

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

**REFUGEE APPEAL NO 76452**

**AT AUCKLAND**

**Before:** D Henare (Member)

**Counsel for the Appellant:** R Chambers

**Appearing for the Department of Labour:** No Appearance

**Date of Hearing:** 4 March 2010

**Date of Decision:** 12 April 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 from the state of Punjab.

**INTRODUCTION**

[2] The appellant is a single man aged 20 years. He arrived in New Zealand on 28 June 2009, having been granted a limited purpose visa on 18 June 2009 to work for a company in the South Island.

[3] On 9 July 2009, the appellant claimed refugee status. He was interviewed by the RSB on 11 September 2009. His claim to refugee status was declined in a decision dated 9 November 2009 against which he appeals to this Authority.

[4] The appellant claims to have been detained and beaten by the Punjabi police on three occasions in 2008 and 2009 because the police wrongly suspected

him of involvement with terrorists. He believes that should he return to India, the police will resume their mistreatment of him.

[5] The essential issue to be determined in this appeal is whether the appellant's claim is credible.

[6] When this matter came before the Authority on 4 March 2010, Mr Chambers sought leave to withdraw from the case. He had, however, on 5 February 2010, filed written submissions with the Authority and attached various items of country information. Mr Chambers indicated that the appellant had been given a copy of these submissions and they stood as the appellant's submission in the appeal. Mr Chambers thereafter took no further part in the hearing.

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

[7] What follows is a summary of the appellant's evidence. It will be assessed later in this decision.

[8] The appellant was born in a rural village in the Punjab in 1990. He was born and raised in the Sikh faith. He is the second of three children. His family own a small farm.

[9] After completing high school in 2007, the appellant worked on the family farm.

[10] The appellant's relation, AA, had lived in the village until his arrest and subsequent disappearance in 2003 or 2004. AA had been arrested by the police many times because of his involvement in the Khalistan movement, which had links to Kashmiri terrorists.

[11] The appellant had two Muslim friends, BB and CC. He termed them "boys" (hereinafter the "Muslim friends" or the "Muslim boys"). The police had shown interest in these friends because of their connections with AA. They had left the village in 2003 or 2004.

[12] In January 2008, following an incident of terrorism in the district, the police visited the appellant's home. When they could not find the appellant, they arrested his father. The appellant's mother told him that the police were looking for him because of his links to AA and his two Muslim friends. The appellant's father was held for two days and released following the payment of money to the police.

[13] Some four or five hours after his father's release, the police arrested the appellant and took him to a local police station. They questioned him about his relationship with AA and the two Muslim friends, who they alleged were terrorists. They wanted to know the whereabouts of these persons. When he could not comply, the police beat him with batons two or three times and he was given electric shocks. The appellant was released the next day because the *Panchayat* paid money to the police.

[14] The appellant received medical attention for two weeks for his injuries. He suffered bruising to his body and a deep cut to his left eyebrow which has left a scar on his face. Fearing that the police would return, he rented a place in Z, a town outside the Punjab.

[15] In May 2008, he obtained a passport because he knew he would have to leave India to save himself from harassment by the police.

[16] In July 2008, as he was crossing a bridge near his home, on his way to visit his family, the police arrested him and took him to a local police station. Again, they questioned him about his links to Kashmiri terrorists, specifically, the whereabouts of the Muslim boys and AA. They detained him and mistreated him. He was given electric shocks on his left ankle and on his toes. He was released the next day after his father paid a bribe to the police.

[17] He stayed at home a short time to recuperate. He then shifted several times, to stay with relatives in Kapurthala and Amritsar.

[18] In August 2008, the appellant met an agent from Jalandhar in a hotel in his district. Upon payment of a significant fee, the agent undertook to make arrangements for his departure from India. In October 2008, he obtained a clear police clearance certificate from the Y district police station.

[19] In March 2009, the appellant was arrested for a third time at his aunt's house in Amritsar. On this occasion, he was taken by six or seven policemen to the Y police station, 20 kilometres away from his aunt's house. Again, they questioned him about the whereabouts of AA and the Muslim boys. After the police drank alcohol, they beat him and gave him electric shock treatment. He was held for a day, and released with the assistance of his father and the *Panchayat*.

[20] The appellant shifted around, staying with friends and relatives in Kapurthala, Z and Amritsar (but he did not stay with the aunt in whose house he

had been arrested).

[21] On 18 June 2009, a limited purpose visa was granted to the appellant to work in New Zealand.

[22] The appellant did not experience any problem when he departed India on 27 June 2009. After arriving in Christchurch, he travelled to Blenheim and discovered there was no work arranged for him. He subsequently met an agent, Kulwant Singh, in a shop, who advised him to claim refugee status and assisted him with completing his application.

[23] The appellant has maintained contact with his family who told him that the police have continued to visit the family home looking for him.

[24] The appellant fears that if he returns to India, he will once again be subjected to detention and beatings by the police. He believes that should he travel elsewhere in India, his whereabouts will be reported as he would be identified as a native of the Punjab by his language.

#### Documents filed

[25] Counsel filed written submissions, dated 4 February 2010, and various items of country information. Counsel also submitted a map of the Punjab showing the district in which the appellant's village is situated.

### **THE ISSUES**

[26] 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."

