

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

**REFUGEE APPEAL NO 76538**

**AT AUCKLAND**

<b><u>Before:</u></b>	C M Treadwell (Member)
<b><u>Representative for the Appellant:</u></b>	The appellant represented himself
<b><u>Appearing for the Department of Labour:</u></b>	No appearance
<b><u>Dates of Hearing:</u></b>	15 and 16 June 2010
<b><u>Date of Decision:</u></b>	28 June 2010

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**DECISION**

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**INTRODUCTION**

[1] This is an appeal against a decision of a refugee status officer declining the grant of refugee status to the appellant, a national of Nepal. He is presently in custody, pending removal from New Zealand because he does not hold a valid permit to be here.

[2] This is the second time that the appellant has claimed refugee status in New Zealand.

[3] On 3 June 2009, the Authority (differently constituted) delivered its decision in respect of the appellant's first appeal. See *Refugee Appeal No 76329* (3 June 2009). It rejected as untruthful his claim that he had twice been abducted by Maoists in Nepal and made to train in a secret camp, from which he had escaped and that Maoists were searching for him. It found that he did not have a well-founded fear of being persecuted if he returned to Nepal.

[4] On the present appeal, the appellant says that Maoists came to his family home in Nepal in January 2010, still looking for him. His father was killed by the Maoists and he is now, himself, at risk of being killed or otherwise seriously

harmful by them. The principal issue is whether the appellant's second claim crosses the jurisdictional threshold of establishing 'changed circumstances' since the first claim, such that the second claim is significantly different.

### **Self-representation**

[5] On the morning of the second appeal hearing, Ms Curtis, who had been instructed by the appellant to that point, sent a fax to the Authority, seeking leave to withdraw as counsel. She did not appear at the second appeal hearing but the Authority records that leave to withdraw was granted.

[6] The appellant represented himself at the second appeal hearing.

### **JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL**

[7] Second or subsequent refugee claims (including appeals to the Authority) are subject to jurisdictional limitations.

[8] Section 129O(1) of the Immigration Act 1987 ("the Act") provides:

A person whose claim or subsequent claim has been declined by a Refugee Status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that the circumstances in the claimant's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer's decision.

[9] It follows that it is necessary to consider the appellant's original claim and his further claim, as presented at the second appeal, with a view to determining:

- (a) whether, in terms of s129O(1) of the Act, the Authority has jurisdiction to hear the second appeal and, if so;
- (b) whether he is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

[10] Jurisdiction to hear and determine subsequent refugee claims under s129O(1) of the Act involves a comparison of the claims as asserted by the refugee claimant. In the absence of significant difference in the grounds upon which the claims are based, there is no jurisdiction to consider the subsequent claim. See *Refugee Appeal No 75139* (18 November 2004).

[11] Where jurisdiction is established, the merits of the subsequent claim will be heard by the Authority. This hearing may be restricted by the findings of credibility or fact made by the Authority in relation to the previous claim. Section 129P(9) of the Act prohibits any challenge to a finding of fact or credibility made by the Authority in relation to a previous claim and the Authority has a discretion as to whether to rely on any such finding.

### **THE APPELLANT'S FIRST CLAIM**

[12] What follows is a summary of the evidence given in the first appeal hearing.

[13] The appellant was born in rural Nepal, as one of four children of a grocer and his wife, and grew up in Kathmandu.

[14] In September 2005, the appellant was approached on the street by a group of Maoists who asked him to join them. He refused. A week later, he was abducted by Maoists in a van, who took him to a Maoist camp in the forest. For a week, he was made to participate in a training programme with other recruits.

[15] Taking advantage of a guard change the appellant escaped and, finding a road, caught a bus to Kathmandu. At about 4am that night, a group of Maoists broke down his door and forced him at pistol point back to the camp.

[16] At the camp, the appellant was tied to a chair and beaten with implements until he became unconscious, suffering lacerations and wounds. It took some months for him to recover, after which he resumed the daily training regime.

[17] After approximately nine months at the camp, the appellant escaped again and made his way to the road, where he again caught a bus to Kathmandu. There, he bought a ticket to a town on the Indian border. He walked across the border and went to stay with an uncle in India.

[18] By telephone, the appellant's parents told him that the Maoists had come to their house seeking him. He also contacted the Maoist camp commander, who had become a friend, to ascertain the risk if he returned to Nepal. The commander told him that they would pursue him because of his second escape.

