

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76194

REFUGEE APPEAL NO 76196

REFUGEE APPEAL NO 76197

AT AUCKLAND

<u>Before:</u>	A R Mackey (Chairman)
<u>Counsel for the Appellants:</u>	The appellants represented themselves
<u>Appearing for the Department of Labour :</u>	No Appearance
<u>Date of Hearing:</u>	11 June 2008
<u>Date of Decision:</u>	30 June 2008

DECISION

[1] These are appeals against decisions 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 appellants, nationals of Bangladesh.

[2] The first two appellants are husband (76194) and wife (76196) and will be referred to as such throughout the decision. They have three children. Only the eldest (76197) is included in this appeal. She was represented by her father as responsible adult pursuant to s141B of the Immigration Act 1987 (the Act) and will be referred to as the child in this decision. Their second child is a New Zealand citizen, born in this country prior to the change in legislation in 2006. Their youngest child, born in New Zealand, does not appear to have yet been registered for Bangladeshi citizenship. The younger two children are accordingly not

included in this appeal.

[3] This is the second time that the appellants have claimed refugee status in New Zealand. Their first claim was declined by the RSB and, on appeal (the first appeal), by the Authority (differently constituted). Their first appeals were *Refugee Appeal Nos 75849, 75850 and 75880* (14 December 2006).

[4] The husband had visited New Zealand in 2002 for a period of approximately two weeks. All three appellants arrived in New Zealand legally on 28 November 2003. On 30 May 2005, the RSB received the first refugee claims from all three appellants. The first two appellants were interviewed in August 2005 and their applications were declined in a letter dated 12 April 2006. They then appealed to this Authority. That appeal was declined on 14 December 2006 as noted above.

[5] The appellants stated in their first application that they predicted that they would be persecuted on return to Bangladesh because of the involvement of the first appellant in the Ahmadiyya sect of Islam over the period from 1989, when he converted, until he departed from Bangladesh. It is claimed that since the first refugee appeal, the situation for Ahmadiyya in Bangladesh has deteriorated. In evidence of specific problems for the appellants, they claim that in January 2007, Khatme Nubuwwat (KN), who are violently opposed to the Ahmadiyya, and consider them non-Muslim, raided the first appellant's family home. They state the KN were seeking the first appellant and that they brutally treated the first appellant's mother and brother.

[6] It is necessary for the Authority to consider:

- (a) whether the appellants meet the jurisdictional threshold of establishing that circumstances in Bangladesh have changed to such an extent that their second claim is based on significantly different grounds from the first claim; and (only if so)
- (b) whether the facts as found on the second claim establish that the appellants have a well-founded fear of being persecuted for a Refugee Convention reason.

[7] It is appropriate to consider the question of jurisdiction first.

JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL

[8] The jurisdiction of a refugee status officer to consider a second or subsequent refugee claim is governed by s129J of the Act which provides:

“129J. Limitation on subsequent claims for refugee status—

(1) 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.

(2) In any such subsequent claim, the claimant may not challenge any finding of credibility or fact made in relation to a previous claim, and the officer may rely on any such finding.”

[9] There is then a right of appeal, pursuant to s129O of the Act which provides:

“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 the 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.”

[10] The question of whether there is jurisdiction to entertain a second or subsequent application was considered in *Refugee Appeal No 75139* (18 November 2004) where the relevant principles were set out at [54]-[57]:

[54] In any appeal involving a subsequent claim under s 129O(1), the issues are not “at large”. Rather, there are three distinct aspects to the appeal.

[55] First, irrespective of the finding made by the refugee status officer at first instance, the claimant must satisfy the Authority that it has jurisdiction to hear the appeal. That is, the claimant must establish that, since the determination of the previous claim, 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. As to this:

- (a) The change of circumstances must occur *in* the claimant's home country. It is not open to the claimant to circumvent the jurisdictional bar by submitting that at the hearing of the previous claim the refugee status officer or the Authority misunderstood the facts.
- (b) A “reinterpretation” of a claimant's case is neither a change of circumstances, nor is it a change of circumstances *in* the claimant's home country.
- (c) The claimant cannot invite the Authority to sit as if it were an appellate authority in relation to the decision of the first panel and to rehear the matter. The Authority has no jurisdiction to rehear an appeal after a full hearing and decision.
- (d) A second appeal cannot be used as a pretext to revisit adverse credibility findings made in the course of the prior appeal.
- (e) Jurisdiction under ss 129J(1) and 129O(1) is determined by comparing the previous claim to refugee status against the subsequent claim. This requires the refugee status officer and the Authority to compare the claims

as asserted by the refugee claimant, not the facts subsequently found by that officer or the Authority.

