IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND **[2011] NZIPT 800148**

AT AUCKLAND

Appellant:	**AD (Singapore)**
Before:	C M Treadwell (Member)
Representative for the appellant:	The appellant represented himself
Representative for the respondent:	No Appearance
Date of decision:	30 June 2011

DECISION

INTRODUCTION

[1] This is an appeal under section 194(1)(c) of the Immigration Act 2009 ("the Act") against a decision of a refugee and protection officer of the Refugee Status Branch of the Department of Labour, declining to grant either refugee status or protection to the appellant, a citizen of Singapore.

[2] The core of the claim is that the appellant suspects that the Singaporean government has formed an adverse view of him because of his belief in truth, democracy and freedom and has caused him harm in the past by way of unfair detention in harsh conditions, deliberate attempts to poison him and the destruction of his business. He fears further acts of intimidation and harm if he returns. The issue on the substantive consideration of his claim is whether his suspicions are justified on the evidence and whether he is, in fact, at risk of harm.

[3] This is the second time the appellant has claimed refugee status in New Zealand. Because of this, he must establish that their are changed circumstances material to his claim, which make it significantly different to his first claim. If he does not meet this jurisdictional threshold, his refugee claim must be dismissed.

[4] It is, however, the first time that he has claimed protected person status and no such jurisdictional hurdle arises in respect of those aspects of the appeal.

[5] Before addressing those issues, however, it is necessary to explain why the Tribunal has determined not to offer the appellant an interview.

The 'manifestly unfounded' jurisdiction

[6] Pursuant to section 233(2) of the Act, the Tribunal may determine an appeal without offering the person an interview, if the person was interviewed (or was offered an interview) at first instance by the Refugee Status Branch, and the Tribunal considers the appeal to be manifestly unfounded or clearly abusive, or if it repeats a previous claim.

[7] Here, the appellant was offered an interview by the Refugee Status Branch on 10 February 2011, which he did not attend (he sought an adjournment, which was declined).

[8] Having perused the file on appeal, the Tribunal formed the view that the claim is, *prima facie*, manifestly unfounded or clearly abusive, or repeats a previous claim. Accordingly, it wrote to the appellant on 18 May 2011, advising him of this and explaining its reasons as follows:

> "In reaching this preliminary view, the Tribunal takes into account:
>
> 1. In your first refugee claim, lodged on 29 March 2010, you claimed that you were imprisoned in Singapore in the 1970s for drug offences and then detained again in the 1980s, though you say you should not have been because you had returned negative drug tests results. The state then bankrupted your business in Singapore in about 2005 because you are a political dissident and that you were twice subjected to food poisoning when you ate at food halls (in November 2005 and May 2006). You stated that these were deliberate acts by the Singapore authorities for reasons of political opinion.
>
> 2. In your second refugee claim, lodged on 22 December 2010, you initially gave no grounds of claim, stating "refer to statement". No statement was submitted at that time. On 18 February 2011, however, you submitted 19 pages of information to the Refugee Status Branch, the second page of which was headed "Statement of Joshua Ngiap Wong". In those documents, you again claimed that you were wrongly detained in the 1980s, that the Singaporean state bankrupted your business because you are a political dissident and that you were twice subjected to food poisoning (in November 2005 and May 2006) when you ate at food halls. You again stated that these were deliberate acts by the Singapore authorities for reasons of political opinion.
>
> 3. It appears that your second claim merely repeats the grounds of your first claim.

> 4. Your first claim was declined by the Refugee Status Branch on 16 September 2010 and, on appeal, by the Refugee Status Appeals Authority on 25 November 2010. The Authority formed the view that your first claim was manifestly unfounded or clearly abusive and determined the appeal without offering you an interview.
>
> 5. On your second claim, you did not attend the Refugee Status Branch interview. The officer considered the medical evidence you put forward, seeking an adjournment, but found that it was not justified. You were warned that the interview would proceed but you did not attend."

[9] The appellant was invited to comment. He responded by fax on 6 July 2011 and again by email of the same date.

[10] For reasons which are explained later, the Tribunal determines that the appellant's second appeal is manifestly unfounded. Further, it repeats his previous claim. The Tribunal declines to offer the appellant an interview in respect of his second appeal. It is to be determined on the papers.

