

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76011

AT AUCKLAND

<u>Before:</u>	B Burson (Member)
<u>Counsel for the Appellant:</u>	R Chambers
<u>Appearing for INZ:</u>	No Appearance
<u>Date of Hearing:</u>	12 April 2007
<u>Date of Decision:</u>	16 May 2007

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of Immigration New Zealand (INZ) declining the grant of refugee status to the appellant, a national of Pakistan.

INTRODUCTION

[2] The appellant claims a well-founded fear of being persecuted in Pakistan because of his belonging to the Ahmadi religion. Before assessing the appellant's claim in this regard, a summary of evidence will be set out.

THE APPELLANT'S CASE

[3] The appellant was born in the late 1960s in S, a town in Punjab province. He lived with his mother and father and his older brother all of his life in S prior to arriving in New Zealand. The appellant's father was a farmer and grazed a small number of buffalo and cows on the land he had inherited from the appellant's grandfather. His father also grew vegetables and crops which were both used for the family's own consumption and sold at local markets.

[4] The appellant's family were not particularly religious. His father was busy with work and did not have much time to go to the mosque to undertake his prayers. His mother, however, was more devout and he would observe his mother more frequently undertaking her daily prayers. His mother taught the appellant and his brother the rudimentary rules of prayer and religious observance. In the appellant's neighbourhood in S there were another two Ahmadi families and the appellant's family used to socialise with them. There were also a number of Ahmadi families in a nearby town called R and the appellant and his family would sometimes meet these people when they went to R to pray at the mosque.

[5] The appellant attended a state primary school for four years in the mid-1970s. While at this school he was verbally abused by fellow students on account of his being an Ahmadi. His brother, who was two years older than him, attended the same school. After completing primary school, the appellant went to the local high school. His brother was there for the first 12 months of his attendance after which time he went to undertake religious education in the local mosque. This was because his brother had from a young age been more attracted to learning about the Ahmadi faith than the appellant or his parents. From his early teenage years, the appellant's brother began frequently attending the local mosque and assisting the *imam*. The appellant's brother would regularly come home with religious texts which he would then study and discuss with his parents. The appellant, however, was not so interested in undertaking any such study and nor was he interested in taking part in the discussions that sometimes took place in the family home. He would therefore excuse himself whenever discussions arose.

[6] The appellant himself remained at the high school for three years. While the appellant was at high school, he began to receive, in addition to the verbal abuse and spitting that he had received at primary school, physical assaults by Sunni Muslim boys from his and other neighbourhoods. These beatings usually took the form of the appellant being beaten with shoes and fists. He would invariably suffer a bleeding nose and mouth as a result of these beatings. The number of people who attacked him would vary but could be up to five or six people. There was no set pattern to the frequency of the beatings in that he could be beaten twice in one week and then suffer no further attacks for the following two months. However, his being beaten in this manner was a regular feature in the years he spent at high school.

[7] As a result of the beatings he too left the high school and went to the mosque for education for two hours per day. During this time he was instructed on reading the Koran and how to recite his prayers. In the afternoons he helped his father on the family land. In 1984 the appellant ceased studying at the local mosque and thereafter assisted his father full-time on the farm with various jobs. He undertook this employment until he left for New Zealand in 2006.

[8] The appellant's brother had become known in S as someone deeply interested in his religion and this made him the target of more severe and frequent beatings than those suffered by the appellant. After completing his studies, the appellant's brother also commenced working on the family farm.

[9] In addition to these incidents, in the period between his leaving high school and his departure for New Zealand, his family suffered a number of problems as a result of their being Ahmadi. On several occasions, unknown persons interfered with the irrigation system to the land and diverted the flow of water from it. On another several occasions, unknown persons let loose animals onto the land which thereby destroyed the vegetables and crops.

[10] Incidents of this nature came to a head in late 2002/2003 when unknown persons set fire to the land. At the time, their crop of wheat, which was ready for harvesting and sale, was destroyed. This caused a significant loss to the family. The appellant's father reported this incident to the police and told the police of the other incidents. Nothing, however, was done.

[11] On a number of occasions the family home has also been attacked when things were thrown at the house smashing the windows. Furthermore, in 2005, the truck owned by the appellant's family, which they used to transport their produce to market, was set on fire outside the family home. Seeing smoke rising from behind the fence, the appellant went outside and noticed that the family truck had been set alight. He and his father tried to douse the flames but were unsuccessful and their truck was destroyed.

[12] The appellant also continued to suffer periodic physical assaults from local Sunni men. These assaults were all of a similar nature, namely, him being hit with shoes and fists as well as being verbally abused. The assaults were always carried out by boys from his local neighbourhood. There was a group of approximately four or five who would usually participate in the assaults although the group would never always be the same individuals.