- (f) Proper recognition must be given to the statutory language which requires not only that the grounds be different, but that they be **significantly different**.
- (g) The Authority does not possess what might be called a "miscarriage of justice" jurisdiction.

[56] Second, in any appeal involving a subsequent claim, s 129P(9) expressly prohibits a claimant from challenging any finding of credibility or fact made by the Authority in relation to a previous claim. While the Authority has a discretion whether to rely on any such finding, that discretion only comes alive once the jurisdictional threshold for subsequent claims set by ss 129J(1) and 129O(1) has been successfully crossed.

[57] Third, where jurisdiction to hear the appeal is established, the merits of the further claim to refugee status will be heard by the Authority. That hearing may be restricted by the findings of credibility or of fact made by the Authority in relation to the previous claim, or "at large", depending on the manner in which the discretion under s 129P(9) is exercised by the Authority."

[11] Against this background, it is now necessary to have regard to the appellants' first and second refugee claims in order to determine whether the jurisdictional threshold is crossed.

THE APPELLANTS' FIRST REFUGEE CLAIM

[12] The account which follows is a summary of that claim which was made to the Authority (differently constituted) at the time of the first appeal. They were represented at the first appeal.

[13] The appellants are a family unit of father and mother and a young daughter. They were all born in Bangladesh. The parents have had two further children since they have been living in New Zealand.

[14] In 1989, the husband, while pursuing tertiary studies, became a supporter of the Ahmadiyya sect of Islam in Bangladesh. He based his first claim on being an active member of the Freedom Party and also his conversion to the Ahmadi faith. In respect of his predicted fears through an association with the Freedom Party, he claimed that the Awami League members began to threaten him in late 1998 and demanded money from his business. In that regard, the husband conceded he had ceased to support the Freedom Party from mid-1996. The first Authority put to the husband that the Freedom Party had essentially disappeared from Bangladeshi politics and therefore he was unlikely to be at risk. This was evidently conceded by the husband.

[15] In relation to the predicted fears because of his Ahmadi faith, the husband stated that he had regularly attended prayers and preached the Ahmadi message on the streets and by visiting houses on a door-to-door basis to introduce people to the Ahmadi religion. His family were not happy about his conversion. Although he had converted long before the time of his marriage in 1998, the wife did not convert at that time. He claimed that from approximately 2001, the *Jam' at Islami* (JI) party declared that Ahmadis were not Muslims and that their religion insulted Islam.

[16] In March or April 2002, a group of people went to his family home and told his mother that they were looking for him. They said that as he was Ahmadi, he was therefore not Muslim and they threatened that if he did not leave the Ahmadi faith, they would kill him. He claimed that these people followed Ahmadis wherever they went and went to where they were living and made threats against them. He reported no other problems in 2002.

[17] Because of difficulties in running his business, the husband decided in September 2002 to visit New Zealand to look for business opportunities. While he was away, the wife received two threatening telephone calls and she was told that if she reported them to the police, she would be killed and her daughter kidnapped.

[18] In February 2003, he claimed that a group of people he believed to be supporters of JI detonated bombs outside the Ahmadi mosque, which they then entered, and assaulted Ahmadi followers with hockey sticks. The husband was in attendance and struggled with them. He was struck with a stick and fell unconscious. He then found himself in hospital where he remained for eight to 10 days because of injuries he sustained to his legs, hands and head.

[19] In March 2003, the husband was in Dhaka city on business when he received a telephone call from the manager of his shop, advising him that some people had entered the shop and began beating the employees and stealing items. They asked after the husband but did not say why they were looking for him. The husband believed that it was because he was Ahmadi. He did not, however, complain to the police.

[20] On the same day, his mother called him and said that a group had come to their home again, looking for the husband. They had damaged the property. On this occasion they did not say why they were looking for the husband or identify

their group.

