

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76162

AT AUCKLAND

<u>Before:</u>	B L Burson (Member)
<u>Counsel for the Appellant:</u>	E Griffin
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	4 & 12 February 2008
<u>Date of Decision:</u>	27 March 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 Bangladesh.

INTRODUCTION

[2] The appellant claims to have a well-founded fear of being persecuted by Islamic extremist groups and Muslim settlers by reason of his activities as a Buddhist monk. What follows is a summary of the appellant's evidence in support of his claim. An assessment follows thereafter.

THE APPELLANT'S CASE

[3] The appellant was born in the late 1970s. While still at primary school in the mid-1980s, he became a novice monk at W temple which is situated in the Chittagong Hill Tract (CHT) area. The appellant continued to attend school

although from time to time he faced harassment from pupils and teachers, who were Muslims, because his head was shaved and he was wearing robes.

[4] Throughout the 1990s, the appellant's guru invited other senior monks from the CHT area to attend W temple to take part in religious practice and conferences. One such monk was GG, the senior monk at X temple and with whom the appellant's guru had regular contact.

[5] The appellant completed his schooling in the mid-1990s. He continued with his religious education without particular incident until late 1995 or early 1996. At this time his guru died and the appellant was instructed by the Buddhist authorities to continue his training under the instruction of GG at X temple. Whereas the activities at W temple had been confined to matters of religious contemplation and instruction, GG was committed to performing humanitarian activities in the local Buddhist community where X temple was situated. GG had established an orphanage where Buddhist children from impoverished families were cared for and given religious and Bengali language instruction. While many children were sent to the orphanage, GG also often went to the surrounding villages and invited impoverished families to send them to the orphanage where they would be given shelter, food, clothing and an education. The appellant accompanied GG whenever he went to the villages for this purpose.

[6] The appellant became ordained as a monk in September 1998. He was thereafter given various administrative tasks relating to the orphanage and other novices. When GG was absent, the appellant was left in charge of the orphanage. GG often travelled overseas as he had many contacts in Buddhist communities abroad. The purpose of GG's travel abroad was, in part, to obtain funds to develop and extend the orphanage and activities at X temple.

[7] As a result of one such trip abroad by GG, in approximately 2000, an Italian priest, LL, came to X temple with development funds. By this time, there were about 100 children at the orphanage and new buildings were to be constructed to replace the existing bamboo structures. At this time, GG was visited by a large number of armed men from the local branch of the *Jamaat-e-Islami* Party (JIB). Their leader was AA and the group included persons from JIB's student wing *Shibir*. This group was acting under the instructions of the local JIB Member of Parliament, CC. GG told the appellant that the group had demanded that GG obtain a substantial sum of money from LL in order to be able to complete the development of the orphanage complex. GG met with CC and told him that he

would speak to LL and try and obtain the sum of money requested. On this basis, CC agreed that they could continue with the development which had begun.

[8] In late 2001, the temple committee for W temple approached GG and requested that the appellant be appointed as the monk for W temple as the previous monk had left. GG agreed and the appellant duly became the head monk at W temple. After his return, he noticed that there was now more open anti-Buddhism displayed by the inhabitants of the Muslim villages that surrounded W. Encouraged by the JIB, Muslim people in the W area had begun confiscating the harvests and land of the local Buddhist communities. The issue was discussed by the appellant and other members of the W temple committee. A complaint was made to the Union Chairman – the principal administrative authority figure in the area – but no action was taken.

[9] The appellant was often subjected to insults and verbal abuse about his religion after returning to W. On one occasion, in late 2001, the appellant was assaulted by about 10 persons whom he recognised as being local members of the JIB. This group pulled the appellant from the rickshaw in which he was travelling and removed his robes. He was pushed and called a non-believer. They told him “there would be no Buddha in the W area, only Allah.” The appellant reported this incident to the local Union Chairman who promised that he would look into the matter. Nothing, however, happened.

