself had any direct contact with INZ in relation to the work visa application, the appellant answered "No". When initially asked whether INZ ever sent letters directly to him, the appellant also answered "No". In answer to a later question, however, he suggested that he may have received one letter from INZ but said that he had shown that letter to the agent.

[37] None of this evidence can be sensibly reconciled with the documentary evidence on the file. In the application for a work visa, which was submitted to an Indian agency who forwarded it to INZ on 29 September 2008, there is no mention of the agent or his contact details. At section A15, where the applicant was asked for the name and address for correspondence, the appellant's name, address and contact telephone numbers were inserted. At A16, the visa application form stated "If you have given the name and address of an agent in A15, do you authorise that agent to act on your behalf?". The letters "N/A" were entered in answer to that question, indicating that there was no agent acting on behalf of the applicant. Nor is there any reference to an agent in the subsequent interactions between INZ and the applicant. If an agent had been acting on the appellant's behalf with INZ, some record of that interaction would be contained either in INZ's internal customer interaction notes or in the formal application documents. The fact that no such reference occurs indicates that the agent was not so acting.

[38] That view is strengthened by other discrepancies between the appellant's evidence and the documents on file. For example, the appellant asserts that although he personally completed the medical examinations for his medical and chest x-ray certificate on 6 October 2008 in Jalandhar city, he did not arrange for the police clearance certificate from a police station in Jalandhar which was dated the same day and also contained his signature. When the Authority suggested that the documents gave the appearance he had been in Jalandhar on 6 October 2008 and had arranged for these documents himself (in contrast to his evidence that the agent arranged for the police clearance certificate), the appellant resisted



that suggestion. He could not explain the surprising coincidence that the agent would happen to get his police clearance certificate from Jalandhar on the same day that the appellant himself was there arranging for other documents and simply stated that he had got his own medical documents but the agent had arranged for the police clearance certificate.

[39] It will be recalled that the appellant's evidence is that he ran his textile business until December 2008. However, in his medical and chest x-ray certificate, completed by a medical doctor in October 2008, A11 of that form asked: "List the countries in which you have lived, studied, or worked for 3 months or more in the last five years." In answer, the following information has been typed into the form: "India. Passed matric in 1990 and working as farmer." When the Authority pointed out the absence of the textile business, the appellant said that because the business was struggling due to the police harassment and because his family also had a farm on which he sometimes helped, he had just told the doctor that he was a farmer.

[40] However, having considered all of the documents on his file and the complete lack of documentary evidence of his textile business which he claimed to have run for 15 years, the Authority is of the view that the indications in the documents filed with the work application represent the appellant's true occupation in India. Had the appellant genuinely been self-employed in a textile business, he would have stated that to the doctor in early October 2008. Taken cumulatively with all the other credibility concerns about his account of the business and the difficulties relating thereto, the Authority finds that the appellant was a farmer prior to coming to New Zealand and has never operated a textile business.

### **CONCLUSION ON CREDIBILITY**

[41] All of the concerns outlined above lead the Authority to conclude that the appellant's claimed difficulties in India are untrue. The Authority rejects the appellant's claim to have been threatened and mistreated by police officers in the Punjab. There is no credible evidence before the Authority that the appellant is at risk of serious harm for any other reason.

[42] The Authority finds that the appellant is a national of India who has a genuine Indian passport and has departed India without difficulties. He has no adverse profile with the Indian authorities, either generally or in the Punjab. There is no reason that the appellant would be of any interest to the authorities should he

now return to India. The appellant does not have a well-founded fear of being persecuted on return to India for any reason.

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

### **CONCLUSION**

[44] 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.

"B A Dingle"  
B A Dingle  
Chairperson