

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76523**

**AT AUCKLAND**

<b><u>Before:</u></b>	M A Roche (Member)
<b><u>Representative for the Appellant:</u></b>	Self represented
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	18 May 2010
<b><u>Date of Decision:</u></b>	31 May 2010

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**DECISION**

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[1] This is an appeal against a 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 is a married man aged in his early 30s. He arrived in New Zealand on 29 November 2008. He first claimed refugee status on 24 December 2008. That claim was declined by the RSB on 15 April 2009. The appellant lodged an appeal with this Authority against that decline decision but subsequently withdrew the appeal before it was heard.

[3] On 27 November 2009, the appellant lodged a second claim for refugee status with the RSB. Following an interview by the RSB on 3 February 2010, this second claim was declined in a decision dated 8 April 2010 leading to the appellant's present appeal.

## **JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL**

[4] Second or subsequent refugee claims (including appeals to the Authority) are subject to jurisdictional limitations. Section 129O(1) of the Immigration Act 1987 (“the Act”) 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.”

[5] It follows that it is necessary to consider the appellant's original claim and his further claim, as presented at the second appeal, with a view to determining:

- (a) whether, in terms of s129O(1) of the Act, the Authority has jurisdiction to hear an appeal concerning the appellant’s second refugee claim and if so,
- (b) whether he is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

[6] Jurisdiction to hear and determine subsequent refugee claims under s129O(1) of the Act involves a comparison of the claims as asserted by the refugee claimant. In the absence of significant difference in the grounds upon which the claims are based, there is no jurisdiction to consider the subsequent claim; *Refugee Appeal No 75139* (18 November 2004). Where jurisdiction is established, the merits of the subsequent claim will be heard by the Authority.

## **COMPARISON OF CLAIMS AND CONCLUSION ON JURISDICTION**

[7] The appellant’s first claim was based on his having been falsely accused of murder by a powerful man in Dhaka who was a political figure. As a consequence of the false accusation, the appellant feared the police and the Rapid Action Battalion (RAB) in Bangladesh.

[8] The appellant’s second claim is based on allegations that because he was a popular political figure in his local area of Dhaka and deeply involved with the Bangladesh Jatiyatabadi Dal (BNP), he incited the jealousy of a former friend who was also involved in politics but on behalf of BNP’s rival, the Awami League Party (ALP). This former friend was responsible for a false case of embezzlement being

brought against the appellant and the revival of an old case relating to the appellant's alleged involvement in a bombing. The appellant learned of these cases against him when the police attempted to serve papers relating to them on his wife in late 2009.

[9] As noted in *Refugee Appeal No 75139* (18 November 2004):

“[51] Jurisdiction under s 129J(1) is determined by comparing the previous claim to refugee status against the subsequent claim. It is clear from the definitions in s129B(1) that the exercise requires the refugee status officer and the Authority to compare the claims **as asserted by the refugee claimant**, not the facts subsequently found by [the Refugee Status Branch] officer or the Authority.”

[10] The second refugee claim is based on significantly different grounds from the first. It is largely based on events that are alleged to have occurred since the appellant's first refugee claim was determined. The jurisdictional threshold is crossed. The Authority will now proceed to determine the appellant's second refugee claim.

### **THE APPELLANT'S CASE**

[11] What follows is a summary of the evidence the appellant gave at the hearing. An assessment of this evidence follows later in this decision.

[12] The appellant is from Dhaka. His parents are deceased. He has six siblings who all remain in Bangladesh. He married in 2002 and has two children.

[13] Around 1995 or 1996, the appellant became involved with the BNP. He attended meetings and organised local people to attend BNP rallies, assisting with their transport and even arranging boats during the rainy season. He developed a reputation in his local area as a strong supporter of the BNP. He became a respected political figure and was called on from time to time to sort out local disputes.

