

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76474

AT AUCKLAND

<u>Before:</u>	A N Molloy (Member)
<u>Representative for the Appellant:</u>	The appellant represented himself
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	31 March 2010
<u>Date of Decision:</u>	14 April 2010

DECISION

[1] This appeal follows the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), to decline the grant of refugee status to the appellant, a national of Bangladesh. The appellant claims that he is at risk of being seriously harmed by a dangerous and influential political figure in Bangladesh who has demanded payment of a sum which the appellant does not owe and cannot pay.

[2] This is the second time the appellant has applied for refugee status. A different panel of the Authority (the first Authority panel) declined the appellant's first appeal in *Refugee Appeal No 76337* (30 April 2009).

[3] Because this is his second appeal, the Authority is required to determine whether it has jurisdiction to consider the merits of his second appeal. The Authority finds that it has. The Authority will first set out the procedural history of the appellant's attempts to obtain refugee status, and will then set out its reasons for concluding that it has jurisdiction to consider the merits of the second appeal. The Authority will then turn to consider the appellant's substantive appeal.

PROCEDURAL HISTORY OF THE APPEAL

[4] The appellant arrived in New Zealand at the end of November 2008 and lodged his first claim for refugee status with the RSB on 28 December 2008. After interviewing the appellant in early 2009, a refugee status officer published a decision dated 27 March 2009, declining the appellant's first application for refugee status.

[5] The appellant lodged his first appeal to the Authority on 9 April 2009. He was advised in writing of the dates on which the appeal would be heard, but failed to attend the hearing. In the absence of any timely explanation from the appellant as to why he failed to attend, the Authority published a decision declining the appellant's first appeal on 30 April 2009.

[6] The following day the Authority received a letter from the appellant purporting to withdraw his claim for refugee status "For personal reasons". The letter did not elaborate upon those reasons.

[7] The appellant lodged his second application for refugee status in late November 2009, but also failed to attend his RSB interview. He claims that he was unwell, but failed to provide a medical certificate as required. The RSB issued a decision, dated 16 December 2009, to the effect that the appellant had failed to establish that the RSB had jurisdiction to consider his second claim.

[8] It is from that decision that the appellant now appeals.

JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL

[9] Neither a refugee status officer nor the Authority has unlimited jurisdiction to receive and determine a further refugee claim after a previous claim has been finally determined. Section 129J (1) of the Immigration Act 1987 (the Act) sets out the circumstances in which a refugee status officer may receive and determine a second or subsequent claim:

"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."

[10] Section 129O(1) of the Act provides a right of appeal from a decision made by a refugee status officer under s129J (1):

“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 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.”

[11] The Authority considered its statutory jurisdiction to hear and determine second and subsequent refugee claims in *Refugee Appeal No 75139* (18 November 2004). It held that under ss129J(1) and 129O(1), jurisdiction is determined by comparing the previous claim for refugee status with the subsequent claim. This involves a comparison of the claims as asserted by the refugee claimant. In the absence of significantly different grounds in the respective claims, the Authority has no jurisdiction to consider the merits of the subsequent claim.

[12] The Authority therefore intends to compare the appellant’s previous claim with his second claim, with a view to determining whether it has jurisdiction to hear the second appeal. If so, it will then determine whether the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

THE APPELLANT'S FIRST REFUGEE CLAIM

[13] For the purposes of his first claim, the appellant claimed to have been an active and prominent member of a political party in Bangladesh. He made a series of speeches attacking the policies of the rival Bangladesh Nationalist Party (BNP). The BNP came to power in 2001. It then took every opportunity to target its political rivals, including the appellant. One such opportunity arose after a series of explosions took the lives of civilians in mid-2005. The BNP accused several political figures, including the appellant, of being members of the terrorist group which claimed responsibility for the attacks, Jama’atul Mujahideen Bangladesh (JMB).

[14] The appellant was subsequently arrested in February 2006. He was arbitrarily detained and tortured by the police before his wife paid a bribe to secure his release.

[15] After the BNP government declared a state of emergency in January 2007,

the appellant became the target of a special force of the Bangladesh police known as the Rapid Action Battalion (RAB).

