

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

**REFUGEE APPEAL NO 76427**

**AT AUCKLAND**

**Before:** A N Molloy (Member)

**Counsel for the Appellant:** R Chambers

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

**Date of Hearing:** 28 January 2010

**Date of Decision:** 22 April 2010

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**DECISION**

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[1] The appellant is a national of India. He claims that he will be seriously harmed if returned to India because he has been targeted by a political figure at the academic institution where he studied. He also claims that the police have accused him of supporting Kashmiri terrorists.

[2] This is an appeal from the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining his application for refugee status. The appeal turns upon the appellant's credibility, which is assessed following the summary of his claim which appears below.

**THE APPELLANT'S CASE**

[3] The appellant is a young single male of Sikh ethnicity. He was raised in X, a small village in the district of Jalandhar, within the state of Punjab. His parents

still reside in X, together with the appellant's younger sibling.

[4] After attending school in Jalandhar the appellant gained entry to a college, where he became a popular figure with the student body and with the academic staff. His difficulties began in 2008 when he endorsed a candidate affiliated with the Congress Party in the student election which was held at the college in March of that year.

#### First assault

[5] The appellant was so popular with his fellow students that his support for the Congress Party candidate was perceived as a significant threat by AA, the candidate who contested the election under the banner of the Akali Dal party. AA and his supporters believed that the appellant may have an important impact upon the result of the impending election. They began trying to intimidate him.

[6] The appellant was not swayed, so one afternoon during the week before the election he was assaulted by AA and about a dozen of his supporters. The attack lasted for 10-15 minutes.

[7] When the appellant lodged a complaint with the Y police station, they took no action to apprehend his attackers. Instead they told the appellant that he should stop supporting the Congress Party.

[8] The election took place a few days later. It was won by AA by a narrow margin. However, that did not bring the appellant's difficulties to an end.

#### Second assault

[9] In May 2008 the appellant was the victim of a further assault by AA and two others. They accosted the appellant outside the college gate and warned him again to stop supporting the Congress Party. The appellant did not see any point complaining to the police.

#### Arrests by police

[10] Through his involvement in the student election the appellant acquired such a profile that he became a target of the local police. He was arrested on two occasions. The first occurred in June 2008 when three police officers apprehended the appellant as he was riding his motorbike. The appellant was taken to Y police station, where he was detained for the night. The appellant was

not charged with any offence, but was accused of having a connection with Kashmiri terrorists and of being involved in fighting between different factions. The appellant was released the next day after his parents paid a sum of money to the police.

[11] The appellant was arrested and taken to the Y police station for the second time in January 2009. To his surprise, AA was waiting there for him. AA struck the appellant and told him, in front of the police, that he did not have long to live.

[12] The appellant was again detained overnight. He was again mistreated and he was again released the following day, once his parents had paid a bribe.

### Sexual assault

[13] On the third or fourth evening after his release the appellant was riding his motorbike in Jalandhar when a man at the side of the road motioned to him to pull over. As he did so two other men emerged from hiding. He recognised them as associates and supporters of AA. The three men dragged the appellant out of public view and, while the two supporters of AA held him down, the appellant was sexually assaulted by the third man.

[14] In the aftermath of that assault the appellant spent approximately two weeks in hospital. The appellant's family reported the rape the following day. The police were initially reluctant to interview the appellant. When they eventually tried to speak to him the appellant was in no fit condition to talk.

[15] The day after he was discharged from hospital the appellant went to the Y police station to lodge his complaint. He was accompanied by his parents, members of his *Panchayat* and other people from his village. However the police did not believe the appellant's claim. Instead they detained him overnight, without telling him why. The appellant was released, unharmed, the following morning, when his parents returned with the *Panchayat*.

[16] The appellant then went into hiding. He lived with various relatives in various different places, to avoid ongoing police attention. Despite being in hiding, the appellant returned to college to sit his final examinations in March 2009.