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

[20] In February 2008, the appellant flew to New Zealand with his father and an uncle, AA. In early 2008, his uncle NN (a New Zealand resident) and the appellant's father saw the then Associate Minister of Immigration. They requested that the three men be allowed to stay in New Zealand until the situation in Nepal stabilised. They had had no decision by the end of June 2008, when the appellant's temporary permit expired.

[21] Throughout 2008, the appellant kept in touch with a friend, SS, in Kathmandu. SS reported that the Maoists were still looking for him. Another friend, DD, a friend of the Maoist commander, was able to pass on information about the appellant's likely predicament in Nepal should he return.

[22] In September 2008, the appellant and his uncle AA were detained by the New Zealand police for three days. Taken to court, they were released on reporting conditions.

[23] On 22 October 2008, the appellant lodged an application for refugee status. He was interviewed by a refugee status officer on 12 and 22 December 2008. On 3 March 2009, the RSB declined his claim. The appellant appealed. The hearing of his first appeal was consolidated with the appeal of his uncle AA, who had also sought refugee status (on different grounds) and who had also been declined.

[24] The appellant's uncle NN gave evidence on the first appeal.

[25] NN has lived permanently in New Zealand since the 1970s. He sponsored the appellant's grandmother and his sister for permanent residence. It was NN who sponsored the appellant, the appellant's father and the appellant's uncle to travel to New Zealand, ostensibly to attend NN's son's wedding.

[26] 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.

[27] NN did not provide any detailed evidence as to the nature of the appellant's refugee claim, simply stating that he understood it was related to problems with the Maoists.

### **Conclusion by Authority on first appeal**

[28] The panel on the first appeal rejected the appellant's first claim. In brief, it found his account not to be credible in any respect.

[29] The Authority found that the appellant had not established that he had a well-founded fear of being persecuted for any Convention reason.

### **THE APPELLANT'S SECOND CLAIM**

[30] The appellant does not resile from his first claim and maintains that the account he gave at his first appeal hearing was truthful.

[31] In addition to maintaining the grounds of his first claim, the appellant says that his father has recently been killed by Maoists and he is at risk of being harmed by them if he returns.

[32] According to the appellant, on 1 January 2010, he received a text message, and then a telephone call, from his brother in the United States. His brother told him that he (the brother) had learned from their mother that their father had been killed in the family home. The brother told the appellant that their mother had been out at the market early in the morning. In her absence, five Maoists had visited the family home (the top apartment in a five storey building owned by their parents).

[33] The Maoists demanded to know the appellant's whereabouts. When his father told them that he did not know, they became angry and broke the furniture and fittings before beating the appellant's father so badly that he died. The appellant's mother came home to find him dead. The neighbours and the people who lived on the floor below told her what had transpired.

[34] On hearing this news from his brother, the appellant telephoned his mother at home but there was no reply. He then called her mobile telephone and spoke to her. She was, at that time, at a temple, praying for the appellant's father.

[35] In mid-February 2010, the appellant's mother received a further visit from the Maoists and told her that the appellant would be killed if he ever returned to Nepal.

[36] Following these events, the appellant's mother resolved to leave Nepal and, possessing a five-year visa for the United States, she flew there in late February 2010. She continues to reside there with her son and daughters.

[37] On 11 March 2010, the appellant was arrested by the New Zealand Police because he is in New Zealand unlawfully. On 19 March 2010, seven days later, he lodged his second refugee claim.

[38] On being taken into custody, the appellant's mobile telephone was taken from him, to be held with his other possessions. The telephone contains the only records he has of his family's telephone numbers in the United States and, not accessing the telephone again until a few days before the second appeal hearing, the appellant had had no ability to contact his family for assistance with the provision of evidence.

#### **Evidence of the appellant's uncle, NN**

[39] NN is the appellant's paternal uncle. He is a New Zealand citizen.

[40] NN told the Authority that he has no personal knowledge of events in Nepal because he has lived in New Zealand for a number of years. He does, however, keep abreast of Nepalese news on the Internet and other media and is aware that the situation remains unstable there. In particular, Maoists use extortion to extract money from people (as they have done for a long time) and he knows of instances in the last year in which distant relatives living in villages have been forced to leave their homes by Maoists.

[41] NN recalls that the appellant's father (NN's brother), left New Zealand for India, on his way to Nepal, in September 2008. He went to India first so that he could ascertain whether it was safe to return to Nepal. He remained in India up to a couple of months. He knows for certain that the appellant's father was back in Nepal by September 2009 because he spoke to him there by telephone in that month.