[16] In March 2007, the appellant witnessed the murder of a man in his shop. The appellant came under pressure from the relatives of the dead man, and from the police, to testify in court about what he saw. He also came under pressure from the accused men not to testify. Eventually the appellant went into hiding after receiving threats from the accused. He was then pursued by the police who issued a summons directing him to appear as a prosecution witness.

[17] The appellant went into hiding for one and a half years until he left Bangladesh at the end of 2008 in order to come to New Zealand.

[18] The RSB did not believe the appellant and issued its decision, dated 27 March 2009, declining his first application. The RSB relied upon a series of discrepancies in the appellant's evidence which he had failed to clarify, despite being given the opportunity to do so following his interview. As already referred to, when the appellant failed to attend his appeal hearing, the first Authority panel published a decision, dated 30 April 2009, declining his first appeal.

THE APPELLANT'S SECOND CLAIM FOR REFUGEE STATUS

[19] The appellant's second claim revolves around AA, a political rival within the Awami League Party (ALP) which came to power in Bangladesh following a landslide electoral victory in late 2008. The appellant claims that he and AA crossed swords in the past as a result of their opposing political loyalties. AA's wife is said to be a close associate of the current Prime Minister, Sheikh Hassina.

[20] In November 2009, the appellant learned from his family members that AA has commenced proceedings in Bangladesh to recover a debt from the appellant. The appellant says that he has not incurred and does not owe the debt, and that he has no means of paying the sums claimed. The appellant believes that the case is politically motivated and that he and his family will be seriously harmed by political associates of AA if the money is not paid. He is currently being sought by the police, the RAB and "Awami League gang members".

FINDING WITH REGARD TO JURISDICTION

[21] Comparing the appellant's first claim with his second, the appellant's second claim gives rise to a change in circumstances in Bangladesh since the determination of his first appeal, to such an extent that the appellant's second claim is based on significantly different grounds to the first. Accordingly, the Authority has jurisdiction to determine the merits of the appellant's second appeal.

Material received

[22] During the course of the second appeal hearing, the appellant produced five documents that have been forwarded to him by his family in Bangladesh. One is a copy of a flyer, written in Bengali, bearing a photograph of the appellant. It records the appellant's debt to AA and offers a reward for information as to his whereabouts. The remaining documents relate to the court proceedings issued against the appellant.

THE ISSUES

[23] 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."

[24] 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

[25] In order to address the issues identified, it is first necessary to determine whether the appellant is a credible witness. For reasons set out below, the

Authority finds that he is not.

Credibility concerns relating to first application for refugee status

[26] After interviewing the appellant in respect of his first refugee claim, the RSB provided him with an interview report. The purpose of such a report is to outline the refugee status officer's understanding of the claim and to give the claimant an opportunity to comment upon any adverse information prior to the application being determined. The appellant's interview report identified a number of apparent discrepancies which the refugee status officer regarded as directly relevant to the credibility of his account.

[27] For example, the appellant gave widely varied accounts as to the length of time he was forced into hiding, from five or six months to as long as 18 months.

[28] The appellant did not respond to the interview report and the refugee status officer relied upon many of the matters identified in the interview report in declining his application upon the basis that it was not believed.

[29] Those matters were not able to be considered by the first Authority panel because the appellant did not attend his first appeal hearing. The present panel of the Authority was also unable to put each of these matters to the appellant, because he claimed that his ill-health and the level of stress he is under prevent him from remembering what he had said previously.

[30] However, he produced no medical evidence to support his claimed memory difficulties. Further, having questioned the appellant about various aspects of his first claim in order to form a view about his credibility in general, the Authority finds that he has not given honest evidence in respect of either of his claims for refugee status.

The first claim

[31] In support of his first claim, the appellant lodged a statement, typed in English, setting out the basis of his claim. The appellant gave inconsistent and vague evidence about the statement.

[32] For example, during his interview in connection with his first claim, the appellant told the RSB that he had prepared a written statement in Bengali which

was then translated into English on his behalf. He claimed that he could not recall who prepared the typed version of the statement for him.

[33] In contrast, the appellant told the present panel of the Authority that whoever had prepared his statement had done so on the basis of a discussion with the appellant. He denied ever having prepared a statement in writing in Bengali and, when the Authority drew the appellant's attention to his earlier contradictory evidence, he could not explain the inconsistency in his testimony.