### Departure from India and arrival in New Zealand

[17] From the time the appellant was first arrested in June 2008, his parents began to consider the possibility of sending him overseas for his safety. In

September 2008 the appellant saw an advertisement posted in a newspaper by an agent, Abdul Kalam, who indicated that he could obtain visas for individuals wanting to come to New Zealand. The appellant's parents paid Abdul Kalam Rs700,000 to arrange a visa for the appellant.

[18] The appellant was eventually able to depart India by air without difficulty and he arrived in New Zealand in late June 2009. He was one of almost two dozen Indian nationals who arrived in New Zealand on around the same day. He recalled being on the flight together with several of them, but did not know any of those men before they arrived in New Zealand. Each has applied for refugee status, albeit on different grounds.

[19] The appellant lodged his application for refugee status in July 2009 after meeting a man called Kulwant Singh, a New Zealand citizen, who informed him about the process. After interviewing the appellant in early September 2009 an officer of the RSB issued a decision declining his application on 14 October 2009. The appellant appeals against that decision.

[20] The appellant has been told by his parents that people are still looking for him in X, and he does not believe he can safely return to his village, or anywhere in India. If he were to return, the appellant believes that he would be killed by AA and his associates or by the Y police.

#### Material received

[21] Prior to the appeal hearing, the Authority received a memorandum of submissions under cover from a letter from counsel, Mr Chambers, dated 20 January 2010.

[22] At the conclusion of the appeal hearing, Mr Chambers sought and was granted leave to obtain additional documents from the hospital where the appellant claimed to have been treated for injuries resulting from his sexual assault in early 2009.

[23] Counsel was originally granted until 24 February 2010. In a letter bearing that date, Mr Chambers advised the Authority that the Medical Superintendent of the hospital in question had asked for the appellant's patient identification or registration number. Counsel had been advised by the appellant that he could not supply that information because the details "were left behind in the Punjab". Mr Chambers informed the Authority that he had therefore provided the hospital with

broad background information which would, he hoped, enable the hospital to provide additional information "shortly".

[24] The Authority replied to Mr Chambers, indicating that the time available to obtain the information sought would not be extended beyond 9 March 2010 "without a clear indication of how much time is required, and without compelling evidence explaining the need for such an extension".

[25] Mr Chambers replied on 3 March 2010, attaching copies of the communications he had exchanged with the hospital in this connection. No further material has been provided to the Authority.

## **THE ISSUES**

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

"... owing to a 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] In order to address the issues as framed it is first necessary to determine whether the appellant is a credible witness. The Authority finds that he is not. His account is contradicted by apparently credible documentary evidence, and is internally inconsistent in various significant respects. The Authority finds that the

appellant has given a false account of his reasons for leaving India. His core account is rejected in its entirety, for reasons which follow.

#### There was no student election in March 2008

[29] The appellant's account turns upon his involvement with a candidate who contested an annual election, in March 2008, for the position of President of the student body at his college. This premise underpins the appellant's account and provides the basis for all of the problems which he subsequently experienced.

[30] However, it has become apparent that there was no such election in 2008. In response to enquiries made through an intermediary in India, the RSB obtained confirmation that there had been no student body election for any post at the college in question for more than quarter of a century. This is recorded in a letter signed by the principal of the college in September 2009.

[31] When asked to comment on the content of the letter the appellant claimed that the college simply did not wish to reveal to the world that such difficulties existed at the college.

[32] The Authority does not accept the appellant's explanation. There is nothing apparent from the nature of the questions posed to the college by the RSB that would have caused it to be defensive about such matters. The RSB made no reference to the appellant, or to difficulties arising from any election. The enquiry simply related to uncontroversial facts as to whether elections are held, the timing of such elections, the names of any students standing for office and whether candidates are endorsed by political parties.

[33] The content of the letter from the college fundamentally undermines the core of the appellant's account. If no election took place, the entire rationale for the appellant's predicament falls away. The appellant has provided no evidence which corroborates his claim and the letter from the principal is compelling when considered in light of the additional matters referred to below.

#### Inconsistent account of the sexual assault

[34] The appellant's account of the sexual assault is marked by two substantive contradictions.

