

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76206

AT AUCKLAND

Before: A R Mackey (Chairman)

Counsel for the Appellant: D J Porteous, Lawyers, Hastings

Appearing for the Department of Labour: No appearance

Date of Decision: 22 May 2008

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 Fiji.

INTRODUCTION

[2] The appellant was born in Suva, Fiji in March 1978. He is of Indo-Fijian ethnicity. He came to New Zealand in January 2004 on a valid visitor's permit to receive medical treatment in this country. He was given neurological treatment by specialists in Canterbury in February 2004. He returned to Fiji in May 2004.

[3] The appellant returned to New Zealand in June 2006, again on a valid visitor's visa based on medical grounds. He was accompanied by his wife and daughter. A son remained in Fiji.

[4] In December 2006, the appellant became embroiled in a dispute and altercation in Hawkes Bay which involved the appellant's uncle and cousin. The police charged the appellant with common assault, burglary and wilful damage.

He was fined as a result of this. He made an application for a seasonal work permit but this was declined because he failed to declare his criminal convictions.

[5] After making unsuccessful appeals against removal from New Zealand, the appellant lodged an application for refugee status on 15 October 2007. After setting out various family and medical problems (a brain tumour which has caused him problems over several years), the appellant claimed that he feared returning to Fiji because, from a combination of his ethnicity and appearance (following surgery), he considered he was at a risk of being physically assaulted by indigenous Fijian youths if he returned to Fiji.

[6] The appellant was offered an interview with the RSB. This took place on 6 November 2007. The refugee status officer found the appellant generally credible but, in a decision dated 28 March 2008, his application was declined in accordance with a detailed decision explaining the full reasoning for that conclusion.

[7] The appellant then appealed to this Authority on 4 April 2008. The Authority then wrote to the appellant's representatives on 29 April 2008, setting out the *prima facie* conclusion that the appellant's claim was manifestly unfounded and clearly abusive.

JURISDICTION OF THE AUTHORITY TO DISPENSE WITH AN INTERVIEW

[8] In certain circumstances, the Authority is permitted to determine an appeal on the papers without giving an appellant an interview. This arises under s129P(5)(a) and (b) of the Immigration Act 1987 (the Act), where the appellant was interviewed by the RSB (or given an opportunity to be interviewed but failed to take that opportunity) and where the Authority considers the appeal to be *prima facie* manifestly unfounded or clearly abusive. The Authority's general jurisdiction in this regard was examined in *Refugee Appeal No 70951/98* (5 August 1998).

[9] The Authority, through its Secretariat, wrote to the appellant's representatives on 29 April 2008. That letter advised that, in the Authority's preliminary view, the appellant's appeal was *prima facie* manifestly unfounded or clearly abusive and that the RSB had correctly stated its reasons for declining the application in its determination. The letter from the Secretariat set out all of the

issues involved and a brief summary of the Authority's reasons for concluding the appeal was manifestly unfounded and clearly abusive.

[10] In the Secretariat's letter also explained that the appellant bore the responsibility of establishing his refugee claim, pursuant to ss129P(1) and 129P(2) of the Act, as explained further in *Refugee Appeal No 72668* (Minute No 2) (5 April 2002) and in *Anguo Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA).

[11] The appellant, through his representative, was provided with an opportunity to present submissions and/or evidence to support his claim by 14 May 2008 and was advised further that, unless persuaded otherwise, the Authority could proceed to determine the matter without giving the appellant an opportunity to attend an interview.

[12] No response was received from the appellant or his representatives.

CONCLUSION ON WHETHER TO DISPENSE WITH AN INTERVIEW

[13] This appellant was interviewed by a refugee status officer on 6 November 2007. Despite being given the opportunity to persuade the Authority that an interview with the Authority was necessary and could assist in establishing his case, the appellant has failed to do so.

[14] In the circumstances of this case, the Authority will determine this matter on the papers, without giving the appellant an opportunity to attend a further interview.

THE APPELLANT'S CASE

[15] The appellant claimed, in his application, several humanitarian factors, none of which are related to the jurisdiction of this Authority. He also appears to have argued that he would be at risk of assault from ethnic Fijian youths if he were returned to Fiji and that the Fijian police have no interest or are unable or unwilling to curtail such assaults. He therefore considers that there would be a failure of state protection by the Fijian government.

THE ISSUES

[16] 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."

[17] 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

[18] As noted, the Authority has determined that it will not interview this appellant, and thus an assessment of credibility will not be made. Accordingly, his account, as recorded, is accepted for the purposes of determining this appeal.

[19] The Authority is satisfied that the determination of the RSB carefully assessed not only the appellant's credibility but all aspects of this appellant's claim relating his ethnicity, physical appearance and living conditions. The assessment noted the appellant's evidence of risks he predicts and a detailed statement of the objective country information available relating to Fiji. All details of that assessment are set out in the RSB decision where it was concluded by the RSB that the appellant had not suffered discrimination that could be considered to rise to the level of being persecuted. Whilst he had suffered some difficulties from having stones thrown at him and being taunted, racially abused and physically assaulted by some youths in November 2003, none of this indicates a real chance (as opposed to a remote or speculative risk) of the appellant being persecuted if he returned to Fiji at this time.

[20] It is the responsibility of the appellant to establish his or her own case. The Authority, in this case, is satisfied that not only was the RSB decision a valid one, but also the appellant has not at any point established that there is a real chance

of his being persecuted should he be returned to Fiji. The objective country information confirms these conclusions and the appellant and his representatives have taken no steps to further establish a valid claim in this appeal.

[21] As the Authority finds the appellant does not have a well-founded fear of being persecuted on return to Fiji, it is unnecessary to decide the second issue stated above.

CONCLUSION

[22] The Authority finds that the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. The appeal is dismissed. Refugee status is declined.

"A R Mackey"
A R Mackey
Chairperson