[21] After this, the husband took his wife and child into hiding. In August 2003, the husband left Bangladesh to go to India to collect visas for New Zealand, for which he had applied after the attack on the mosque in February 2003. The family continued to live in hiding until mid-November 2003, when all three appellants left Bangladesh for New Zealand.

[22] The wife claimed that she had known that the husband had converted to the Ahmadi faith and recalled the incident of February 2003 when she went to the hospital to see him. She stated that neither she nor the child had any difficulties in Bangladesh, apart from the anonymous telephone calls.

[23] The Authority, in the first decision, raised a number of difficulties and discrepancies in the accounts given by the husband, including his knowledge of the Ahmadi faith. It was also noted that the husband had made no effort to contact Ahmadi associates in Bangladesh since he left or to contact Ahmadis in New Zealand. He stated this was because of his poor English skills. He confirmed that he was aware of the Ahmadi centre in Dhaka but had made no attempt to contact that centre to find out how his associates in Bangladesh were faring, or to seek any other assistance from them.

[24] In the conclusions, the Authority expressed great scepticism regarding the husband's claimed conversion to the Ahmadi faith, but concluded "extending him a liberal benefit of the doubt" that he had converted. The Authority, however, considered that the husband had attempted to embellish his commitment to the religion and that, in fact, was only a very low level participant. It stated:

"At the most, the Authority will accept that this practise involves no more than attending the Friday prayer session and possibly attending the evening prayer sessions on other days."

[25] After assessing the fears in relation to the Ahmadi faith against the country information, the Authority considered that the sporadic nature of the anti-Ahmadi activity in different locations in Bangladesh, coupled with the first appellant's low level of practice of the faith, led to the conclusion that the maltreatment the husband feared was well below the level of a real chance and that there was no evidence of a real chance that any of the appellants would suffer serious harm of a kind that might give rise to a risk of being persecuted on return to their home area. The Authority found that Bangladesh nationals, including the husband and his family, would be afforded rights comparable to those described in the Refugee

Convention and that even if there was some risk in their home are, they had available to him to an internal protection alternative.

[26] The appeals of the three appellants were therefore dismissed.

THE APPELLANTS' SECOND REFUGEE CLAIM

[27] The account that follows is a summary of the account given by the husband and the wife in respect of the second claim.

[28] At the outset, the Authority explained the limited jurisdiction in this second appeal. Although the Authority made it clear that it was only able to consider evidence relating to changed circumstances arising after the first refugee appeal, the appellants did not resile from their first claim, although the risks relating to the Freedom Party appear no longer to be pursued.

[29] The first appellant presented a statement in writing, dated 15 February 2007, in support of the second application made to the RSB.

[30] It is to be noted that no interview took place with the RSB. Following the appellants presenting the application and written statement in support, a letter of acknowledgement of the claim was sent to them at their post office box. This was the address set out for communication purposes in the applications. However, on 28 February 2007, the RSB again wrote to the husband, this time to a residential address also contained in the appellants' file. In this letter, they set out the date upon which an interview would be given at the RSB in Auckland and details of how the appellants should attend. It appears that letter never reached the appellants who had relocated their residential address, although they had not changed their post office box. The appellants therefore did not attend the interview with the RSB. Because they did not attend, the RSB proceeded with the decline of the applications on 23 March 2007, on the basis that although the appellants had responded to earlier correspondence, they did not state they were unable to attend the scheduled interview. The matter was therefore dismissed, pursuant to s129H(5) of the Act, because of their failure to attend the interview.

[31] When the Authority came to consider this matter, and an application for leave to appeal out of time made by the appellants personally, it noted the different addresses and the failure by the RSB to use the post office box the appellants had

signified. It was therefore unsurprising that the appellants did not attend the interview at the RSB as the letter setting that appointment was unfortunately sent to a former residential address and not the post office box. For that reason the Authority allowed the appeal out of time and set the matter down for an oral hearing. The husband, the wife and the children attended the hearing before the Authority. A Bengali interpreter was provided and a good understanding between the appellants and the interpreter was established.