[14] For several years before he left Bangladesh, the appellant had a friendship with a man named AA. He and AA used to visit each other's houses on a Friday and used to exercise together in the mornings. They often discussed politics. AA was a member of the ALP. Over time, AA became increasingly jealous of the appellant's popularity and political profile and began to view him as a political rival. As AA's jealousy developed, he and the appellant ceased visiting each other's

houses but would see each other in the local park in the morning when they went to exercise.

[15] In October 2005, a First Information Report (FIR) was issued against the appellant by the police in respect of an alleged incident on 21 October 2005 when the appellant and other BNP members were said to have attacked a group of police following a political demonstration (the 2005 “bombing” case). This was untrue and the appellant had not been involved in such an incident. The case against him was politically motivated but, because the BNP was in power at the time, the appellant had no particular concerns about this case and did not think it would be pursued.

[16] In October 2007, the appellant was falsely accused of murder. He spent some time in hiding and left Bangladesh on 28 November 2008. This murder accusation formed the basis of his first refugee claim which was declined. He has since learned from his wife that the person who committed the murder has been arrested and has told the police that the appellant was not involved. The appellant no longer has any fears relating to this accusation.

[17] In late 2009, the appellant was contacted by his wife who told him that the police had been to their house with an arrest warrant for him. She refused to accept any papers from them. The appellant asked his closest friend in Bangladesh to find out about the case against him. This friend, BB, investigated and found that the appellant was wanted in respect of two separate cases. One is the 2005 “bombing” case which has been revived, and the other is an embezzlement charge brought against him by his former friend, AA.

[18] BB also found a “wanted poster” for the appellant outside the police station in his village. He removed this poster from where it was pasted to a wall and sent it to the appellant, together with documents he had obtained from the court relating to the charges and a letter to the appellant from a lawyer that he (BB) had consulted on his behalf. BB took an advertisement out in a local newspaper, featuring a photograph of the appellant. This advertisement requested that the false charges against him be dropped. He sent a copy of this advertisement to the appellant.

[19] The appellant has remained in contact with his wife. She has reported to him that gangs of men sent by his former friend, AA, have threatened to rape her and harm the children if she did not disclose his whereabouts in New Zealand. So

far she has refused to do so but is extremely frightened. The appellant fears that if his wife discloses his whereabouts in New Zealand, he will be traced here by his opponents and harmed. He also fears that if he returns to Bangladesh he will be killed by the police or other government agencies at the behest of AA.

### **Documents produced**

[20] The appellant filed a number of documents with the RSB in support of his second refugee claim. These appeared on his DOL file and included:

- (a) an advertisement published in the *Shomo Shati* newspaper (date unknown) featuring a photograph of the appellant;
- (b) a “wanted” poster, featuring a photograph of the appellant;
- (c) a letter dated 27 December 2009 to the appellant from a lawyer, CC;
- (d) court documents relating to an embezzlement complaint brought against the appellant by AA and a consequent charge under the Negotiable Instrument Act issued against him; and
- (e) the FIR and other documents relating to the 2005 charges brought against the appellant under the Arms Act and Explosive Substance Act.

### **THE ISSUES**

[21] 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.”

[22] 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**

[23] Prior to determining the issues, it is necessary to make an assessment of the appellant's credibility. The Authority did not find the appellant to be a credible witness. His evidence was contradictory and inconsistent with statements he had made at his RSB interviews. It was also implausible. The Authority's reasons for its credibility findings are as follows:

#### **Appellant's political profile**

[24] The appellant has claimed that the reason his former friend, AA, has arranged for false cases to be brought against him is his jealousy of the appellant's political profile in their district and the popularity this has brought him. Similarly, the appellant claims that the reason he was falsely accused of the 2005 "bombing" charge was because of his profile as a BNP activist. In his evidence and at his RSB interview the appellant claimed to have been a BNP member and activist since around 1995 or 1996. He claims to have organised people in his area to attend BNP rallies and to have joined the BNP in the organisation of relief for poor people. These activities, he claims, gave rise to his profile and popularity.

