

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

**REFUGEE APPEAL NO 75975**

**AT AUCKLAND**

**Before:** B A Dingle (Member)

**Counsel for the Appellant:** The appellant represented himself

**Date of Decision:** 14 March 2007

---

**DECISION**

---

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of Immigration New Zealand (INZ), declining the grant of refugee status to the appellant, a citizen of Bangladesh.

[2] This is the second time the appellant has appealed to this Authority. The Authority dismissed his appeal in respect of his first refugee claim on 11 July 2005. His second refugee application was lodged with the RSB on 29 August 2006. It was declined by the RSB on the basis that it had no jurisdiction to accept the appellant's subsequent claim.

[3] This issue in this appeal is whether this Authority has jurisdiction to determine the appellant's second claim for refugee status.

## **JURISDICTION: SECOND CLAIMS FOR REFUGEE STATUS**

[4] Neither a refugee status officer nor the Authority has unlimited jurisdiction to receive and determine a further refugee claim after a first claim has been finally determined. The parameters within which this is possible are set out in ss129J(1) and 129O(1) of the Immigration Act 1987 (“the Act”).

[5] Section 129J(1) provides:

"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.**"  
[Emphasis added]

[6] Section 129O(1) 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."

[7] The Authority has recently considered the nature of the jurisdiction conferred by ss129J(1) and 129O(1) in its decision in *Refugee Appeal No 75576* (21 December 2006). In that decision, the Authority concluded that where a second (or subsequent) claim to refugee status is lodged, the first step is to make a comparison between the claim as asserted at the time the first claim was finally determined (in this case by the Authority on 11 July 2005) and the claim being asserted at the time the second claim is being determined; [35].

[8] If the claims when compared do not disclose the required change in circumstances, then jurisdiction to determine the second claim cannot be established and the appeal must fail [45B]. To that extent, the Authority was confirming the position it had articulated in *Refugee Appeal No 75139* (18 November 2004); [55](e).

[9] The merits of the second claim will only be heard by the Authority where jurisdiction to consider a subsequent claim is established. Even then, the hearing may be restricted by the findings of credibility or fact made by the Authority in relation to the previous claim, as s129P(9) prohibits any challenge to a finding of fact or credibility made by the Authority in relation to a previous claim.

[10] In its decision in *Refugee Appeal No 75139* (18 November 2004), the Authority also noted that it does not have a “miscarriage of justice” jurisdiction and cannot rehear an appeal which has already been determined; [55].

[11] This decision will consider whether this appellant’s second claim meets the jurisdictional threshold in ss129J(1) and 129O(1) below at [29]-[35].

### **JURISDICTION OF THE AUTHORITY TO DISPENSE WITH AN INTERVIEW**

[12] In circumstances outlined in s129P(5) of the Immigration Act, the Authority has a discretion whether to offer the appellant the opportunity to attend an interview. The discretion to dispense with an interview arises where the appellant was interviewed by the RSB or, having been given an opportunity to be interviewed, failed to take that opportunity, and the Authority considers that the appeal is *prima facie* ‘manifestly unfounded or clearly abusive’. The Authority’s jurisdiction in this regard was examined in *Refugee Appeal No 70951/98* (5 August 1998).

[13] After setting out the procedural history of the appellant’s case, the Authority will briefly outline the appellant’s current claim for refugee status. That claim will then be assessed in light of ss129J(1) and 129O(1) and a conclusion reached about whether to dispense with an interview under s129P(5) of the Act. The Authority will then set out its conclusions on the merits of the appeal.

### **PROCEDURAL HISTORY OF THE APPELLANT’S CASE**

#### **FIRST CLAIM FOR REFUGEE STATUS**

[14] The appellant arrived in New Zealand on 14 June 2003 and lodged an application for refugee status (his first application) with INZ on 9 July 2003.

[15] It is not proposed to set out in full the account presented by the appellant in support of his first claim for refugee status in New Zealand. A detailed summary of this account can be found in the decision of this Authority in *Refugee Appeal No 75252* (11 July 2005).

[16] Essentially, the appellant claimed that he was the victim of politically motivated attacks from BNP members and supporters because of his affiliation

with a rival political party, the Awami League. The appellant claimed to have been attacked on several occasions, to be on a BNP “wanted list” and to have been subject to a false criminal charge laid by the police at the request of the BNP. He also claimed that people regularly went to his parents’ home looking for him after his departure from Bangladesh.

[17] On 31 May 2004, the RSB declined the appellant’s first application for refugee status. He appealed to this Authority.

[18] Following a hearing before the Authority (differently constituted), the appellant’s appeal was dismissed on the basis that he had presented a fabricated account of his political involvement in order to augment his false claim for refugee status. In its decision, *Refugee Appeal No 75252* (11 July 2005), the Authority rejected the appellant’s claim in its entirety.

## **SECOND CLAIM FOR REFUGEE STATUS**

[19] On 29 August 2006, the appellant lodged a second claim for refugee status with the RSB.

[20] The appellant’s second claim is made on the basis that the BNP and/or their associates continue to seek him and will eventually attack and kill him because of his past political affiliations with the Awami League. The appellant has restated that a policeman, AA, on orders of a political opponent, attacked him before he left Bangladesh. He now claims that AA has continued to harass his parents since his departure. He also claims a further false criminal charge has been laid against him.