THE HUSBAND'S EVIDENCE

[32] After explaining his background again and his conversion to the Ahmadi faith in 1989, the husband advised that he carried out his practice of the Ahmadi faith during the 1990s, praying and fasting at the appropriate times and attending the Ahmadi mosque in his area, as well as telling other people about the Ahmadi faith. He never officially joined the Ahmadi faith or mosque. He believed in Islam and the additional beliefs held by adherents to the Ahmadi faith. He reiterated the problems he had experienced before leaving Bangladesh and which were described in the first appeal hearing in 2006.

[33] The Authority asked the husband to outline changes of circumstances or any incidents that created risks for him on return to Bangladesh since the first decision of the Authority in December 2006.

[34] The husband then referred to an attack on his former family home, where his mother and brother now live. He stated that he had been advised by his father-in-law in a telephone call in early January 2007 that his mother and brother had been attacked and had had to go to hospital following a visit by what he understood were supporters of the KN cadre. They had stated that they were looking for the husband.

[35] It was put to the husband by the Authority that the timing of the attacks on his family home and family members, within two or three weeks from the date upon which he received the decline of his first appeal to this Authority, appeared coincidental and suspect. He stated that he had, in fact, on receiving the decline of the first decision, spoken to his father-in-law by telephone and asked for him to provide evidence of the activities of the groups in Bangladesh who were attacking and deriding the Ahmadis. His father-in-law had sent him, after his telephone calls, a copy of a letter, in Bengali and in English. This letter, apparently from the "AA Hospital", states:

“This is to certify that [first appellant’s mother] and her son [the brother] came to this clinic injured by striking of wood staff and sticks last Friday January 5 2007 at 4 o’clock in the afternoon. After treating under first aid they were released from the clinic at 6 o’clock in the afternoon on the same day. They returned home while they felt comfortably well on being treated with first aid.”

[36] The husband, in the accompanying letter of 2 March 2007, which he sent to the RSB, enclosed two other documents. One, allegedly from a friend, he claimed stated that the current situation in Bangladesh was worse and that there was worse activity against the Ahmadi. The other letter was allegedly from his father-in-law narrating how a rival group had put “torture on my mother and brother”. Unfortunately, neither of these letters has been translated, so the Authority is unable to give them any weight.

[37] The husband was unable to give any further details of the injuries suffered by his mother and brother but confirmed they had been to the hospital for two hours and had obtained treatment. When asked why he thought that this incident had anything to do with him being Ahmadi, he stated that it was because Sunni Muslims in Bangladesh do not want Ahmadi. These Sunnis, after prayers, would decide that the Ahmadi were insulting the prophet and therefore looked to attack Ahmadi followers.

[38] When asked why such people would come to his former family home some three years after he had left Bangladesh, his reply was that in fact this was just one of other small incidents that happened from time to time. When it was put to him that his mother and brother were not Ahmadi, so it seemed illogical that such an attack would take place, he contended that the attackers were, in fact, still looking for him, even after more than three years.

[39] He said he had spoken to his mother after the incident but because she had questioned him as to why he had joined the Ahmadi faith and it caused her and the brother in Bangladesh distress, the husband decided to reduce his contact with his mother.

[40] When it was again put to the husband that he had not given a reply as to why this incident should take place almost three years after he left Bangladesh, but so quickly after the decline decision on his first appeal, his reply was “Only Allah knows”. He confirmed again that the information had been sent to him by his father-in-law after he had told him that he needed information here in New Zealand. He had also told his father-in-law to send the medical certificate and to write to him. He did not think it was a fabrication.

[41] He reported that in further telephone discussions with his father-in-law he had been told of continuing attacks on Ahmadi followers in different districts of Bangladesh and reports of these in the newspapers.

[42] He explained that, as there was no Ahmadi mosque where he lived in the Bay of Plenty, he had not attended any formal ceremony but had pursued his practice at home, praying and fasting at the appropriate times. He advised that the wife now believed in the Ahmadi faith like him, and had come to that conclusion about one year ago.

[43] The husband was referred to his declaration where he mentioned an article in a newspaper, *Daily Star*, which was dated 18 September 2006. He did not have a copy of that article. However, during the lunch break, the Authority was able to locate the article on the Internet and provide him with a copy. The first appellant confirmed that the article "Ahmadis in trouble" reported, in English, a campaign was being launched against the Ahmadi community under the banner of different Islamic organisations who considered that Ahmadis should be declared non-Muslims by the government. The article reported that this was a very offensive stand against a peace-loving minority sect and that the government should take immediate steps to stop repression of Ahmadis.