[27] 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**

[28] Prior to determining the framed issues, it is necessary to make an assessment of the appellant's credibility.

[29] The Authority did not find the appellant to be a credible witness. The Authority is satisfied that the appellant has not given a truthful account of his circumstances in India.

[30] The reasons why the Authority disbelieves the appellant's story are based on inconsistencies and implausibilities in his evidence. Some of the inconsistencies go directly to the core of his claim. Cumulatively, they undermine the entire claim. The appellant was unable to provide any convincing explanation for these discrepancies. The Authority was left with the impression that he was either embellishing his account or he was simply unable to recall details of a fabricated story.

## Inconsistencies

### *The appellant's relationship with AA and the Muslim boys*

[31] The appellant claimed that the reasons for his problems with the police resulted from his connections with AA and the Muslim boys. However, the evidence about his relationship with them was problematic.

[32] In the statement filed by the appellant in support of his refugee application, the appellant stated that AA was his first cousin. Before the RSB, he stated that AA was his father's cousin. Before the Authority, he stated the police thought he was AA's cousin, but he was a distant relation. Later in his evidence, he contradicted himself and said there was no blood relationship with AA, but he regarded him as an uncle.

[33] In his written statement, the appellant said his problems began when a Muslim friend was arrested and gave his name to the police. Before the RSB, the appellant identified BB as the Muslim friend who had mentioned the appellant's name to the police, when he was arrested. When the Authority asked him to explain how he knew BB had mentioned his name, and the circumstances of the arrest, he was vague. He said he did not know whether his two Muslim friends had been arrested. He speculated that someone else must have told the police that he had known them.

### *The appellant's living arrangements after his first release from detention*

[34] In his evidence relating to his living arrangements after his first release from detention, he stated to the RSB that he was staying with relatives or living in the temples, in Kapurthala or Amritsar. However, before the Authority, he said his father had given him money to rent a place in Z, a town outside the Punjab. When this discrepancy was raised with him, he said he had lived in all three towns.

### *Application for police clearance certificate*

[35] Before the RSB, the appellant stated that his father had approached senior police officers and bribed them to obtain a police clearance certificate for him. To the Authority, he said that the agent in India had applied for the certificate and paid the police for it. He then contradicted himself and said that perhaps his father had assisted the agent.

*The appellant's third arrest, detention and mistreatment*

[36] In his evidence relating to his third arrest, before the RSB, he stated he had been living at his maternal aunt's home in Amritsar. To the Authority, he said his aunt was a paternal aunt. When this discrepancy was raised with the appellant, he was emphatic that the aunt in Amritsar was his paternal aunt. The Authority found this evidence confusing.

[37] There was also discrepancy about the nature of the maltreatment he had suffered during his third detention. Before the RSB, he said he had been punched and kicked by the police, but he had not suffered any injuries. To the Authority, he said he was given electric shocks and beaten with batons until he lost consciousness. He said he required medical treatment because he could not walk. When this discrepancy was raised, he said his evidence to the Authority was correct, but admitted "maybe I said different things".

*Whether the appellant's father paid money to the police to secure his third release from detention*

[38] The appellant told the Authority that his father, with the help of the *Panchayat*, paid a bribe to the police to secure his third release from detention. The appellant recalled the sum paid. When the Authority informed the appellant that his evidence to the RSB was that money was not paid since his father could not afford it, he replied he could not remember matters.

Implausibilities

[39] The appellant claimed that his connections with AA and his two Muslim friends, who the police alleged were terrorists, were the reasons for police interest in him. Yet his evidence was that all three persons had left the village in 2003 or 2004 and the police did not start making visits to his home until January 2008. It is implausible that, had the police genuinely suspected that the appellant had connections with terrorists or had information about them, they would have waited four years before questioning him. That the police then sustained a high level of interest in him throughout 2008 and 2009 is highly implausible. The Authority finds he has fabricated his claim of connection with these alleged terrorists, and it is a device he has concocted as part of his false claim.

[40] Having found that the basis of the police interest in the appellant is implausible, the Authority also notes two further concerns with his evidence,

namely:

- (a) It is implausible that the appellant was arrested in a police blockade on a chance visit home in July 2008; and
- (b) It is implausible that the appellant was able to secure a police clearance certificate from his district police station in October 2008 while the adverse police interest in him was ongoing.

[41] The appellant also gave evidence that although he feared for his life at the hands of the Punjabi police, he returned home on many occasions to visit his family and that he helped his father on the farm until he left India. His evidence was that his second arrest and detention occurred when he was visiting his family. Had he really feared the police, it is considered highly unlikely that he would have kept visiting his family in this manner.

#### **CONCLUSION ON CREDIBILITY**

[42] Taking all matters referred to above into account, the appellant's story is rejected in its entirety. It is not accepted that the appellant has been of interest to the Punjabi police because of his alleged connections with terrorists, namely AA and his two Muslim friends.

[43] The appellant, on that accepted profile, has not established that he has a well-founded fear of being persecuted in India on the objective country information.

[44] The first issue framed for consideration is answered in the negative. It is unnecessary therefore to consider the second issue of Convention ground.

#### **CONCLUSION**

[45] For the reasons mentioned above, the Authority finds 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.



"D Henare"  
D Henare  
Member