[10] After returning to W temple, the appellant remained in close contact with GG whom he desired to emulate by undertaking charitable and educational works in the W area. He told GG of the situation in W but GG said that because the government was supporting the Muslims, there was nothing the Buddhist community could do. GG told him that AA and the other JIB/Shibir members had continued to come to X temple demanding the money but each time GG informed them that he had not yet received the money from LL.

[11] The appellant learned that in 2002 the JIB group returned to X temple looking for GG but, because he was not there, they smashed the temple’s windows and burned some books and official papers. In April 2002, GG was murdered by the JIB group led by AA. Upon hearing this news, the appellant travelled immediately to X temple and with other monks began demanding justice. Later that morning, the appellant and other monks formed a procession and walked from X village to the central Buddhist temple in Chittagong. By the time they reached Chittagong, there were over 1,000 people in the procession.

[12] At the central Buddhist temple, the senior monks had a meeting to decide what to do. The National Movement Committee (NMC) was formed to organise the activities to bring the perpetrators of GG's murder to justice. The appellant played an active role in this committee in which he had to liaise often with senior Buddhist monks and different Buddhist communities across the CHT area.

[13] Over the next two months or so, the NMC undertook a number of public demonstrations in Chittagong, Dhaka and in local villages in the CHT area. One particular demonstration in Dhaka took the form of a symbolic hunger-strike. The activities of the NMC culminated in a large demonstration in Chittagong in June 2002 which was attended by not only members of the Buddhist community, but members of other minority groups such as Hindus and Christians. The appellant spoke at this demonstration.

[14] Shortly thereafter, CC sent emissaries to the central Buddhist temple in Chittagong and told the Buddhist leadership that they should stop these activities. The Buddhist leadership were threatened that if they did not do so, more Buddhists would be killed. Concerned by this threat, and noting that the JIB were now part of the government, the Buddhist leadership felt that they had no option but to comply and instructed the NMC to cease its activities. Some of the members of the NMC, fearful of further repercussions, decided to leave Bangladesh altogether and travel overseas. However, some members of the NMC that remained in Bangladesh – including the appellant – met secretly in Chittagong from time to time thereafter to discuss how they could obtain justice for GG.

[15] On one occasion in mid-2002, when returning from a visit to Chittagong where he had been attending such a meeting, the appellant was stopped by the AA and other JIB members who had come to X temple in the past to demand money from GG. They punched and slapped the appellant and threatened that he would be killed if he carried on demanding justice.

[16] The appellant returned home to W where he reported this incident to the local police station. The police officer on duty did not take any written notes of his statement but simply said that the police would look into it. No action was ever taken. The appellant then went to report it to the local Union Chairman but again no action was ever taken against the JIB group even though the appellant had identified them.

[17] A few days later, the same JIB group came to W temple. Sensing he was in danger, the appellant fled out the back door and took shelter in the house of a

Buddhist family. The JIB group proceeded to burn prayer books and ransacked the temple. The next morning, the appellant took a bus to Y temple, where he knew the head monk. Although still situated in the CHT area, Y temple was some 200 kilometres from W temple.

[18] The appellant met with the Y temple committee who agreed that he could stay. The appellant noticed that many of the local children could not speak or read the Bengali language. The nearest school was far away from the village and many could not attend there. He considered suggesting to his friend who was the monk at Y temple that an education service be established but was afraid this might bring him to the attention of the JIB. The appellant had maintained contact with his family and the W temple committee. He also maintained contact with the former NMC members who continued to meet in private to seek justice for GG's death. As a result of this contact, he came to learn that Muslim extremists were continuing to look for him at both his parents' house and W temple.

[19] After approximately one year, the appellant's friend left Y temple and the appellant was appointed to become the temple's head monk. Having assumed this responsibility, the appellant found he could not in good conscience see the local children continue to suffer a lack of education. He therefore raised this issue with the Y temple committee who agreed to run an educational service for the local tribal children. A small school was established in Y temple and he invited the local parents to send their children to the school in order to obtain language and religious instruction.

