

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

**REFUGEE APPEAL NO 76432**

**AT AUCKLAND**

**Before:** A R Mackey (Chairman)

**Counsel for the Appellant:** R Chambers

**Date of Decision:** 2 December 2009

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**DECISION**

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[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the grant of refugee status to the appellant, a national of India from the state of Punjab.

**INTRODUCTION**

[2] The appellant a young man in his early 20s from India. He was issued a limited purpose visa by Immigration New Zealand (INZ) in June 2009 on the condition that he would work as a vineyard worker in the north of the South Island. He arrived in New Zealand in June 2009 only to find that there was no work available to him. He therefore moved to another part of New Zealand to find work. After conversations with some fellow Sikhs in New Zealand, he contacted his counsel and applied for refugee status on 9 July 2009. He was interviewed on 11 September 2009. In a decision made by the RSB on 21 October 2009, his application was declined. The RSB found his evidence vague, inconsistent, mobile and implausible, to the extent that it rejected its credibility in its entirety, apart from the fact that he was a national of India.

[3] The appellant then appealed to this Authority.

[4] After receiving the appeal and giving it preliminary consideration, the Authority wrote to the appellant's counsel on 16 November 2009, stating that a *prima facie* conclusion had been reached by the Authority that the appellant's claim was manifestly unfounded or clearly abusive, as it appeared the appellant's prediction of being persecuted on return to India, even if accepted as credible, was not for reasons of any the five Refugee Convention grounds set out in the inclusion clause noted below.

[5] The Authority provided the appellant 10 working days, that is, until 30 November 2009, to present submissions responding to matters raised in the Authority's letter of 16 November 2009 and following that dateline, unless persuaded otherwise by submissions and evidence presented, the Authority stated that it may consider and determine the matter on the papers without giving the appellant an opportunity to attend an interview.

[6] No reply was received from the appellant or his counsel within the time provided in the letter, or to the date of this decision.

### **JURISDICTION OF THE AUTHORITY TO DISPENSE WITH AN INTERVIEW**

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

[8] As noted, the Authority, through its Secretariat, wrote to the appellant's counsel on 16 November 2009. The letter from the Secretariat set out the issues involved and referred to the relevant jurisdiction in the Act. A brief assessment of the appellant's case was set out in the letter in the following terms:

"The appellant's claim is that he fears serious maltreatment/being persecuted at the hands of the police if he is returned to the Punjab, India and that the maltreatment would take place if and when he is re-arrested in respect of a kidnapping charge he claims has been made against him.

The provisions of the "inclusion clause" in Article 1A(2) of the 1951 Convention

relating to the Status of Refugees (the Convention), as amended by the 1967 Protocol, defines a refugee as 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.”

The Authority does not consider, on the face of the submissions and evidence presented to date that your client’s prediction of being persecuted is “for reasons of” any of the five Convention reasons set out above. That is, there is simply no nexus to a Convention reason.

Accordingly, it is the preliminary view of the Authority that the appellant has presented an appeal which is either clearly abusive or manifestly unfounded.

A copy of the Authority’s file is now enclosed.”

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

### **CONCLUSION ON WHETHER TO DISPENSE WITH AN INTERVIEW**

[10] The appellant in this case has been interviewed by the RSB. They reached a decision that they did not accept his credibility, apart from being a national of India and, as such, he was not a refugee.

[11] In carrying out its fresh (*de novo*) assessment of the appellant’s claim in the appeal, as noted, *prima facie* the appellant’s claim did not indicate, even if credibility were accepted, that any maltreatment he would suffer on return would be for reasons of one or more of the Refugee Convention grounds. At the time of this decision, no submissions or evidence in rebuttal of that preliminary conclusion have been received.

[12] For the above reasons therefore, the Authority will determine this matter on the papers without giving the appellant the opportunity to attend a further interview.

### **THE APPELLANT’S CASE**

[13] As noted above in the letter addressed to the appellant's counsel, this appellant's claim is that he predicts serious maltreatment (being persecuted) at the hands of the police if he is returned to his home district in India. That maltreatment would take place if and when he was re-arrested in respect of a kidnapping charge he claims has been levelled against him by the police, at the instigation of relatives of his late partner. He states she died when she was living with him in Mozambique.

[14] He claims that he was arrested by the police on returning to India and after maltreatment by them was ultimately released when the village *Panchayat*, on his father's request, managed to get the police to release him.

[15] He was arrested again some three months later in April 2008 and claimed on that occasion he had been beaten and raped by the police. Again, he was able to be released. Soon thereafter, his father made arrangements for him to leave India. This was ultimately achieved in June 2009 when he was issued with a limited purpose visa to travel to New Zealand.

## **THE ISSUES**

[16] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."

[17] 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**

[18] As the Authority has noted, this matter is being determined without an

interview of the appellant. Thus, an assessment of credibility will not be made. Accordingly, his account, as recorded above, is accepted for the purposes of determining this appeal.

[19] As noted in the inclusion clause, set out above, refugee status is only recognised where a claimant can establish a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. In this case, the harm feared by this appellant is not for any one or more of those five Convention reasons. Any potential problems for this appellant arise from a possible police prosecution related to domestic incidents and disagreements with his late partner's family. These are not even tangentially related to a Convention reason.

[20] As noted, no submissions have been received from the appellant or his counsel that any way rebut the Authority's conclusion that the claim is a manifestly unfounded or clearly abusive one. The Authority therefore finds that if the appellant is returned to India at this time, regardless of the credibility or otherwise of his claim as presented, the answer to the second issue set out above is that there is no Convention reason for any predicted persecution.

## **CONCLUSION**

[21] The Authority finds that the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

"A R Mackey"  
A R Mackey  
Chairman