[25] The appellant's claims about his political activism were in stark contrast to statements he made at his RSB interview in February 2009 in support of his first refugee claim. At that interview he was asked if he had ever been a member of the ALP, the BNP or the Bikolpo Dhara Bangladesh (BDB) party. He stated that he had not been a member of any of the three political parties or a supporter but that he had respect for Chowdhury (a BDB figure). At the appellant's RSB interview on 14 January 2010 regarding his second refugee claim, he was asked why he had denied any political involvement at his previous interview. He claimed that he had been advised by friends that it would be better not to mention his support of political parties and he followed this advice. He also claimed to have been frightened that if he disclosed his political activism it may have caused the government in Bangladesh to seek him out in New Zealand. For both these

reasons he failed to mention that he was a BNP activist. He repeated this explanation before the Authority.

[26] The Authority rejects the appellant's explanation for the disparity between his claims of political involvement in his first and second refugee claims. His first claim was declined by the RSB because his claimed problem (the false accusation of murder) had no nexus to a Convention ground. The Authority finds that to avoid his second claim being declined for the same reason the appellant has invented an untrue political history for himself. It is not accepted that he would have denied this at his first interview, had he been involved in the BNP as he now claims. His two explanations for this denial, the advice of friends and his fear of the Bangladeshi government are disbelieved. Given that almost all Bangladeshi refugee claims in New Zealand are based on political grounds, it is unlikely in the extreme that members of the Bangladeshi community would have advised the appellant not to mention politics in his claim. On his own evidence, the appellant was a fairly low level BNP figure. The suggestion that the government in Bangladesh would seek him out in New Zealand after becoming aware of his presence here is farfetched in the extreme.

[27] The Authority rejects the appellant's claim to have been involved with the BNP in Bangladesh. It finds that he was being truthful when he stated at his first RSB interview, that he had never been a member or supporter of any party.

[28] The rejection of the appellant's claim to have been a BNP activist with a local political profile effectively disposes of his refugee claim. However, the Authority will go on to provide further reasons for the rejection of his credibility.

#### 2005 bombing charge

[29] Among the documents filed by the appellant in support of his current claim were a number of documents relating to a charge against him under the Arms Act and Explosive Substance Act. These documents relate to an alleged incident on 21 October 2005. The letter of complaint which gave rise to the charges states that the complainant:

“... saw some B.N.P. supporter and [the appellant] gathered and were holding a meeting in protest of arrest, torture, harass and political on the member of B.N.P. and they were demanding release of their arrested member of BNP leaders... For their ill motive and bad activities we opposed them but they became furious and used rough behaviour on us and attacked on us, started breaking running vehicles, Cars, Private Cars, University, College and Office Windows and Furniture's, Blushed bombs, tortured our force and General Public, as a result many force,

General Public injured and lost many Govt. and Public properties and I tried to arrest them but they fled way..." [sic]

[30] Although the complainant alleged that the appellant and other BNP supporters were demonstrating for the release of BNP leaders, at the time (October 2005) the BNP was in government and the ALP were in opposition. It is unlikely therefore that members of the BNP leadership would have been detained at that time.

[31] The appellant claims "the government" was responsible for bringing the case against him. This is unlikely as, according to his evidence, he was a supporter of the government at the time. He also claimed, however, that because his party was in government, he did not have any concern about the 2005 charges although he was aware of them at the time.

[32] His claim to have been aware but unconcerned about the 2005 charges when they were brought against him, contrasted with his earlier evidence to the Authority that he had "no idea" about the 2005 case until his friend, BB, went to the court in late 2009 about the false charges brought against him by AA and came across the 2005 charges. It was only when the Authority commented that it seemed odd that he would have been unaware of the 2005 charges while living in Bangladesh that he changed his evidence and stated that he knew about them and that, simultaneously, they had been brought by the government against him but he was unconcerned because his party was in government.