JURISDICTION

[11] Where a refugee and protection officer has considered a subsequent claim and determined that the person is not a refugee or protected person, section 195(2) of the Act provides:

> "A person may appeal to the Tribunal against a decision by a refugee and protection officer to decline a subsequent claim by the person to be recognised under any of sections 129, 130, and 131 as a refugee or a protected person (whether or not the refugee and protection officer recognised the person as a refugee or a protected person under the grounds set out in another of those sections, or both of those other sections)."

[12] Section 200(7) of the Act provides:

> "Where an appeal is brought under section 195(2), the Tribunal must determine the matter in accordance with section 198(1), as if the appeal were an appeal to which that section applied."

[13] Section 198(1) of the Act requires the Tribunal to conduct its orthodox enquiry into whether to recognise the appellant as:

(a) a refugee under the Refugee Convention (section 129); and

(b) a protected person under the Convention Against Torture (section 130); and

(c) a protected person under the International Covenant on Civil and Political Rights ("the ICCPR") (section 131).

[14] It is relevant to note that section 226 of the Act provides:

> "It is the responsibility of an appellant or affected person to establish his or her case or claim, and the appellant or affected person must ensure that all information, evidence, and submissions that he or she wishes to have considered in support of the appeal or matter are provided to the Tribunal before it makes its decision on the appeal or matter."

[15] Further, the Tribunal may rely on any finding of credibility or fact by the Tribunal or any appeals body in any previous appeal or matter involving the person and the person may not challenge any finding of credibility or fact so relied upon – see section 231 of the Act.

[16] Given that it is the appellant's responsibility to establish the claim and because the Tribunal may rely on past findings of credibility or fact, it is necessary to provide a summary of the first claim and the findings thereon, before turning to the present claim.

[17] It must be said at the outset that the appellant clearly feels passionate about certain issues and becomes repetitive and highly emotive when referring to them. Further, English is his second language. As a result, his statements are invariably discursive and difficult to follow. The accounts of both his first and second claims are summarised here, for the sake of order and clarity.

THE APPELLANT'S FIRST CLAIM

[18] The appellant's first claim was also viewed by the Tribunal as, *prima facie*, manifestly unfounded and he was not offered an interview. The account of his first claim was derived from the documents and statements submitted by him.

[19] In the appellant's first claim, he stated that he had been the victim of harm at the hands of the Singaporean state, under the oppressive regime of Lee Kuang Yew, in the following ways:

(a) he had been unjustly charged and jailed in the 1970s and 1980s, for smoking and consuming drugs;

(b) non-uniformed civilians had poisoned him between 2002-2005 with colourless, odourless poison in foods and drinks, after he had visited the early Malay settlements and made enquiries of the descendant of the early sultanate, who was the original ruler and owner of Singapore;

(c) surveillance of his communication devices, mobiles, telephones, email and internet;

(d) the government had forced his café business to fail and had bankrupted him in order to repress and control him;

(e) he had suffered false medical treatment and false reporting of paranoid delusions in his medical history records, in respect of a 22-month detention in the Singapore Drug Rehabilitation Centre between 1982 and 1984, which he labelled a violation of international human rights, an invalid trial and in spite of a negative urine test showing no drug in his body;

(f) being at risk of detention without trial under the Internal Security Act, used to frame and detain drug, criminal or political and religious detainees, all without trial, for as long as 33 years.

[20] The appellant also claimed:

(g) he stood for political opinion, the gospel of God's truth, liberation, for promoting and defending democracy, liberty, justice and human rights;

(h) he supports the opposition Democratic Party of Dr Chee Sjuan and practises "*Falun Dafa*, yoga, meditations, Buddhism, Jehovah's Witnesses, all religions and so on";

(i) he was against Singapore supporting China and its collaboration with that country's despotic regime and tyrannical government;

(j) he knew the structure of the minds of Lee Kuang Yew, his associates and allies as enemies of western democracy and their fear of those with enlightened minds and philosophy, who cannot be tempted or bribed by money, luxury or fame.

[21] The claim was supported by a statutory declaration dated 20 August 2007 from one AA, who stated that she was:

> "… a witness to severe poisonings experienced by the appellant on several occasions, he has had near death experiences, difficulty in breathing, breathlessness, bloating of the stomach and it has created fear and stress for him. Not only was he the victim of poisoning, but his business which was so successful suddenly saw a 90% drop in customers and it was obvious from this that there was a conspiracy to detect and destroy his talent."

