

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76424

AT AUCKLAND

<u>Before:</u>	B A Dingle (Chairperson) S Aitchison (Member)
<u>Counsel for the Appellant:</u>	R Chambers & H Craven-McLeay
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	27 January 2010
<u>Date of Decision:</u>	24 February 2010

DECISION

[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.

INTRODUCTION

[2] The appellant is a single man in his mid-20s who was born and has lived all of his life in Z village in the Kapurthala district in the Punjab. He claims to have been targeted for arrest, detention and physical mistreatment by the Indian police because he has been linked with Muslim militants and terrorists. He also claims that the Indian police will pursue him wherever he lives in India. He says that because the Indian police will not prosecute any charges against him in a fair or judicious manner, he will simply be subject to their arbitrary arrest and torture for the foreseeable future.

[3] The central issue to be determined in this case is whether or not the

appellant's account is a credible one.

THE APPELLANT'S CASE

[4] What follows is a summary of the evidence given in support of the appellant's refugee appeal. An assessment of this evidence will follow later in the decision.

[5] The appellant was born and raised in the Sikh faith in Z (a village of some two thousand residents) in the Punjab state. He is one of four children. His parents continue to live in the family home and farm their land surrounding the village. Apart from time spent in hiding in the months just prior to his departure from India, the appellant had always lived with his parents in Z. The family owned approximately 20 acres of farmland, held in three separate plots near the village. The closest two plots of land are approximately half a kilometre from the family home and the third block is approximately two kilometres away.

[6] For the purposes of this appeal, the appellant's early life was unremarkable.

[7] In 2002, he completed his secondary schooling. In that year he was also issued with a genuine Indian passport.

[8] In 2003, he applied for a visa to study in Canada, but his application was declined. He began working permanently on the family farm.

[9] Nothing of relevance occurred between 2003 and 2007.

[10] In December 2007, the appellant had his first difficulties with the Punjabi police. Early one morning, while driving to a nearby town to deliver vegetables to the market, he picked up three men who requested a lift. During the journey, the men talked to the appellant in Punjabi and Hindi. They asked him questions about his village and what he did for a living. They asked to be dropped off at the edge of town. The appellant did not learn anything about the men's identities during that trip.

[11] Two days later, two uniformed police officers arrived at the appellant's house and asked him to accompany them to the Y police station on the grounds that one of his "colleagues" had been arrested and found with weapons. The police did not search the house.

[12] Once at the station, the police officers revealed that the arrested man was called AA and accused the appellant of being linked, along with AA, to a Kashmiri Militant organisation. The appellant was asked repeatedly where his other colleagues were located and how many weapons he had. He was detained for two days and one night, during which time he was beaten twice. At one point, he fell down during a beating and hit his right eyebrow on a wall, causing it to bleed.

[13] The appellant was released when money was paid through his village *Panchayat* (council) to the police. He was not subject to any formal charges or bail conditions on release.

[14] The appellant returned to work on the farm. The police began to visit his home and farm regularly to enquire about him. Occasionally they would search the pump house on the farm but they never found anything of interest.

Second arrest

[15] In February 2008, the appellant was arrested for a second time because a boy was murdered in the area and the police suspected that he had either committed the murder or supplied the weapons used. He was taken to the same Y police station for two to three hours. He was questioned but when he could provide an alibi for his whereabouts at the time of the murder, he was promptly released with a bribe.

[16] After his release, he resumed life on the farm.

Third arrest

[17] In June 2008, the appellant was arrested for a third time from an animal shelter close to his home. Some Muslim men were arrested with weapons near his village. The police suspected the appellant was involved and so they arrested him. He was detained for a week, during which time he was questioned about his links to Muslim and Kashmiri militants and physically mistreated by the police. His release was secured by the payment of a Rs80,000 bribe to the police. On release, the police warned him that they would kill him if he was linked to terrorists again.

[18] The appellant took some days to recover from his injuries. Within approximately one week of his release, he decided to go and stay with relatives to

avoid further police attention. Thereafter he stayed at various places including with his sisters and a maternal uncle. The appellant returned to his village occasionally for brief visits. The police continued to visit the family home, but his father paid them to go away.

