

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76063

AT AUCKLAND

Before: A N Molloy (Member)

Counsel for Appellant: I Uca

Appearing for the Department of Labour: No appearance

Date of Decision: 25 September 2007

DECISION

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

[2] This is the second time the appellant has appealed to this Authority. The Authority (differently constituted) dismissed her appeal in respect of her first refugee claim on 27 November 2006. She lodged a second refugee application with the RSB on 5 February 2007. The RSB declined the second application on the basis that it had no jurisdiction to accept the appellant's second claim.

[3] This appeal turns upon whether the Authority has jurisdiction to determine the appellant's second claim for refugee status.

JURISDICTION: SECOND CLAIMS FOR REFUGEE STATUS

[4] Neither a refugee status officer nor the Authority has unlimited jurisdiction to receive and determine a further refugee claim after a first claim has been finally determined.

[5] Section 129J(1) of the Immigration Act 1987 (the Act) sets out the circumstances in which a refugee status officer may receive and determine a second or subsequent claim for refugee status:

“A refugee status officer may not consider a claim for refugee status by a person who has already had a claim for refugee status finally determined in New Zealand unless the officer is satisfied that, since that determination, circumstances in the claimant’s home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim.”

[6] Section 129O(1) of the Act provides a right of appeal from a decision made by a refugee status officer under s129J(1) of the Act:

“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 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.”

[7] When considering its statutory jurisdiction to hear and determine second and subsequent refugee claims under ss129J(1) and 129O(1) of the Act, the Authority has held, in *Refugee Appeal No 75139* (18 November 2004) and *Refugee Appeal No 75576* (21 December 2006), that jurisdiction is determined by comparing the previous claim for refugee status with the subsequent claim. In the absence of significantly different grounds in the respective claims, the Authority has no jurisdiction to consider the merits of the subsequent claim.

JURISDICTION OF THE AUTHORITY TO DISPENSE WITH AN INTERVIEW

[8] In circumstances outlined in s129P(5) of the Act, the Authority has a discretion about whether to offer the appellant the opportunity to attend an interview. The discretion arises where the appellant was interviewed by the RSB (as in this instance) and if the Authority considers that the appeal is *prima facie* ‘manifestly unfounded or clearly abusive’. The Authority’s jurisdiction in this regard was examined in *Refugee Appeal No 70951/98* (5 August 1998).

[9] After setting out the procedural history of the appellant’s case, the Authority will briefly outline the appellant’s current claim for refugee status. That claim will then be assessed in light of ss129J(1) and 129O(1) of the Act and a conclusion reached about whether to dispense with an interview under s129P(5) of the Act.

PROCEDURAL HISTORY OF THE APPELLANT'S CASE

FIRST CLAIM FOR REFUGEE STATUS

[10] The appellant arrived in New Zealand in January 2005 and lodged her first claim for refugee status in early February of that year. She was interviewed by a refugee status officer later the same month and the RSB issued a decision, dated 14 April 2005, declining her first application.

[11] In her first claim for refugee status, the appellant claimed that she was unable to return to Iran because of her abusive father. She claimed that her father had persistently been physically violent to her and to her mother. He had hit her at various times with his hand and with a belt and had inflicted cigarette burns to her body.

[12] The father tried to coerce the appellant into marrying a man of his choosing. She avoided complying with his wishes by threatening to commit suicide if forced to marry against her will.

[13] While still at school, the appellant met a young Armenian Christian man, AB, with whom she subsequently fell in love. They hoped to marry. When the father learned of their relationship, he became very angry and forbade the marriage.

[14] The appellant continued to meet AB in secret, and began to read the bible. In mid-2004 she left Iran with AB. They stayed in South Korea for several months. While there, they began attending a Christian church together. The appellant was baptised a Christian and she and AB married before the appellant travelled to New Zealand alone in early 2005. After arriving in New Zealand, the appellant was advised by her mother that her father had laid a complaint against the appellant with the Iranian authorities. He threatened to kill the appellant if she returns to Iran.

[15] The appellant claimed that she faced punishment for her loss of virginity and said that she was at risk of being persecuted in Iran because she had converted to Christianity. She also claimed that her father's predilection for violence would return to the fore.

[16] After hearing the appeal against the decision of the RSB in June and July 2006, the Authority published a decision dismissing the appellant's appeal in *Refugee Appeal No 75572* (27 November 2006). A detailed summary of the appellant's account is set out in that decision.

[17] In dismissing her first appeal the Authority rejected the appellant's entire account and found that:

"...there is no evidence that AB exists and her evidence surrounding key events in the account, namely the marriage proposal and departure was both contradictory and implausible. Her evidence surrounding her Christian faith was equally contradictory and she misled both the Authority under oath, and the RSB, as to the existence of evidence of her baptism." [42].

and:

"In light of the above matters, the Authority rejects the appellant's claim to be a genuine Christian convert. It finds that she went through the motions of converting to Christianity in South Korea in an endeavour to shore up her claim to refugee status." [69].

[18] As a consequence, the Authority concluded that:

"...it cannot rely on any of [the appellant's] evidence as to the circumstances prompting [her] departure from Iran or [her] subsequent actions, and rejects [her] account as untrue." [75].

SECOND CLAIM FOR REFUGEE STATUS

[19] On 5 February 2007, within 10 weeks of the date of the Authority's first decision, the appellant lodged a further claim for refugee status. This was supported by a statement in her name bearing the same date.