[22] Additionally, she said, the appellant:

> "… suffered from the effect of germs released intentionally on public trains, buses and public places and on many occasions we noticed people taking his photograph subtly from their mobile phones even recording our conversations....
>
> It is very clear that the above sufferings are a sign of persecution because of his love for humanity, democracy, human rights and Jesus Christ."

[23] The Authority found that the appellant's subjective belief that past instances of harm (imprisonment for smoking and drug offences, food poisoning and economic difficulties, including bankruptcy) were acts of the state because of his opposition to the Lee Kuang Yew regime, to be purely subjective and not supported by direct evidence or corroborated by country information. There was no objective basis for finding that he had any well-founded fear of being persecuted in Singapore. His appeal was declined.

THE APPELLANT'S SECOND CLAIM

[24] The second claim form was silent as to the grounds. In a fax sent to the Refugee Status Branch on 18 February 2011 (after he had failed to attend the interview), he repeated the information he had advanced on his first claim. The refugee and protection officer considering the second claim described it as "an identical list to that... which was received by the Authority". The Refugee Status Branch found, in the circumstances, that there had not been any significant change in circumstances material to the claim.

[25] On appeal, the appellant has written again.

[26] On 24 May 2011, he sent a fax to the Tribunal, alerting it to the recent general elections in Singapore, a statement by the Prime Minister apologising for "many wrongdoings" over the years and asserting that the Singaporean government knows he is in Auckland and has been intercepting his mail.

[27] On 6 June 2011, the appellant sent a further fax, disputing that the second appeal is manifestly unfounded. Everything he says in that fax, about the grounds of the second claim, is an assertion already made on the first refugee claim. Indeed, he relies upon the fax of 18 February 2011 sent to the Refugee Status Branch. Such further information as there is relates to his complaint that the Refugee Status Branch did not grant him an adjournment of the interview. He also attaches a copy of a rambling, discursive letter dated 7 January 2011 to the

Refugee Status Branch as to the expanded jurisdiction of the Tribunal under the 2009 Act.

[28] On 6 July 2011, the appellant sent an email to the Tribunal, attaching a two page statement, and a copy of the statement sent on 18 February 2011. Also attached were a copy of a clear Singaporean police certificate, confirming no convictions in the ten years to 1996 and a copy of a letter from the appellant's doctor which had supported the adjournment application to the Refugee Status Branch.

[29] Again, the structure of the new statement is only semi-coherent. As best as the Tribunal can summarise it adds:

(a) The appellant had set up a café in Singapore to "promote the defending of world".

(b) He was poisoned in Singapore on many occasions, almost dying on the first occasion and losing some 15kg in a week. He was denied a poison test or treatment by the government, with doctors and nurses falsifying records.

(c) There is secret poisoning and persecution of "the intelligent tribe" and those who realise the tyranny and ambitions of Singapore's dictatorship, which is controlled by Vladimir Putin as puppet-master.

(d) The appellant was the victim of erroneous charges and sentencing – with the police and judges not understanding the effect of drugs on young minds. He should have been rehabilitated, not imprisoned and given a criminal record. Instead, he was detained for six months in a cold, cement cell with only a blanket, having to stand whenever a guard entered, being beaten, allowed only two minutes for a bath and having water thrown over him if he fell asleep.

(e) The appellant has been a law-abiding citizen for 30 years.

JURISDICTION

Whether a significant change in circumstances material to the claim

[30] It will be recalled that, because this is his second refugee claim, the

appellant must, by section 200(1)(a) of the Act, establish whether there has been a significant change in circumstances material to the appellant's claim since the previous claim was determined.

[31] The short answer is that there has not been. While a fresh statement has been added by the appellant, which provides details of alleged instances of mistreatment while in prison in the 1970s and 1980s, such information is neither a significant change in circumstances (his first claim was that the detentions were unlawful and the addition of incidents of minor physical mistreatment does not amount to a significant change in the nature or context of the persecution claimed), nor is it material (the further information the appellant has added describes events some 25-35 years ago and there is no suggestion of their repetition in the future).

[32] The Tribunal is satisfied that the appellant's second refugee claim does not assert a significant change in circumstances material to the appellant's claim since the previous claim was determined. The jurisdictional threshold is not crossed and, pursuant to section 200(2)(a) of the Act, the refugee appeal must be dismissed.