[19] In approximately August or September 2008, the appellant's father was advised by a village elder that the appellant should depart India for his own safety. The elder provided the name of an agent, BB, who could assist the appellant to leave. The appellant met BB and agreed to pay Rs800,000 for a work visa for New Zealand. BB prepared the visa application and other paperwork. The appellant signed the visa application form, medical certificates and other documents before they were submitted to Immigration New Zealand (INZ). He was issued with a police clearance certificate for which his father had paid a bribe of Rs25,000.

[20] On 18 June 2009, the appellant was issued with a work visa by INZ. On 20 June 2009, he left his village and travelled to his uncle's home and from there he travelled to Delhi. On 27 June 2009, he departed Delhi airport using his own passport without difficulty. At the airport, BB introduced him to five or six other people whose travel he had also organised. On 28 June 2009, the appellant arrived in New Zealand at Christchurch international airport and was issued with a work permit valid until 8 September 2009.

[21] The appellant was one of a group of Punjabi Indians who were supposed to secure work on vineyards in the Marlborough region, but when they arrived in New Zealand, that work was no longer available.

[22] On 9 July 2009, the RSB received the appellant's confirmation of claim to refugee status form. The appellant had filled out the form with the assistance of Kulwant Singh who had also assisted him prepare a written statement. The appellant is aware that a number of other men whom he had met at Delhi airport also claimed refugee status.

[23] Since his arrival in New Zealand, the appellant has had regular contact with his family. They have told him that the police continue to come to the home to search for him and believe he has joined Kashmiri militants in Kashmir where they are now searching for him.

[24] The appellant fears that if he returns to India he will be pursued by the

Punjabi police because they suspect him of being linked with a terrorist organisation. He believes that even if he lived in another part of India he would eventually come to the attention of police, his record with the Punjab police would be discovered and he would be at risk of persecution because of it.

Other documents filed

[25] The Authority and the appellant have been provided with the files of the Refugee Status Branch, including copies of all documents submitted by the appellant at first instance. Counsel for the appellant filed opening written submissions under cover of a letter dated 19 January 2010. Counsel also filed a full photocopy of the appellant's passport at the opening of the hearing and made closing oral submissions at the hearing.

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] The Authority finds that the appellant has not given a credible account as to his claimed difficulties in the Punjab. The core part of his account was marked by

inconsistencies, implausibilities and vagueness. The Authority is in no doubt that the account has been fabricated for the purpose of making a refugee claim. The specific reasons for this finding follow.

First arrest

[29] When questioned by the Authority about his first arrest and detention, the appellant repeatedly stated that he was not accused of links with a specific organisation or group of people. The Authority was careful to ask him specific questions on this point because his evidence was inconsistent with his written statement and oral evidence to the RSB in which he asserted that he was accused of links with the Khalistan movement.

[30] The Authority did not have an opportunity to put the apparent inconsistency to the appellant prior to the lunch adjournment. When the hearing resumed after lunch the Authority asked the appellant about medical treatment he received for his injuries after the first detention. The appellant answered the question and then spontaneously started repeating evidence about the way in which he was questioned and introduced new details relating to police accusations that he was associated with the Khalistan movement. When asked by the Authority why he was providing these details in answer to a question about medical treatment he suggested that he had not completed his evidence on the point before lunch. The Authority rejects his explanation. The Authority had earlier asked him specifically what organisations he was accused of being linked with and he answered "they didn't mention any". Furthermore, his spontaneous assertion about links with the Khalistan movement in the context of questions about a completely different matter gave the clear impression that he was seeking to correct a flaw in his evidence which he had identified during the lunch break. The evidence is rejected.

[31] Further, the appellant told the RSB that during his first arrest, he was shown a written statement containing the claims and charges against him. In contrast, he told the Authority that he never saw any written documents, including statements or formal charges against him. When asked by the Authority to explain the apparent inconsistency, he stated that they did not show him anything; they simply told him what he was suspected of. That explanation does not explain his previous evidence to the RSB and the Authority finds that the inconsistent evidence is the result of a fabricated account.

[32] The Authority also has concerns about the appellant's evidence that the

police told him the full name of AA whom they arrested and linked to the appellant. He never mentioned AA's name to the RSB despite being asked a long series of detailed questions about the incident and the man who had been arrested with weapons. While the Authority acknowledges that the appellant was not specifically asked whether he knew the name of AA at the RSB interview, the Authority finds it implausible that the appellant would not have previously provided the detail of AA's name had he known it. The Authority finds that his late disclosure of the name at the appeal hearing is simply an attempt to bolster his false claim by providing further fabricated details.