[20] For the purposes of her second claim, the appellant asserts that she has been told by her mother and her uncle that her father has threatened to kill the appellant if she returns to Iran. She claims that her father has become more violent because her mother complained to the police about his violence.

[21] The appellant also claims that she is afraid that she will be considered an apostate because she has converted to Christianity. She claims that she will be seriously harmed because of this.

[22] After interviewing the appellant for a second time in March 2007, the RSB issued a further decision dated 15 May 2007, deciding that it had no jurisdiction to consider the appellant's second claim. The RSB was not satisfied that circumstances in Iran had changed to such an extent that the appellant's further claim was based upon significantly different grounds to her previous claim. Accordingly, refugee status was declined.

[23] The appellant now appeals against that second decision of the RSB.

WHETHER TO DISPENSE WITH AN INTERVIEW

[24] The Authority formed the preliminary view that the appellant's second appeal was *prima facie* 'manifestly unfounded or clearly abusive' because it did not meet the jurisdictional threshold for second or subsequent claims. That view, and the basis upon which it had been formed, was set out in a letter from the Authority's Secretariat to the appellant's lawyer dated 6 September 2007.

[25] The letter noted that the appellant had been interviewed by the RSB in respect of her second application for refugee status. It also noted that this was the second refugee application lodged by the appellant, and set out the relevant jurisdictional requirements. The appellant was advised that, in the Authority's preliminary opinion, the appellant's second claim did not meet the jurisdictional requirements:

"Preliminary view

It is the Authority's preliminary view that [the appellant] does not satisfy the statutory criteria for the acceptance for consideration of a second refugee claim under ss 129J and 129O of the Act.

Neither the continued threat of violence at the hands of her father, nor the claimed risk posed by her conversion to Christianity is a change which would permit a finding to be made that [the appellant's] second claim is based on significantly different grounds to her previous claim. They have always been the central aspects of [the appellant's] refugee claim and her first claim was based on precisely these grounds.

[The appellant's] claims, when compared, do not establish that circumstances in Iran have changed to such an extent that her further claim is based upon significantly different grounds to her first claim. If that is so, then the Authority has no jurisdiction to consider the credibility and merits of the second refugee claim.

The Authority observed, in *Refugee Appeal No 75576* (21 December 2006), that the potential for abuse of second claim procedures led Parliament to limit the circumstances in which such claims can be considered (at [27]-[28]).

Within the comparatively short period of ten weeks after the publication of the Authority's decision finally determining your client's first appeal, [the appellant] has lodged a second claim in virtually identical terms to her first. She has not provided any evidence of a significant change in circumstances in Iran since the Authority declined her first appeal on 27 November 2006. In the circumstances, it is open to the Authority to find that to be an abuse of the second claim procedure.

[26] The Secretariat's letter dated 6 September 2007 also reminded the appellant that she bears the responsibility for establishing her refugee claim pursuant to ss129P(1) and 129P(2) of the Act; as referred to in *Refugee Appeal No 72668/01* (Minute No 2) (5 April 2002) and in *Anguo Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA).

[27] Notice was also given that, unless the Authority was persuaded otherwise, it could consider and determine the appeal pursuant to s129P(5)(a) and (b) of the Act, without giving the appellant an opportunity of attending a further interview. Reference was also made to *Refugee Appeal No 70951* (5 August 1998).

[28] The appellant was invited to provide the Authority with submissions and/or evidence to address these issues by Thursday 20 September 2007. No response was forthcoming.

CONCLUSION AS TO WHETHER TO DISPENSE WITH AN INTERVIEW

[29] Taking into account all relevant material available to it, the Authority finds that the appellant's second appeal is *prima facie* 'manifestly unfounded or clearly abusive'.

[30] As the appellant was interviewed by a refugee status officer on 26 October 2006 in the course of the determination of her second refugee claim, the Authority determines this appeal on the papers pursuant to ss129P(5)(a) and 129P(5)(b) of the Act, without giving the appellant an opportunity to attend a further interview.

THE JURISDICTIONAL THRESHOLD

COMPARISON OF CLAIMS MADE

[31] In order to determine whether it has jurisdiction to consider the second appeal, the Authority must compare the appellant's first and second claims. Purely for the purposes of this analysis, it is assumed that the appellant's second claim is credible.

[32] As noted in the letter from the Authority's Secretariat to the appellant, dated 6 September 2007, the appellant's first claim for refugee status was based on her assertion that she faced punishment for her loss of virginity, that her father would react to her actions with violence and that she was at risk of being persecuted in Iran because she had converted to Christianity.

[33] Her second claim for refugee status, lodged within days after the Authority's decision to decline her first appeal, again relates to threats made by the father to the appellant's life. The appellant also claims that she will be seriously harmed

because, as a convert to Christianity, she will be considered an apostate.

[34] Comparing the appellant's first and second claims, and taking into account all of the material available to it, the Authority finds that there is no significant difference in the grounds upon which the appellant's first and second claims are based. In fact, both claims are based upon the same grounds.

CONCLUSION

[35] The appellant has not presented any evidence that, since the final determination of her first claim on 27 November 2006, circumstances in Iran have changed to such an extent that her second claim is based on significantly different grounds to her first claim.

[36] The appellant does not satisfy the requirements of ss129J and 129O(1) of the Act. It follows that the Authority has no jurisdiction to consider the appellant's second claim to be recognised as a refugee in New Zealand. The appeal is therefore dismissed.

"A N Molloy"

A N Molloy
Member