[44] The Authority stated that it noted the copyright for the news article appeared to be "Ahmadi Muslim Community". The husband confirmed this was the case.

[45] In addition to the *Daily Star* article referred to, the Authority, from its own research provided the appellants, because they were self-represented, three documents which appeared to provide the most up-to-date country information in respect of Bangladesh, in particular, reports on Ahmadi in Bangladesh. These documents were:

- (a) United Kingdom Home Office *Country of Origin Information Report: Bangladesh* (26 February 2007). In particular paragraph 21.24 was referred to;
- (b) United States Department of State *Country Reports on Human Rights Practices for 2007: Bangladesh* (March 2008), in particular, pages 12 and 13 of 24: "Freedom of Religion" and "Societal Abuses and Discrimination"; and
- (c) United States Department of State *International Religious Freedom Report:*

Bangladesh (2007) released by the Bureau of Democracy, Human Rights and Labor. The entire report was supplied.

[46] The appellants were provided with a period of 10 days in which to provide any comments or submissions in relation to this country material.

[47] On 20 June 2008, the husband, on behalf of all three appellants, sent comments to the Authority. He thanked the Authority for arranging an interview for him and giving him the opportunity to make comments. His reply is headed: "Report Bangladesh, in regards to human rights, freedom of religion – Ahmadiis or Kadiyans or Qadianis". The appellant's comments were as follows:

1. Although some sorts of weak laws are prevailing in Bangladesh in the name of providing freedom of speech and press, however, in practice the Government limited these rights. As a result, my life including my wife and children are not protected from the fear of Islamic fundamentalists. They are so violent and cruel that Government was unable to stop anti Ahmadiyya activities in order to safe my life in Bangladesh.
2. Fundamentalists assaulted and beat me many times, but I was unable to get any protection from police and law enforcing agency. As I opposed the cruel and inhuman activities, so fundamentalists targeted to kill me. I did not leave Bangladesh as long as I was able to protect my self. But, at last I was failed to protect my life. In that context, I had no other way to leave the country for the sake our lives.
3. Since the inception of Ahmadiyya community in 1880's, believers of this community have been treated inhumanly. As the number of believers of our community has been increasing, so fundamentalists are furious on Ahmadiyyas in particular their active workers like I. It was surprising that in 2004, government ban the publication of Ahmadiyya literatures. Later on, it was temporarily suspended by the High Court.
4. Day by day, anti Ahmadiyya activities have been increased and intensified across Bangladesh. These incidents have included massive Ahmadi rallies, threats on active workers, attacks on Mosques, the refusal to allow Ahmadi children to go to school, and the confiscation of Ahmadiyya publications.
5. In recent years, hundreds of violent Islamists under the banner of Khatme Nabuwat committee attempted to capture Ahmadiyya Mosques in Dhaka, Bramanbariya, Narayanganj, Kushtia, Jessore, Khulna and other areas in the country. They also killed our members. Government did never bring them into court for punishment.
6. The incidents that have published in media and newspaper is very insignificant in terms of its occurring in different areas in Bangladesh. Mostly, harassment and inhuman activities that have been organizing by fundamentalists are not released to the media as news to the people.
7. During my period in Bangladesh, Islamic fundamentalists were behind me as they are determined to kill me at any cost. Many times they attached me, but luckily I saved myself from their. But, finally I was found to leave the country for the sake our lives.
8. The fact that our community members lives are in life risk. So, not only me, many of our active workers left Bangladesh, and settled in other

countries. Some of them took shelter in Canada too, and recognising the reality government of Canada gave support to settle themselves in Canada, and other countries.

9. In this context, we earnestly request the authority to consider our matter with due consideration. Our lives are totally unsafe in Bangladesh. We will be killed by Islamic fundamentalists, if we are sent back to Bangladesh, because still fundamentalists have been searching us there to kill us.”