[42] As to the particular circumstances of the appellant's second claim, NN stated that he was telephoned by the appellant's brother in the United States about a week before Christmas last year and was told of the death of the appellant's father. The brother told him that Maoists had broken into the house, had killed the appellant's father and had taken many items as they left.

[43] NN tried to telephone the appellant's mother in Nepal but he does not "get on" with her and she hung up the telephone when he called.

[44] NN confirmed that, in Nepalese tradition, a 'funeral' ceremony was held in Auckland for the appellant's father, to celebrate his life. The service was held at a monastery.

[45] If there were inconsistencies in the evidence of the appellant, NN considers that they may be attributable to the appellant being beaten by Maoists.

## Documents

[46] The appellant's uncle NN says that he has been unable to obtain either written statements or other documentary evidence from the appellant's family in the United States because of a family feud.

[47] As to the retrieval of the appellant's mobile telephone from the prison authorities, so that he could obtain his family's telephone numbers and call them himself, the appellant says that he retrieved it only four days before the appeal hearing.

[48] Although some three months have elapsed since the second refugee claim was filed and there is no apparent reason why the appellant could not have accessed his telephone earlier, in order to contact his family, the Authority granted a short extension in the interests of fairness, to 5pm Friday 18 June 2010, to obtain and submit any further documents or information he wished to provide, including by fax if necessary. The agreement of his partner (a New Zealand national and not a party to the family feud) to assist with such communications was given by her to the Authority.

[49] In the result, the appellant produces the following relevant documents:

- (a) Five news articles from the website [www.nepalnews.com](http://www.nepalnews.com):
  - (i) "PM Nepal Tells Diplomats Govt Ready to take Difficult Decision to End Crisis" (5 May 2010);
  - (ii) "Maoist Cadres Clash With Police in Butwal; Over Dozen Injured" (5 May 2010);
  - (iii) "Maoists Assault Labourers for Working During Bandh in Pokhara" (5 May 2010);
  - (iv) "Govt Urges for Alertness to Ward Off Food Shortages" (6 May 2010);
  - (v) "Maoists, Locals Clash in Budhanilkantha: Minor Injured" (6 May 2010);
- (b) One article from [www.ynetnews.com](http://www.ynetnews.com), "Nepal evacuates Tourists as Maoist Strike Bites" (4 May 2010).

[50] On 16 June 2010, Ms Curtis' office forwarded to the Authority a fax received from an unnamed source in Nepal. The fax comprises Nepalese and English versions of the appellant's father's death certificate and a copy of a 'relationship certificate' (in Nepalese), issued to the appellant's mother in February 2010, which also notes his father as deceased. The death certificate gives the date of death as 31 December 2009 but does not record the cause of death.

## CONCLUSION ON JURISDICTION

[51] As explained in *Refugee Appeal No 75139* (18 November 2004) at [51]:

Jurisdiction... is determined by comparing the previous claim to refugee status against the subsequent claim. It is clear from the definitions in s.129B(1) that the exercise requires the refugee status officer and the Authority to compare the claims **as asserted by the refugee claimant**, not the facts subsequently found by [the Refugee Status Branch] officer or the Authority.

[52] Thus, for the purposes of establishing whether jurisdiction exists, the Authority is required to measure claim against claim, without regard to credibility (though, of course, if the jurisdictional threshold is met, credibility is then relevant to the assessment of whether the claimant is a refugee).

[53] The first refugee claim by the appellant was that he was at risk of serious harm at the hands of Maoists, for having escaped from a training camp at which he was being held. The nature of the harm feared was that he would be killed (threats being made to this effect) and examples were given of other escapees who had been killed or "handicapped". See in this regard the appellant's first application form at question E2, his statement of 8 December 2008 at pp2-3 and his claim to the first appeal panel that he would be tortured and possibly killed (*Refugee Appeal No 76329* (3 June 2009) at [3]). Country Information as to the history of persistent, grave human rights violations by Maoists was given (see, for example, counsel's submissions of 29 April 2009, at pp3-6).

[54] The second refugee claim by the appellant continues to maintain that he is at risk of serious harm at the hands of Maoists, for having escaped from a training camp at which he was being held. The only points of difference which he identifies in the second claim are the assertions that:

- (a) his father has been killed by Maoists in the course of their search for him;



- (b) country conditions in Nepal have worsened since his first claim because the country is now more politically unstable.

[55] It will be recalled that the jurisdictional threshold of 'changed circumstances' is met only if a claimant establishes that the changes are such that the second claim is brought on *significantly different* grounds.