[13] Specifically, the appellant recalls an incident in 2004 when he and his brother were confronted by five or seven Sunni boys when they had stopped at a shop on their way home from the farm. On this occasion, the youths began verbally abusing them for being Ahmadis and the appellant's brother answered back which aggravated their assailants who began beating them. The appellant suffered a swollen face and a cut to his mouth. His brother was beaten more severely and had cuts and bruises about his body. The appellant and his brother went home and the appellant's brother was taken to the neighbourhood doctor where his various wounds were attended to.

[14] The appellant suffered a further assault in 2005. At this time he was coming back from the farm when he encountered a group of Sunni boys gathered in a square situated close to the family home. They began swearing at him and abusing him for being an Ahmadi and then began to beat him with shoes and their fists. The beatings lasted for some five or 10 minutes but stopped when other people began to gather in the square. As a result of this attack, the appellant suffered cuts to his mouth and a bleeding nose. When he went home he was taken to a nearby doctor and given a tablet and some ointment.

[15] Apart from the attacks the appellant was also constantly verbally abused for being an Ahmadi when he walked in the street. He was also spat upon from time to time.

[16] In late 2004, the appellant and his father and brother were working on the family farm as usual. In the middle of the afternoon, the appellant's brother decided he wanted to go home to take a bath. Approximately one and a half to two hours later some people came to the farm and started calling loudly to the appellant's father that the appellant's brother was laying on the road injured.

[17] The appellant cycled on his bicycle towards the place where his brother had been reportedly attacked with his father on the back. About half way between the farm and the house, a distance of some five to eight kilometres, they saw the appellant's brother lying on the road covered in blood. By the time they had arrived, some people from the neighbourhood had already gathered. The appellant's father put the appellant's brother's head into his lap. The appellant's brother was breathing but was unconscious. There was an open wound at the back of his head. A person with a truck came along and the appellant, his father and his injured brother travelled in the truck to the local hospital. However, the

doctor who came and saw them told them that the appellant's brother had died shortly after arrival. Thereafter his father made a complaint to the police.

[18] The appellant was again attacked in 2006 as he emerged from a local shop. As he stepped into the street, some Sunni boys began hitting him without warning. The beating did not last very long as his attackers ran away when other people came out of the shop. This was the last time the appellant was physically assaulted.

[19] After this attack, the appellant's father decided that the appellant should leave Pakistan. The family had lost one son and his parents did not want to lose their remaining child. The appellant's father, therefore, made arrangements with persons called AA and BB to enable the appellant to leave the country. Although the appellant believes his father would have paid some money, he does not know how much. All he knows is that, at the time, the leader of their religion was embarking on a worldwide tour including travel to Australia and New Zealand and this made it easier for the appellant to secure entry into New Zealand. He does not know what steps were taken by his father or AA or BB. He left Pakistan in late March 2006 and arrived in New Zealand shortly thereafter.

[20] AA and BB accompanied him to New Zealand. They spent one night at an Ahmadi mosque in Manukau before travelling to Tauranga where they stayed with somebody that AA knew. However, AA and BB left approximately three or four days later. The appellant has not seen them since.

[21] As a result of these incidents, the appellant is afraid to return to Pakistan. The family's ability to sustain themselves has been substantially interfered with by persons in their Sunni community because they are Ahmadi. He has faced verbal and physical attacks all of his life simply because he is an Ahmadi. He fears that what happened to his brother will happen to him.

Documentary evidence

[22] On 10 April 2007, the Authority received from counsel a written memorandum dated 18 March 2007 together with a bundle of country information relating to the general situation of human rights in Pakistan and the situation of Ahmadis as per schedule at pages 8 and 9 of that written memorandum.

[23] On the morning of the hearing, counsel submitted a photocopy of the First Information Report (FIR) dated 20 September 2004. The document purports to have been filed by the appellant's father with the police in relation to the claimed fatal attack on his brother, together with an uncertified translation thereof. Counsel also submitted the original of the appellant's birth certificate and the appellant's brother's death certificate, copies of which were already on the INZ file. Finally, at the end of the hearing, counsel submitted to the Authority a copy of an extract from the Encyclopaedia Britannica, relating to the Ahmadiyah.

[24] During the hearing the Authority served on counsel the following:

- (a) Ludwig W Adamec *Historical Dictionary of Islam* (The Scarecrow Press, Inc. Lanham, Maryland, and London 2001);
- (b) Minority Rights Group *World Directory of Minorities* (1997) p578;
- (c) J Bowker (ed) *The Oxford Dictionary of World Religions* (Oxford University Press (1999) p33;

[25] At the conclusion of the hearing counsel also addressed the Authority orally. At counsel's request, the Authority granted the appellant a period of two weeks from the date of the hearing to file a certified translation of the FIR together with a copy of a medical report from the doctor who had attended to the appellant after his assault.