THE WIFE’S EVIDENCE

[48] The Authority also heard evidence from the wife. She stated she had been married to the husband since 1998. She had been born and raised as a Sunni Muslim. Her observance of that religion had been by way of praying at home. When she married she knew of the husband’s Ahmadi faith. She stated he was heavily involved with the Ahmadi.

[49] She reported that the husband had got into trouble after an incident at the mosque after an attack upon him in 2003. She considered that the attack had probably been by those who could not tolerate the Ahmadi. She said that the husband was in hospital after the attack for a period of 8-10 days.

[50] She stated that he continued his involvement with Ahmadi and friends of that faith. Because of her husband’s involvement with the Ahmadi faith she had a desire to know about it. About one year ago she had decided to practise Ahmadi observances here in New Zealand. This was not carried out in any public way but in her own home.

[51] When asked whether there was any change in circumstances in the situation since the first appeal was decided, that is, during the years 2007 and 2008, she considered that the situation for Ahmadis in Bangladesh was worse. She noted that her father had written to them saying that the appellant’s mother and brother had been injured in January 2007. She agreed that this was just after the first appeal decision declining their application had been received. She was asked whether her husband had asked for evidence of problems in Bangladesh to be sent to them. She replied that there was always a problem with Ahmadi and so her father talked to her quite often about the problem.

[52] When asked whether her father had reported any further problems after January 2007, she said that he continued reporting to her that there were fights between other Muslims and Ahmadi, but nothing specific to the family.

[53] She stated that on return to Bangladesh, if this took place, she could carry out her Ahmadi faith at her home but she would not do anything in public or outside of her home. She considered she would be at risk as: “they say Ahmadi are non-Muslim”. She considered the risk to her would arise because her husband would “go outside” and practise the Ahmadi faith publicly thus she would be implicated in his problems. She stated that the appellants had lived with her husband’s mother and family while in Bangladesh but sometimes they had stayed at her parents’ home. While staying at her parents’ home they never encountered any problems. Her parents’ home was in the same town approximately 15 minutes away by taxi in another part of Dhaka.

[54] The first and second appellants were asked if there was anything that would put their children at risk if they returned with them. They stated that because they were Ahmadi the children might be attacked like them.

THE ISSUES

[55] Does the Authority, noting the provisions of ss129J and 129O of the Act, have jurisdiction to determine this second refugee claim made by the appellants? If so, the Authority must then assess the appellants’ second claim considering the following issues.

[56] 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.”

[57] 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 appellants being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

THE JURISDICTION QUESTION

[58] This preliminary issue must now be addressed. This involves the comparison of the accepted facts as found in the first refugee claim (including the RSB assessment and first decision of the Authority), with the claim now made by the appellants which is the basis of this second appeal. The substance of the two claims are compared to establish whether the Authority is satisfied, since the first determination, circumstances in the appellants' home country have changed to such an extent that the further claim is based on significantly different grounds from the first refugee claim.

[59] In the second claim, which of course was not assessed by the RSB, for the reasons stated above, the appellants' point to country information which indicates a continuation of harassment and problems for Ahmadis in Bangladesh and a report of a specific attack on family members in January 2007. The analysis of the country information does not, for the reasons set out below, indicate a change in circumstances in Bangladesh to the extent that the claim is now based on significantly different grounds from the first claim. The evidence of a specific attack on family members is an additional factor which was not included in the first claim. Noting this, the Authority has therefore proceeded on the assumption that it has jurisdiction to assess the substance of the second claim. Conclusions on all issues are then reached.

ASSESSMENT OF THE APPELLANTS' SECOND CLAIM

CREDIBILITY ASSESSMENT

[60] The Authority found some of the core evidence in relation to the appellants' claim of a change in circumstances since the first appeal was published lacked credibility. The correspondence and evidence of telephone discussions with the husband's father-in-law in early 2007 and the letter from the "AA Hospital" the Authority considers were fabricated to assist a second claim to refugee status.

[61] The reasons for reaching this conclusion are:

- (a) Both the husband and the wife agreed that the husband had rung his father-in-law very shortly after receiving the decision to decline the first appeal and that a request was made to provide documentation in support of continuing

harassment and attacks on Ahmadi in Bangladesh.