[33] The appellant's evidence about the 2005 charges was confused, contradictory and implausible. As was noted in the RSB decision about the appellant's second claim, there is a prevalence of fraudulent, forged and fake documents produced in support of Bangladeshi refugee claims. These include "genuine" documents (issued by officials) obtained by fraudulent means: Canadian Immigration and Refugee Board, Research Directorate *BDG100388.E Prevalence of fraudulent, forged or fake documents* (8 August 2005). Given the quality of the appellant's evidence about the 2005 charges, the Authority places no weight on the documentary evidence in support of those charges. The appellant's claims about these charges are rejected.



### Other documents

[34] A number of other documents were filed in order to corroborate the appellant's claims about the charges brought against him at the behest of his former friend, AA. These do not withstand scrutiny,

[35] Among the documents filed is a "wanted poster" which, he claims, his friend (BB) scraped off an outside wall near a police station. The poster features a colour photograph of the appellant aged in his 20s. When asked where the photograph had come from, the appellant stated that it was a copy of a passport photograph he had taken several years ago but that the photograph had never been used as his travel plans at the time were not pursued. When asked how the police or his enemy, AA, would have obtained this photograph which had been kept in his home, he suggested that AA could have taken it from his house during a social visit or that he could have obtained it from the studio photographer.

[36] Both scenarios are unlikely. It is not accepted that AA would have procured the photograph by stealth from the appellant's home when their friendship was still at the stage when they spent time visiting each other, or that he would have known that the appellant had posed for a passport photograph many years earlier and, by coincidence, been able to find the photographic studio in Dhaka where the photograph had been taken and to have been able to search for and obtain the photograph.

[37] The Authority finds that the photograph was provided to the appellant's friend by the appellant or his wife for the purpose of manufacturing evidence. This conclusion is strengthened by about the fact that the "wanted poster" appears to have been deliberately crumpled up and then straightened out to give it a more "authentic" appearance. When asked why his friend would have crumpled up the poster (which bears no other sign of damage) and then straightened it out again, the appellant had no explanation. Similarly, although he claims the poster was scraped off a wall, it bears no sign that it was once affixed to a hard surface such as tears or rips, which would be expected to occur when a poster pasted to a wall is removed. In explanation, the appellant claimed that the glue used in Bangladesh was quite different and that this is why the poster was able to be removed from the wall without damage. He also suggested that perhaps the poster had been wet when removed which would have made the process easier. However, the poster bears no sign of water damage. The Authority finds that the poster is an item of manufactured evidence and places no weight on it.

[38] Similarly, no weight is placed on the documents related to the embezzlement charge supposedly brought against the appellant by AA. The subject of the embezzlement charge is a cheque written by the appellant that was not honoured. However, it is claimed in the documents related to this charge that the cheque issue date was 2 December 2008. The appellant was in New Zealand at this time. The Authority finds that the documents relating to the embezzlement charge are similarly false.

#### Relationship with AA

[39] The appellant claims that he had a friendship of many years duration with AA. The friends visited each other's homes and knew each other's wives and children. They exercised together in the mornings. Although they supported different political parties, they talked about politics together. The appellant claims that AA's jealousy led to a souring of the friendship to the extent that he has caused serious false charges to be brought against the appellant and has had thugs visit the appellant's wife to threaten her with rape. The Authority finds this to be implausible. The Authority has already found that the appellant was not a member or supporter of the BNP. This being the case, there could be no basis for AA's jealousy of his political profile and popularity. The appellant's claims about AA's enmity towards him are rejected.

[40] The Authority finds that the appellant's claims are entirely false. He has provided no credible evidence that he has a well-founded fear of being persecuted in Bangladesh for any reason. It is unnecessary, therefore, to consider the second issue of the Convention ground.

#### **CONCLUSION**

[41] For the above reasons, the Authority finds 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.

"M A Roche"

M A Roche  
Member