[20] In late 2005, after the school had been established for approximately one and a half to two years, a group of about 10 Muslim settlers came to see the appellant at Y temple. The appellant had understood from his friend, who had been the monk at the temple, that Y village had been attacked by Muslim settlers and its Buddhist inhabitants targeted as a result of a government policy of bringing in Muslim settlers who would take land from the tribal communities who were Buddhists. There had been much fighting in the past and although a peace agreement had been signed, conflict and the confiscation of land still continued.

[21] This group of settlers now demanded that the appellant stop teaching the tribal children. They warned him that he should leave the area and said that if he did not do so, anything could happen to him and there would be bloodshed. The appellant believes that the Muslim settlers were against anything which could assist the tribal people in organising to resist their takeover of their lands.

Although a peace accord had been signed, a group had splintered from the main party formed to protect Buddhist hill tribes-people and which had signed the peace deal with the government. The appellant believes the Muslims settlers thought that educating the tribal children somehow made it more likely for them to support such a group. The appellant reported this incident to the Y temple committee who urged him to stay and continue to teach the children. The appellant did so.

[22] Approximately one month later, the appellant was visited by an army officer and soldiers from the local military camp. This officer informed him that he must cease the education programme and leave the area. The appellant tried to persuade the officer that he was not doing anything subversive, but the officer would not listen and told him he must leave. The appellant was aware that the army and Muslim extremists had burned many Buddhist houses and tortured and raped Buddhists. Anxious that he did not cause further bloodshed, the appellant told the officer he would go but asked for a period of time in order that he could find another place to live.

[23] Approximately two months later, the appellant left Y temple and travelled to Z temple, situated approximately 50 kilometres away, where the monk was also a friend of his. The appellant experienced trouble with local Muslim settlers soon after he arrived in Z village. He was subjected to verbal abuse. He was told by the local Muslims that they did not want monks and Buddhism in that area. The appellant understood from his discussion with the other monks at Z temple that they too had been subjected to similar verbal abuse.

[24] In August 2006, approximately 40 or 50 armed Muslim settlers came to Z temple. The appellant was the only monk present. The group broke the temple gate and doors and began vandalising the temple. They assaulted the appellant. Upon hearing his cries for help, local Buddhist Hill tribe members came to the temple and a fight ensued between the two groups. Eventually, the army arrived and stopped the fighting. The appellant, along with 10 or 12 other Buddhist tribal members, received injuries and were taken to the local hospital. The appellant received cuts on his arms and legs and bruising about his body. The appellant was hospitalised for three days. During this time he was sent to another hospital in order to have a test undertaken because the first hospital did not have the appropriate facilities. He heard that the other people who had been hospitalised from the Buddhist community received injuries of various severity, but mainly comprising cuts.

[25] After he was discharged, the appellant stayed with a friend in the local community. He saw a doctor who prescribed him various medications for his injuries. The appellant contacted the Buddhist central committee in Chittagong who advised him that he should consider going overseas. The appellant contacted another friend, BB, who was also a monk and who made all the necessary arrangements for him to leave the country. BB was living in Thailand at the time and arranged a Thai visa for the appellant.

[26] In September 2006, the appellant travelled to Thailand where he stayed for the next few months. While there, he contacted his family who informed him that in October 2006 Muslim extremists had come to W temple looking for him and that a person guarding the temple had been shot as he tried to warn the local villagers.

[27] The appellant is worried that if he returns to Bangladesh he will continue to be a target for Muslim extremists. Although members of some of the Islamic extremist parties have been arrested, in particular AA and CC, there is still a substantial problem with Muslim extremism in the country. If one group is banned they simply change their name and continue with their project to rid Bangladesh of all non-Islamic religions.