- (b) Within a short period of time from that telephone call, letters arrived from the father-in-law (reporting an attack by KN on the husband's mother and brother) including a letter dated 6 January 2007, allegedly from the AA Hospital.
- (c) The coincidence of this alleged attack taking place so shortly after the decline of the first appeal was reported to the family in Bangladesh, particularly given it is more than three years since the husband and his family left Bangladesh, is considered far too coincidental and opportunistic for it not to be a self-serving fabrication.
- (d) The assessment of all documentation from Bangladesh must be assessed in the light of the actual documentation received, its contents, how it was received, and in particular by noting the notoriously unreliable nature of documents from Bangladesh. See usefully *Refugee Appeal No 75840* at[42].
- (e) The endemic corruption in Bangladesh is also evidenced by reference to the United States Department of State *Country Reports on Human Rights Practices for 2007* mentioned above which states at page 15:

"According to the World Bank's worldwide governance indicators, corruption in the country was a severe problem. Following the declaration of a state of emergency, the caretaker government and the military took significant steps to address government corruption."

Whilst this relates perhaps more directly to government corruption it is symptomatic of widespread corruption.

- (f) Additionally, it is noted that the husband's mother and brother are not followers of the Ahmadi faith and that the husband has not lived at that home for more than three years. The Authority considers therefore that if an attack had been made in January 2007, at the husband's former home, those who carried it out, of necessity, knew of the appellants and where they had lived. Logically therefore a one-off attack, more than three years after the appellants had left Bangladesh, is implausible given that those with knowledge of the husband would also have known that he had long ago left the country. Also, because the attackers must have had some considerable knowledge of the husband and his former home it is equally illogical and

implausible that they would attack family members who are not Ahmadi.

- (g) The totality of the evidence in relation to this incident is thus found to be lacking in credibility by the Authority. This story and the supporting documentation have been fabricated to assist a second claim for refugee status.

[62] The Authority finds that there is no evidence relating to the appellants personally which indicates any significant change in circumstances or different grounds from the first appeal.

[63] The Authority has, however, gone on to assess the country material, and submissions and comments put forward by the appellants on that material, to ascertain if it indicates a significant change in circumstances that may give rise to a real chance of the appellants being persecuted on return to Bangladesh.

[64] The article from the *Daily Star*, given its content and that it is sourced from the Ahmadi Muslim community, adds nothing to the situation as assessed by the Authority in the first decision. Indeed, it is dated prior to the date of the first decision.

[65] The material in the United States Department of State Report and the United Kingdom Home Office COI Report indicates a continuation of some anti-Ahmadi activities. These appear to be sporadic and certainly not at the level whereby all those having some association to the Ahmadi faith in Bangladesh are at a real chance of being persecuted because of that adherence to the Ahmadi faith. Indeed, the country reports also show that not only are protests continuing to demand that Ahmadis be declared non-Muslims but the government has generally acted in an effective manner to protect Ahmadis and their property. This is reported by the United States Department of State *International Religious Freedom Report: Bangladesh (2007)* which noted (page 4 of 7) that:

“The government continued not to enforce the ban on Ahmadi publications. Furthermore, protestors are generally stopped from hanging signs outside Ahmadi mosques declaring them non-mosques or threatening the lives and property of Ahmadis. In March (2007) police protected the local Ahmadi community when it removed an anti-Ahmadi sign board from one of their mosques in Khulna, the first time the police have provided such support.”

That same report at page 6 of 7 stated:

“There were approximately 100,000 Ahmadis concentrated in Dhaka and several other locals. While mainstream Muslims rejected some of the Ahmadi teachings, the majority supported Ahmadis’ right to practise without fear or persecution.”

However, Ahmadis continued to be subject to harassment and violence from those who denounced their teachings.”

CONCLUSION

[66] From the above assessment based on the facts as found in support of this second claim the Authority does not consider that there is a real chance of the appellants being persecuted on return to Bangladesh. Because the well-foundedness of the appellants’ claim is not established, there is no necessity to go on and consider the issue of nexus to a Convention reason. Although now also unnecessary in the circumstances, the Authority finds it does not have jurisdiction to determine this second appeal.

[67] For the reasons mentioned above, the Authority finds the appellants are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeals are dismissed.

“A R Mackey”
A R Mackey
Chairman