Second arrest

[33] The Authority rejects the appellant's evidence about his second arrest for two reasons. First, he told the Authority that his second arrest occurred because there had been a boy murdered nearby his village and the police suspected him of involvement in that murder. In contrast, at the RSB interview he made no mention of the murder or that it was the cause of his arrest. The relevant part of his RSB interview is recorded as follows:

“Q: Why were you arrested on the second occasion in February?

A: That time [police] also having a doubt on me.

Q: Based on what? What was doubt based on?

A: That I have some weapons.

Q: Why would they think that?

A: I don't know why.”

[34] When asked by the Authority to explain the omission of evidence about the murder to the RSB, the appellant could give no sensible explanation. He said that the police had thought he was distributing weapons provided by Muslim groups, impliedly asserting that there were no inconsistencies between his Authority and his RSB evidence. The Authority does not accept this because he was specifically asked at the RSB interview why the police would have reason to suspect he had weapons, and yet he did not mention the murder which he now claims was the entire reason for the police suspicion of him.

[35] In contrast to his vagueness to the RSB about why the police would suspect him of having weapons in February 2008, to the Authority he spontaneously provided the information about the boy being murdered, after being asked the open question “When were you next arrested?” He then went on to provide details

such as the boy's name, how he was murdered and by what sort of firearm.

[36] The Authority finds it wholly implausible that, had the appellant in fact been accused of murder or involvement in one at the time of his second arrest, he would have failed to reveal this important information to the RSB. The fact that he told the RSB that he did not know why the police suspected him cannot be sensibly reconciled with his Authority evidence. The evidence is rejected.

[37] Further underlining the view that this evidence is false, is the implausibility of the appellant being arrested on suspicion of murder, only to be released some two to three hours later. The appellant explained this very short detention by saying that once it was confirmed that he had not been in the vicinity at the time of the murder, he was permitted to leave the police station. However, his own evidence was that he was also under suspicion of providing weapons for someone else to undertake the murder. If that were so, it is implausible that the police would have released him without conditions before conducting a more thorough investigation about that possibility. The appellant was not able to explain his short detention and the lack of ongoing investigation.

Third arrest

[38] At the RSB interview, the appellant said that when he was arrested in June 2008 (the third arrest), he was arrested from his farm. When asked by the Authority the location of his arrest, he first said "Perhaps I was at home" and when asked again to clarify, the appellant paused and then said that he was arrested from an animal shelter attached to the house. His pause and answer gave the clear impression that he could not recall his previous evidence (to the RSB) and he was trying to give an answer which would be able to fit with whatever his previous evidence had been. When the Authority asked him to clarify that he was "at home", he answered "Yes."

[39] When then reminded him that during his RSB interview he twice said he was arrested from the farm, his evidence became mobile. He said that the house is near the farm and that they have a house and an animal shelter and a farm, the implied assertion being that there is little distinction between those three locations. He also asserted that he could not recall what he had said previously because he was under "mental pressure".

[40] During re-examination by his counsel, the appellant changed his evidence again and claimed that the animal shelter was not attached to the house but was located on the other side of their neighbour's house which was closer to the farm. The Authority finds that this final assertion that he was arrested from the animal shelter which was near to both the house and the farm (but attached to neither) is simply an attempt to mend the previous inconsistencies in his evidence as to the location of his third arrest. The inconsistencies were the result of an untrue account being incorrectly recalled. His last version cannot be reconciled with the RSB evidence or with his initial evidence to the Authority and is rejected.

CONCLUSION ON CREDIBILITY

[41] For all of the reasons outlined above, the Authority finds that the appellant's account of his difficulties in the Punjab since December 2007 is untrue. The Authority rejects the appellant's entire account of being arrested and suspected of links with Muslim militants or any other unlawful groups. There is no credible evidence whatsoever that the appellant has any profile with the Indian authorities or Indian police.

[42] On that basis, the Authority finds that the appellant is an Indian national with a genuine passport, valid until late 2012. The appellant has no profile with the Indian authorities. There is no basis whatever on which he can be said to have a well-founded fear of being persecuted in India should he now return there.

[43] The first issue identified in [26] above having been answered in the negative, the second issue does not arise for consideration.

CONCLUSION

[44] For all of the above reasons, the Authority finds that 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.

"B A Dingle"
B A Dingle
Chairperson