[56] It is clear that the second claim does not provide grounds that are significantly different to the first claim. The fresh evidence that, since the first claim, the appellant's father has been killed does not provide significantly different grounds. The first claim was that the appellant was at risk of being seriously harmed (including being killed) by Maoists for having escaped from their camp. The second claim merely repeats the first and adds the death of the father in the course of their search for the appellant. While it is accepted that a dramatic intensification of adverse interest in a person can amount to significantly different grounds, the addition of the father's death does not indicate any increase in antipathy towards the appellant, given that the first claim included repeated assertions that the appellant risked being tortured or killed (for the same reasons as continue to be advanced on the second claim) and that threats to kill him had been made. Those assertions have not changed at all, let alone to the point that the second claim could be said to be significantly different to the first.

[57] The appellant also raises the assertion that country information indicates a significant worsening of conditions in Nepal because of political instability. The country information does not, however, say that. The articles submitted by the appellant record a moderate level of unrest in early May 2010 as a result of a call by the opposition Maoist Party for a general strike. Such industrial action and the attendant civil unrest has been a feature of the Nepalese political landscape for decades, even after the ceasefire ending the Maoist insurgency in 2006 and its admission to mainstream politics. See, for example, the United States Department of State's *Country Reports on Human Rights Practices: Nepal* (February 2008), which reported, in respect of the 2007 year:

Maoists frequently employed arbitrary and unlawful use of lethal force, including torture and abduction. Violence, extortion, and intimidation continued throughout the year. Impunity for human rights violators, threats against the media, arbitrary arrest, and lengthy pretrial detention were serious problems....

INSEC reported that, through December 10, Maoists and members of other armed groups killed between 229 and 234 civilians....

Maoist-inspired work stoppages, enforced through violence and intimidation, caused particular hardship to workers in many economic sectors....

Numerous politically agitating groups restricted freedom of movement within the country, including forcing transportation strikes, known locally as "bandhs." Maoist and YCL cadres called multiple bandhs throughout the year to force attention to political issues, even after joining the government.

[58] Similar reports continued in the 2008 year, as reported by the Department of State in its February 2009 report:

[T]he Maoists, the Maoist-affiliated Young Communist League (YCL), and members of other small, often ethnically based armed groups committed numerous grave human rights abuses.... Maoists frequently employed arbitrary and unlawful use of lethal force, including torture and abduction....

Maoist and YCL cadres called two bandhs, both prior to the [April] election....

[59] As to the year 2009, the February 2010 Department of State report continued to record, for example:

The government's respect for human rights improved slightly as all parties joined the government. Members of the security forces, the Maoist militias, the Maoist-affiliated Young Communist League (YCL), and members of other small, often ethnically based armed groups committed human rights abuses.

Maoist militias engaged in arbitrary and unlawful use of lethal force and abduction. Violence, extortion, and intimidation continued throughout the year.

Numerous political groups restricted freedom of movement within the country, including forcing transportation strikes, known locally as "bandhs," to bring attention to political issues.

[60] Clearly, Maoist calls for strikes and the ensuing violence and civil instability is not new to the political landscape. It does not constitute changed circumstances at all, let alone ones which would give rise to significantly different grounds in the appellant's second refugee claim.

[61] For the sake of completeness, it can be added that even if such sporadic outbreaks of generalised civil unrest had not existed before the first claim (which they did), their presence after the first claim would still not amount to significantly different grounds because the second claim does not sensibly assert any nexus between such civil unrest and any real chance of the appellant suffering serious harm. At most, the appellant would face the random and speculative risk of being harmed through 'being in the wrong place at the wrong time'. To that extent, generalised civil unrest might be said to give rise to different grounds, but not to *significantly* different grounds.

[62] In reality, the second claim is nothing more than an attempt to revisit, by asserting further facts on the same continuum, the first claim. It is appropriate to repeat what was said in *Refugee Appeal No 75139* (18 November 2004), where the Authority sounded a strong note of warning that the jurisdiction to hear and

consider subsequent claims is not intended to provide an avenue to re-litigate a claim already fully heard and decided upon:

[46] As the Authority made clear in *Refugee Appeal No. 70387/97 Re MSI* (14 May 1997) at p 11 in relation to the comparable requirement in the earlier Terms of Reference, a “reinterpretation” of a claimant’s case is neither a change of circumstances, nor is it a change of circumstances *in* the claimant’s home country. Furthermore, a refugee claimant cannot invite the Authority to sit as if it were an appellate authority in relation to the decision of the first panel and to rehear the matter. Not only is there no jurisdiction for this to be done, it is an exercise expressly precluded by the terms of s 129Q(5) which provide that a decision of the Authority is final once notified to the appellant. The finality of the decision is reinforced by the definition of “subsequent claim” in s 129B(1). The Authority has no jurisdiction to rehear an appeal after a full hearing and decision. See *Refugee Appeal No. 71864/00* (2 June 2000) at [39] - [41] & [63]. Nor, unless an appellant crosses the jurisdictional threshold, can the Authority ever permit a challenge to adverse findings of credibility or fact made in the course of a prior appeal. See s 129P(9).

[47] If a refugee claimant wishes to argue that on the first appeal the Authority misdirected itself either on the facts or on the law, the proper remedy is judicial review, not the submission of a second refugee claim.... The New Zealand refugee determination system is a generous one, but it does have necessary limits. For good reason the Authority does not possess what might be called a general “miscarriage of justice” jurisdiction.

[63] Those views are endorsed and adopted here.

[64] Given the finding that the jurisdictional threshold is not met, the Authority is precluded from considering the appellant’s second claim.

[65] While it is not necessary to do so, for the sake of completeness the Authority intends to record its findings as to the credibility of the second claim. It does so because, implicit in the second claim is the assertion that the first appeal panel was wrong to reject the credibility of the first claim. For the reasons which follow, the Authority is of the view that not only was the first appeal panel correct, the second refugee claim is also not credible.

### **Credibility of the second claim**

[66] The new ground of the second claim, that the appellant’s father has been killed by Maoists, is rejected as untruthful.

#### *News of his father’s death*

[67] The appellant initially told the Authority that he learned of his father’s death when he received a text message from his brother in the United States on 1 January 2010. As a result of that text message, he said, he telephoned his mother in Nepal.

[68] Asked why his statement on 12 April 2010 made no mention of the receipt of a text message from his brother, the appellant could not explain. Instead, he suddenly changed his evidence and introduced, for the first time, a telephone call from his brother after he had sent the appellant the text message. As to why both his statement and his evidence to the Refugee Status Branch made no mention of the telephone call from his brother, he had no sensible explanation.

[69] In contrast to both versions of events, the appellant's statement suggests a third account. It strongly suggests that he first heard of the death of his father from his mother:

At approximately 8pm on the 1st of January 2010 I made a phone call to my parents' home in Nepal. No one answered the phone so then feeling very concerned I rang my mom's cell-phone which she answered. She explained that a group of 5 Maoist (Nepalese Communist Rebels) had come to the home [and, in the course of searching for me had beaten and killed my father]....

[70] Asked to explain why his statement pointed to his mother as the first source of news about his father's death, the appellant could not explain, beyond suggesting that he had misremembered because he had been so affected by grief. That explanation is rejected. In the two months since his statement of 12 April 2010, the appellant has given three different accounts of this important aspect of his claim. It is not accepted, that, more than four months after the event, any initial grief would cause such varying accounts to be given in the short space of two months.

#### *Loss of telephone records*

[71] The appellant has not produced his mobile telephone, with the text message from his brother. He says that, by bad luck, the telephone broke at the end of January. He took out the SIM card, intending to put it in another telephone but then had the further bad luck to lose it. Whether the text message was stored in the telephone's memory or on the Sim card, he says, it now cannot be retrieved. Such claimed misfortune is suspicious.

#### *Witnesses to the killing of the father*

[72] According to the appellant, his parents lived on the fifth floor of a brick apartment building owned by them. As to how it was known that his father had been killed by five Maoists in the apartment and that they had been looking for the appellant, he initially explained that his brother and mother had told him that neighbours had seen and heard the incident. As to how they could have done so, the appellant stated that, though his parents' building is five storeys high, so are

the buildings on either side. The fifth floor neighbours in the adjacent building had been able to see and hear the events in his parents' apartment. Belatedly, he added that the people in the fourth floor apartment of his parents' building had also been able to hear.

[73] A degree of reality needs to be allowed to intrude. This aspect of the appellant's statement is so replete with detail as to defy belief. According to the appellant, the neighbours were able to tell that there were five attackers, that they heard the men ask the appellant's father to reveal the appellant's whereabouts and for him to "come and contact them", that his father pretended not to know, that they repeated their demand but his father kept claiming not to know, that the men then became angry and started breaking furniture, that his father grabbed hold of them and begged them not to do so, that this so enraged the men that they turned on him and beat him with the broken furniture and whatever was to hand, and that the attackers then told the neighbours that if anyone saw the appellant, they would kill him in the same way.