[35] First, the appellant told the RSB that the man who motioned to him to pull over and stop that evening had long hair. When outlining this event before the Authority the appellant expressly stated that the man in question had short hair.

[36] Second, the appellant told the refugee status officer that he was restrained by two men whom he recognised as associates of AA. The sexual assault was carried out by the third (long-haired) man, whom he had never previously seen. In direct contrast, the appellant told the Authority that he was sexually assaulted by one of the two associates of AA, which must mean that he was restrained by the second of the two associates along with the man he had never previously seen.

[37] It is also notable that the statement lodged in support of the appellant's refugee claim asserts that he was assaulted while detained after his second arrest.

[38] The appellant could not adequately explain these fundamental contradictions.

#### The nature of the vendetta against the appellant is implausible

[39] The Authority finds that the nature and enduring length of that vendetta is so disproportionate to the political significance of the appellant that it is implausible.

[40] The appellant claimed that he became the subject of an extraordinarily sustained and vitriolic campaign conducted against him by a local student political figure. This was backed up by the local police. The consequences involved sustained assaults on campus, police detention and mistreatment and threats to his life.

[41] Yet the activities that gained him such a profile included nothing more than associating with his friend and making a single speech on the friend's behalf, a week before the election. When asked what his speech had been about, the appellant's answer was vague and non-specific. He said that he had simply told the crowd "As you are aware the candidate I support are good people, we need your vote." He did not say anything negative about the Akali Dal Party.

[42] When asked to explain why he was perceived to be so crucial to the election outcome by the Akali Dal Party, the appellant's reply was vague and generalised; it was because he was "popular". The appellant displayed no hint of political acumen or interest, and supported his friend's candidacy simply because they were friends.

[43] Nor could the appellant adequately explain why such a vitriolic campaign was sustained against him for more than a year following the election, even though the appellant's candidate had lost.

[44] The Authority notes that the appellant was the only individual singled out for this treatment by the Akali Dal Party. In addition, the appellant's description of his first assault was vague and mobile. It supposedly took place on a busy campus during an ordinary academic day. When asked to explain how this could have occurred without any intervention by staff or others, the appellant initially claimed that he had "no time" to cry out for help. When it was pointed out that he had claimed the assault took place over a protracted period of 10-15 minutes, the appellant contradicted himself by saying that he did yell and scream, but that no-one came to his assistance.

#### Lack of corroborating material

[45] The appellant has provided the Authority with no material which might corroborate his claim to have been attacked at various times, or his claims to have been injured.

[46] Following the conclusion of the appeal hearing the appellant's counsel was provided with the opportunity to obtain confirmation from the hospital where the appellant claims to have been treated for injuries following his sexual assault in early 2009. No such information has been provided. While counsel explained that the appellant did not have the reference numbers requested by the hospital, there is no apparent reason why he could not have obtained this information from his family in India. The Authority notes in this regard that the appellant was asked for a copy of any medical certificate from the hospital by the refugee status officer who interviewed him in September 2009. The appellant agreed to obtain this information then, but has failed to do so. He has not provided any credible explanation for his failure.

#### Summary of findings

[47] In this context and for all of these reasons, the Authority finds that the appellant's account is untrue. His core account is rejected in its entirety.

[48] The Authority rejects the appellant's claims that he came to prominence as a politically significant person on the campus of an educational institution. It rejects his claims that he experienced difficulties with political rivals and that he



was subsequently the victim of a sexual assault. Finally, the Authority rejects the appellant's claim that he had been arrested and mistreated by the police and that he had been accused by the police of supporting terrorists. The Authority also rejects the appellant's claim that he will be of any interest to the police or other authorities in India if he were to return there now.

[49] The only relevant aspect of the appellant's claim the Authority accepts is that he is a national of India from the Punjab and that he has a genuine Indian passport. It finds that the appellant departed India without difficulty and that there is no credible evidence that he is at risk of serious harm in India. The appellant does not have a well-founded fear of being persecuted on return to India for any reason.

### **CONCLUSION**

[50] For the reasons mentioned, 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 N Molloy"  
A N Molloy  
Member