[26] On 30 April 2007, the Authority received from counsel a certified translation of the FIR. Although the appellant had indicated at the hearing that he had kept the envelope in which the FIR had been sent to him from Pakistan, this had not as yet been provided to counsel. However, on 7 May 2007, the Authority received from counsel a copy of a letter dated 26 March 2007 from Dr DD. In this letter Dr DD states the appellant was armed at his clinic on 2 March 2005 "bleeding from his nose and mouth. He also had other minor injuries on the body." Dr DD states he was sent home the same evening after treatment.

[27] By letter dated 9 May 2007 counsel advised the Authority that he had been instructed by the appellant that the appellant could not locate the envelope in which he received the FIR and suspects he may have disposed of it.

THE ISSUES

[28] 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."

[29] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (d) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (e) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

Credibility

[30] The Authority has no doubt in finding that the appellant is not a credible witness. It rejects the appellant's account of him being an Ahmadi or that he has suffered the various problems he has claimed including the assault and death of his brother. His account was characterised by a number of inconsistencies and implausibilities as follows.

As to the problems the appellant faced at school

[31] The appellant told the Authority that both he and his brother had begun to be assaulted by local Sunni youths while they were still at high school. However, this was different to what he told the refugee status officer at his interview where he indicated that it was only his brother who had been subjected to assaults at this time. Furthermore, in both his written statement and his RSB interview the appellant failed to mention that he and his brother had begun attending the mosque at different times in response to the problems they faced at school. Although not made explicit, the clear inference from his written statement and evidence to the RSB is that he and his brother left at the same time.

[32] His evidence at the RSB interview was confirmed back to the appellant in a written report prepared by the officer upon which the appellant was asked to comment. In a reply dated 27 November 2006, it was stated by counsel on his behalf that the appellant:

“... accepts the general chronology and has no amendments or alterations to make to that report.”

[33] In response to these concerns the appellant told the Authority that he had, in fact, told the officer of the beatings he suffered at high school and the fact his brother had “left early for the mosque”. However, the interview record is clear insofar as it fails to record his having said these things to the officer. Nor did he make any attempt to correct the officer’s understanding of the evidence in his written reply. Indeed the appellant went further and expressly accepted the officers understanding of his evidence as presented in the summary as being “generally correct.” His explanation is, therefore, rejected.

As to the attacks on the family home

[34] The appellant told the Authority that windows in his family’s house had been broken three times by unknown persons simply because they were Ahmadi. However, he made no reference to this in his original statement or during his RSB interview. When asked to explain why he was introducing this significant new evidence only at this late stage, the appellant explained that he had not mentioned it previously because the attacks were minor and that the significant events were the attacks on the land and the death of his brother. The Authority rejects this explanation. These incidents were the only times when the appellant claims that the family home had been directly targeted by Sunnis in their community because of their religion. It is significant and can reasonably be expected to have been recounted from the outset if in fact it were true.

As to the attack on his brother

[35] The appellant’s evidence in regards to this significant part of his claimed narrative was characterised by a number of discrepancies. These discrepancies arose in relation to what he had said previously and in relation to the copy of the FIR handed to the Authority at the hearing, which he claims as genuine, and upon which he relied to corroborate his account. Thus:

- (i) in his RSB interview he indicated that he and his father had travelled by truck to locate his injured brother after having been told by the person that the brother had been the victim of an assault. He told the Authority in his oral evidence that he and his father had travelled by bicycle; and
- (ii) in the written reply the appellant named the individual who had informed him and his father of the attack as a man called MM. However, in his oral evidence he gave the name of MA.

[36] While MA is stated in the FIR as being the person who informed the appellant's father of the attack in the first place, this similarity between the appellant's oral evidence and the FIR stands in stark contrast to significant discrepancies between his evidence and other statements made in that document. In particular:

- (i) the appellant's evidence was that the attack occurred some five to seven kilometres away from the farm where he and his father were working and that the appellant and his father had to travel by bicycle to the place of the attack. However, the FIR states that the attack took place on the other side of the sugarcane farm and that on hearing this news the appellant and his father had rushed toward the site to see what was going on; and
- (ii) contrary to the appellant's evidence to the Authority that neither he nor his father saw who had attacked his brother because they were both "on the farm" when they were informed, the FIR reportedly filed by his father in relation to this incident clearly states that after hearing of the assault, the appellant and his father rushed to the site of the attack raising their voices for help as they did so. The FIR goes on to state that "on hearing this noise, the man named NN attacked the appellant's brother with his stick on his head continuously". The FIR also names two people as being the perpetrators of the attack on the appellant's brother.