[74] The notion that so much detail was able to be seen and heard by neighbours in a different building is itself implausible. Added to that is the serendipity that the neighbours were able to pass on information at the core of the appellant's second refugee claim, including the revelation that Maoists are still looking for the appellant (even though he claims to have left Nepal in 2006, four years ago) and that the killing of his father was directly linked to their search for him.

[75] A further concern arose from the evidence of the appellant's uncle, NN. NN told the Authority that he knew, and had been to, the appellant's family house in Kathmandu. He stated that it was a four or five story house, which was entirely occupied by the family. He expressly confirmed that no-one else lived there. Asked to explain why the appellant had described it as a five storey apartment block, with the parents occupying the top floor and the lower floors being rented out, the uncle became evasive, suddenly agreeing that that might have been the case and that he "didn't take much notice". Such a difference in the fundamental nature of the building would, however, be difficult to overlook.

#### *Departure of the appellant's father from New Zealand*

[76] The uncle's willingness to manipulate the evidence to assist the appellant was also evident in his explanation for the appellant's father's departure from New Zealand. The appellant had told the Authority that his father went to India to stay

at an *ashram* where he hoped that he could find a cure for his cancer. The uncle, in contrast, claimed that the father had gone to India in order to gauge whether the risk from Maoists had reduced to the point that it was safe for him to return to Nepal. Had that been the real reason, there is no doubt that the appellant would have said so, given its relevance to his refugee claim. The appellant's actual evidence is the more likely in the circumstances, and the uncle's explanation untruthful.

[77] Confronted with the appellant's different evidence on the point, the uncle then immediately modified his own evidence, stating that he did know that the appellant's father had had "something" wrong with his leg and that this might also have been a reason. His vagueness as to his own brother's cancer as a contributing cause of his departure from New Zealand is surprising.

#### *News of the father's death*

[78] The appellant's own account is that he heard of his father's death on 1 January 2010. The evidence of his uncle, NN, is irreconcilably inconsistent. In contrast to the appellant, NN told the Authority that he received a telephone call from the appellant's brother, advising of the death, just before Christmas 2009. Asked to be more precise, he stated that he had received the call about a week before Christmas.

[79] When the Authority pointed out that the appellant had not heard of his father's death until 1 January 2010 and asked the uncle whether he knew why the brother would have withheld the information from the appellant for two weeks, the uncle could not say.

[80] Quite apart from the irreconcilable accounts, the subsequent arrival of the death certificate, giving the date of death as 31 December 2009, means that it, and the uncle's claim to have heard of the death a week before Christmas, cannot be simultaneously true.

#### **Conclusion on credibility of second claim**

[81] Taken cumulatively, the foregoing concerns lead the Authority to conclude that the appellant's second claim is not credible. Neither the evidence of the appellant nor his uncle is accepted as truthful.

[82] It is not overlooked that a death certificate and a 'relationship certificate' have been sent from Nepal, appearing to show that the appellant's father did die

on 31 December 2009. Even if the death certificate is genuine, it does nothing more than establish the fact of death. It does not state the cause. Nor is it overlooked that the appellant says that his father left New Zealand for India in 2008 because he had cancer.

[83] The Authority also has a discretion to rely upon findings made in relation to an earlier claim. Pursuant to s129P(9) of the Act:

... the claimant may not challenge any finding of credibility or fact made by the Authority in relation to a previous claim, and the Authority may rely on any such finding.

[84] In deciding whether to exercise that discretion, the Authority records that it finds the reasons given by the panel on the first appeal for its conclusions on credibility to be cogent and persuasive and determines to rely on them.

[85] If more were needed, the reality that the first claim was untruthful means that the second claim, building as it does on the first claim, is built on foundations of straw.

[86] Even if the appellant could satisfy the Authority that it has jurisdiction to entertain the second claim (which it does not, for the reasons already given) the second claim is, like the first claim, disbelieved.

## **CONCLUSION**

[87] It is concluded that the Authority has no jurisdiction to consider this second appeal. Since the determination of the first refugee claim circumstances in the appellant's home country have not changed to such an extent that the second claim is based on significantly different grounds to the first claim.

[88] Given the finding of absence of jurisdiction, the appeal is dismissed.

"C M Treadwell"

C M Treadwell  
Member