[33] That is not, however, an end to the appeal. It will be recalled that, while this is the appellant's second refugee appeal, it is his first protected person appeal. Although the refugee appeal must be dismissed for the reasons already given, pursuant to section 198 of the Act the Tribunal must still determine whether to recognise the appellant as:

(a) a protected person under the Convention Against Torture (section 130); and/or

(b) a protected person under the International Covenant on Civil and Political Rights (section 131).

THE CONVENTION AGAINST TORTURE – THE ISSUES

[34] Section 130(1) of the Act provides that:

> "A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand."

Assessment of the claim under the Convention Against Torture

[35] Section 130(5) of the Act provides that torture has the same meaning as in the Convention against Torture, Article 1(1) of which states that torture is:

> "… any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

Conclusion on claim under Convention Against Torture

[36] The Tribunal is satisfied that there are no substantial grounds for believing that the appellant would be in danger of being subjected to torture if deported from New Zealand. The enquiry into protected person status is, like the refugee enquiry, a prospective one. The decision-maker is required to assess whether there is a risk, in the future, of the person suffering the relevant harm. Past harm will not, of itself, suffice. See, for example, *Refugee Appeal No 70366* (22 September 1997).

[37] At most, the appellant suffered a number of periods of imprisonment between 25-35 years ago, for smoking or drug-related offences. There is no evidence to suggest that the Singaporean authorities have had any further interest in the appellant for those reasons since then. Even if aspects of his detention at that time amounted to violations of human rights, the passage of time without the appellant being further detained satisfies the Tribunal that those events are firmly relegated to history and there is no risk of them recurring.

[38] As to the claim that he suffered instances of food-poisoning, there is no evidence to suggest that they were anything other than random events caused by the ingestion of food which was bad in some way. There is nothing beyond the appellant's speculation to suggest that the Singaporean authorities were involved. Absent clear and compelling evidence to the contrary, states are presumed capable of protecting their citizens. See, for example, *Refugee Appeal No 523/92 Re RS* (17 March 1995) at 35-37. In the case of an open and democratic society which generally respects the rule of law, such as Singapore, that extends to a presumption that the state is willing to do so. The presumption is, of course, rebuttable, but the appellant has not rebutted it.

[39] The declaration by AA does not assist his claim. AA is only able to attest, from her personal observation, to the fact of food poisoning, not to the cause of it. While she asserts that the failure of the appellant's business must also be because of a conspiracy against him by the government she cannot, in reality, know that and her mere surmise does not add weight to the appellant's own assertions.

[40] As to his failed business and his bankruptcy, the evidence does not establish that these were brought about by the state at all, let alone because the state harbours animosity towards the appellant. The suggestion is far-fetched and the Tribunal accords it no weight.

[41] There are no substantial grounds for believing that the appellant would be in danger of being subjected to torture if deported from New Zealand. He is not a person in need of protection under the Convention Against Torture.

THE ICCPR – THE ISSUES

[42] Section 131(1) of the Act provides that:

> "A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand."

[43] Pursuant to section 131(6) of the Act, "cruel treatment" means cruel, inhuman or degrading treatment or punishment.

Conclusion on claim under ICCPR

[44] For the reasons already discussed in respect of the claim under the Convention Against Torture, the claim under the ICCPR must fail. The appellant's assertions do not establish any substantial grounds for believing that he would be in danger risk of suffering cruel, inhumane or degrading treatment, let alone arbitrary deprivation of life if he is deported from New Zealand.

[45] The appellant is not a person in need of protection under the International Covenant on Civil and Political Rights.

CONCLUSION

[46] For the foregoing reasons, the Tribunal finds:

(a) the second refugee appeal is dismissed;

(b) the appellant is not a protected person within the meaning of the Convention Against Torture; and

(c) the appellant is not a protected person within the meaning of the International Covenant on Civil and Political Rights.

[47] In closing, the Tribunal observes that this is the second time that the appellant has lodged a refugee claim which has been found to be manifestly unfounded. The resources available for addressing the protection needs of the many claimants before the Refugee Status Branch and the Tribunal are not unlimited. The Tribunal does not expect to see a third manifestly unfounded claim from the appellant.

[48] The appeal is dismissed.

"C M Treadwell"

C M Treadwell
Member

Certified to be the Research Copy released for publication.

C M Treadwell
Member