[37] At this point, the appellant queried the accuracy of the translation that accompanied the FIR. The interpreter for the hearing was therefore asked to provide an oral translation. In so doing he confirmed that the FIR does state:

- (i) the appellant and his father were informed that “nearby the sugarcane farm, on the other side of it, your son is being beaten by the two named individuals with *lathis*”;
- (ii) after hearing this the appellant and his father ran toward this and as “we got close to it, it began shouting and upon hearing these shouts the two attackers fled”;
- (iii) that the reference to “the north” in the written translation provided could be accurate but it was not entirely clear; and
- (iv) the word NN was not a name but rather referred to the two attackers named elsewhere.

[38] The certified translation of the FIR received on 30 April 2007 confirms the interpreter’s translation. It also states that, contrary to the appellants evidence before the Authority:

- (i) the appellant’s father and the appellant was working in “our field” and that the attack on the appellant’s brother took place on the other side of an “adjacent cane field”;
- (ii) the appellant and his father ran to the site; and
- (iii) the appellant’s father saw two persons attacking the appellant’s brother and names the identity of the two attackers.

[39] In short, regardless of which of the three separate translations is used, the FIR is substantially different in its narration of the events surrounding the brother’s claimed assault and death to that provided by the appellant. The Authority finds that the reason for this divergence is that the event simply did not happen and that the FIR is not genuine and has been manufactured in order to bolster his claim. It is not credible that such a significant event could not be told consistently by the appellant himself, or that his understanding of it would be so markedly different from that set out in a document upon which he relies to substantiate this claimed event.

As to the appellant's departure

[40] The appellant's account of the arrangements made for his departure was noted for its vagueness. Furthermore, the Authority finds that his account of having to leave on a false passport is inherently implausible. The appellant agreed that, at the time of his departure, he had no problems with the Pakistani state authorities such as might excite official interest in him should he try to leave Pakistan through normal immigration channels and using normal procedures. Moreover, at the time of his departure he possessed a valid Pakistani passport containing his correct details. Yet the appellant had no explanation whatsoever as to why in these circumstances he could not simply leave on his original passport and why his father would go to the additional expense of arranging for his departure through using a false passport and a falsely obtained visa.

[41] He provided a single sheet of his genuine passport to substantiate his identity when he arrived in New Zealand. He told the Authority that the original of the document was unavailable to him and was retained by AA and BB. The Authority has no doubt that the reason the appellant's original passport has not been produced is because it would show that contrary to his evidence, he departed lawfully using his original passport and that this passport remains readily available to him to use at a future point in time should the need arise.

As to the delay in claiming asylum

[42] The appellant arrived in early April 2006 but did not file his claim until mid-August 2006. When asked to explain why there was such delay, the appellant told the Authority that he did not know what to do and it was only at this time that he was given the necessary advice. This explanation the Authority finds implausible. He told the Authority that both AA and BB who accompanied him to New Zealand knew of his predicament in Pakistan. Moreover, he stayed at an Ahmadi mosque on the first night. It is, therefore, surprising that he did not mention his predicament to the leaders of the Ahmadi mosque who, being Ahmadi themselves, can reasonably be expected to know of the fact that the persons from their community have been recognised as refugees here in New Zealand – see, for example, *Refugee Appeal No 74091* (21 November 2005).

[43] The appellant told the Authority that AA and BB had told him not to mention his troubles to anybody - including the leaders of the Ahmadi mosque. This is

frankly implausible and he could provide no good reason why AA and BB should give him this advice.

As to the appellant's limited knowledge of the Ahmadi faith

[44] Throughout his asylum process the appellant has been at pains to stress that he was not very religious and for this reason had only a rudimentary understanding of the Ahmadi faith. Caution must be exercised before adverse credibility findings are made on the basis of a person's limited understanding of their claimed faith, in that the most devout of individuals may nevertheless possess a genuine inability to recall particular narratives of, or historical details surrounding their faith. However, the Authority is satisfied for the reasons outlined above, this is not the explanation for the appellant's lack of knowledge in this case. Rather, the Authority is in no doubt that the reason for this appellant's lack of knowledge about matters relating to his claimed faith is simply that he is not Ahmadi and that this has been a false claim made by him in an attempt to secure refugee status in New Zealand.

Summary on credibility

[45] Because of the cumulative effect of the above matters, the Authority finds the appellant not to be credible and rejects the entirety of his evidence as it relates to his claim to have a well-founded fear of being persecuted in Pakistan. Having regard to this finding, the Authority places no weight on the letter of Dr DD.

[46] The first principal issue is therefore answered in the negative. The need to consider the second does not, therefore, arise.

CONCLUSION

[47] For the above reasons, 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.

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B Burson
Member