[28] At the conclusion of the hearing counsel addressed the Authority orally. Leave was given to file further documentation and country information and on 6 March 2008 the Authority received from counsel a further memorandum together with a further schedule of documents comprising items of country information. Counsel's oral and written submissions, together with the country information filed on the appellant's behalf, have been taken into account in reaching this decision.

THE ISSUES

[29] 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."

[30] 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

[31] The Authority accepts the appellant as a credible witness. His evidence was plausible and generally consistent with what he had said previously and with country information. He displayed a favourable demeanour. His account is accepted in its entirety.

A well-founded fear of being persecuted

[32] In *Refugee Appeal No 76128* (26 March 2008) the Authority has extensively considered the situation in Bangladesh in relation to Buddhist monks. In light of its view of country information in relating to the rise of Islamism in Bangladesh and the ongoing conflict in the Chittagong Hill Tracts area, the Authority concluded at paragraph [90]:

“The appellant’s predicament stands at the epicentre of two powerful trends in Bangladeshi political life. There has occurred a gradual Islamicisation of the Bangladeshi polity in which Islamic parties committed to the establishment of an Islamic state ruled by Sharia law have gained increasing influence. Radical Jihadi or neo-fundamentalist groups have emerged. The synthesis of national identity with an Islamic religious identity has helped fuel violent conflict in the CHT area where Bengali Muslims have been settled at the expense of local Buddhist tribespeople. At the same time, this process of gradual Islamicisation has seen the work of non-Islamic NGOs attacked. While some action has been taken by the Bangladeshi state, it has only been taken against those Islamic groups which have targeted the institutions and functioning of the state. The conflict in the CHT area has continued despite the establishment of a military-backed interim government. Buddhist communities and some Buddhist monks continue to be caught up in the conflict in this area.”

[33] Although this appellant does not have the profile of the appellant in *Refugee Appeal No 76128*, the Authority is also satisfied that this appellant also faces a well-founded fear of being persecuted for the same reasons. This appellant is a person who has been, and continues to be, committed to providing community development projects for the Buddhist community in the CHT area as a direct manifestation of his Buddhist beliefs. This has brought him into open conflict with Muslim groups in the area. He has been threatened and physically attacked. He

has been forced to abandon community development programmes by Muslim settlers and by the army. The Authority has no doubt that should this appellant be returned to Bangladesh he would continue to be involved in educational works for the Buddhist community in the CHT area. This is likely to bring him into further conflict with Muslim settlers in the area. Country information establishes that there continues to be an absence of state protection for Buddhist monks engaged in such work.

[34] The first principal issue is therefore answered in the affirmative.

Internal Protection Alternative

[35] For the reasons given in *Refugee Appeal No 76128* at paragraphs [92]-[95], the Authority is satisfied that this appellant does not have a viable internal protection alternative available to him. He would be forced to reside at a temple no matter where he was living and this would make him readily identifiable to those groups interested in finding him. Moreover, for this appellant, like the appellant in *Refugee Appeal No 76128*, undertaking community development work amounts to a manifestation of his deeply held religious beliefs as protected by Article 18(3) of the International Covenant on Civil and Political Rights 1966. No issue of lawful limitation arises. For the reasons cogently articulated in *Refugee Appeal No 74665* (7 July 2004) at paragraph [114], the appellant cannot be expected or required to avoid the harm by exercising discretion in the manifestation of his beliefs in any proposed site of internal protection. His moving elsewhere in Bangladesh would not reduce the risk of his suffering serious harm to below the real chance threshold.

Nexus and Convention ground

[36] In *Refugee Appeal No 72635* (6 September 2002) at paragraph [173] it was held that one of the five enunciated Convention grounds must be a contributing cause to the predicament of the claimant; to the risk if being persecuted. In this case, there is no doubt that the appellant's predicament is being contributed to by his religion. The second principal issue is also answered in the affirmative.

CONCLUSION

[57] For the reasons mentioned above, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"B L Burson"

B L Burson
Member