[34] A particularly striking aspect of the statement is the fact that two different versions were lodged with the RSB. The two statements were virtually identical in substance except in respect of one detail: one contained the claim that the appellant had been a prominent and devoted member of the Awami League; the second contained the claim that the appellant had been a prominent and devoted member of the Bikholpo Dhara political party. Those parties are political rivals.

[35] The appellant could not explain why two fundamentally different versions of such an important document had been created. It is most likely that the two statements were prepared as alternative manifestations of a false narrative. This simple contingency plan was unwittingly unravelled by the unintentional submission of both versions to the RSB.

[36] The two inherently inconsistent statements are strongly suggestive that the appellant's first claim was fabricated. Further support for that conclusion is drawn from the appellant's testimony when interviewed by the RSB in connection with the first claim. He said that his problems were exacerbated by the fact that a man had been fatally stabbed in front of him in his shop in early 2007. The appellant claimed that the two men who had committed the murder later threatened him to prevent him from giving evidence against them at trial.

[37] This claim raises various concerns. For example, it contradicts the appellant's claim that he had gone into hiding the previous month, February 2007.

[38] However, the most problematic aspect of this part of his evidence is the fact that such an important and pivotal event was not referred to at all in the appellant's first application for refugee status, or in (either version of) his statement. It was first enunciated during his oral interview with the RSB in early 2009.

Credibility concerns relating to second claim for refugee status.

[39] In support of his second claim, the appellant provided the Authority with

copies of what purport to be documents filed in a court in Bangladesh seeking damages in respect of a debt owed by the appellant. Each relates to one of two cheques supposedly paid by the appellant to AA in satisfaction of a debt. One is for 10,000,000 taka; the other for 12,000,000 taka. Both cheques were dishonoured by the bank when AA presented them for payment. The documents appear to relate to legal proceedings commenced to recover those amounts from the appellant.

[40] The appellant was unable to explain why AA had pursued such a course of action against him, other than to refer to a vague political rivalry between the two of them. Yet the appellant's first refugee claim contained no hint that the appellant had ever experienced problems with AA and there is no credible reason why such a vendetta would suddenly manifest itself in February 2009 when, on his own account, the appellant had already been in hiding for up to 18 months.

[41] In addition, the appellant claims that AA has been harassing and threatening his family in order to discover his whereabouts. However, according to the documents tendered, the court proceedings were supposedly issued in February 2009 yet the appellant was not apprised of them until nine months later, in November 2009. If the documents were a genuine reflection of the vendetta described by the appellant, then it is surprising that news of the court proceedings would not have reached the appellant until nine months after they were supposedly issued.

[42] Finally on this point, the Authority's experience in the past has been that documents of this nature are difficult to verify in the context of refugee claims where sensitivities often preclude the making of effective enquiry in the country of origin. Further, the appellant agreed that it is easy to obtain false documents in Bangladesh, provided that one is willing to pay for them. Accordingly, the Authority tends to view such documents as essentially neutral, with their authenticity following findings as to the claimant's credibility generally.

SUMMARY OF FINDINGS

[43] The appellant is not a credible witness. His first claim was riddled with discrepancies which he failed to explain to the RSB and which he could not explain to the present panel of the Authority. He failed to attend a hearing with the first Authority panel in respect of his first appeal, which he subsequently withdrew. After lodging a second claim for refugee status, the appellant again failed, without reasonable explanation, to attend an interview, this time with the RSB. Just as his

first claim was supported by disingenuous and conflicting versions of a statement which was clearly prepared without any input from the appellant, his second claim is supported by court documents which are so suspect that they cannot be relied upon.

[44] The Authority finds only that the appellant is a national of Bangladesh and that he has a genuine Bangladeshi passport. The remainder of his account is rejected in its entirety. The Authority finds that he is not at risk of being persecuted in Bangladesh, nor is he the subject of any interest from the Bangladeshi police, the RAB or any other authorities in Bangladesh. Nor does the Authority accept that he is the subject of fraudulent and coercive court proceedings from a political opponent.

[45] Objectively, on the facts as found, there is no real chance that the appellant would be persecuted for a Convention reason should he return to Bangladesh.

CONCLUSION

[46] For 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.

"A N Molloy"
A N Molloy
Member