[21] In his confirmation of claim form lodged in relation to this second claim, the appellant restated that he had been a member of the Awami League for a long time and that the attacks and harassment of him and his family were wholly related to this political affiliation. He also indicated that the second claim included a particular incident of harassment of his father by the appellant’s political opponents.

## **WHETHER TO DISPENSE WITH AN INTERVIEW**

[22] On the instruction of the Authority, the Secretariat, by letter dated 16 February 2007, wrote to the appellant, giving notice that the Authority’s preliminary

view of the this appeal was that it was *prima facie* 'manifestly unfounded or clearly abusive' and could therefore be determined on the papers without giving him an interview pursuant to s129P(5)(a) and (b) of the Immigration Act 1987. The letter noted that the appellant had been interviewed by the RSB in respect of his current application.

[23] The letter went on to state that this was the second refugee status application lodged by the appellant and advised of the relevant additional jurisdictional requirements. It also noted the Authority's preliminary view that the appellant's second claim did not satisfy these jurisdictional requirements. The letter continued:

"Your first claim was that you were targeted for attacks by affiliates of the Bangladesh National Party ("BNP") because of your membership of an opposition political party, the Awami League, and because you refused to join the BNP. One of these attacks was perpetrated by the local BNP leader, [AA]. You also claimed that the BNP subsequently "caused problems" for your parents because of your political involvement. As a result of the continued harassment of you and your family, you went into hiding and, some time later, departed Bangladesh.

In its decision in respect of your first appeal, the Authority (differently constituted) found that you were not a credible witness and that you had presented an entirely fabricated account of your past experiences in Bangladesh. The Authority found that you had not suffered serious harm in Bangladesh in the past and that there was no reason why you would do so in the future.

Your subsequent claim does not appear to be significantly different from the first. It is noted that you have restated the grounds of your first refugee claim in your second confirmation of claim form. You claim that you would be attacked and eventually killed by the BNP because you were/are a member of the Awami League. You restate that [AA] was the person who attacked you before you left Bangladesh and claim that he has continued to harass your parents since your departure. You also claim to have been the subject of false criminal charges in 2006, which are directly related with your involvement in the Awami League. However, your first claim included the existence of similar false criminal charges which were also related to your political involvement. Therefore, the latest charges appear to be simply a continuation of a pattern of police harassment that was documented in your first refugee claim.

The Authority's preliminary view is that you have failed to establish that the grounds giving rise to your second refugee claim are significantly different from those giving rise to the first. Both claims are based on continuing interest from the BNP because of your status as a member of the Awami League. It appears that you are unable to satisfy the jurisdictional criteria for second and subsequent refugee claims established by ss129J and 129O Immigration Act 1987.

A copy of the Authority's files in respect of your claim is enclosed."

[24] The appellant was provided with an opportunity to present submissions and/or evidence to support his appeal by 2 March 2007. The Secretariat's letter advised that the responsibility for establishing an appellant's refugee claim lay with the appellant, pursuant to ss129P(1) and 129P(2) of the Act (as referred to in

*Refugee Appeal No 72668/01* (Minute No 2) (5 April 2002) and in *Anguo Jiao v Refugee Status Appeals Authority* [2003] NZAR 647, 648 (CA)).

[25] No submission or response of any sort has been received by the Authority.

### **CONCLUSION AS TO WHETHER TO DISPENSE WITH AN INTERVIEW**

[26] Having considered all relevant matters and for the reasons which will be apparent later in this decision, the Authority is satisfied that the appellant's appeal is *prima facie* 'manifestly unfounded or clearly abusive' because the jurisdictional threshold for the consideration of a subsequent claim, pursuant to s1290(1) of the Act, has not been met.

[27] The Authority notes that the appellant was interviewed by a refugee status officer in the course of the determination of his second refugee claim.

[28] The Authority will now proceed to determine the appeal on the papers pursuant to s129P(5)(a) and s129P(5)(b) of the Act, without giving the appellant an opportunity to attend a further interview.

### **THE JURISDICTIONAL THRESHOLD**

[29] The Authority is now required to consider whether the jurisdictional threshold is met pursuant to s1290(1) of the Act; see also *Refugee Appeal No 75576* (21 December 2006).

### **COMPARISON OF CLAIMS MADE**

[30] It is necessary to compare the appellant's first and second claims, in order to establish whether the latter are, because of changed circumstances in Bangladesh, brought on significantly different grounds. For the purpose of this analysis, it is assumed that the appellant's account is credible.

[31] As noted above, the appellant's first claim for refugee status was based on the fact of his political affiliations with the Awami League and the ongoing harassment he and his family had suffered from BNP supporters and the

Bangladesh police. The appellant claimed to have been pursued and attacked by BNP supporters and to have been told that he would not be safe anywhere in Bangladesh unless he ceased his support for the Awami League. The appellant also claimed to have been the subject of a false criminal charge laid against him by police who were acting under instructions from the ruling BNP party.

[32] The appellant's second claim is based on the following grounds:

- i. that the BNP are continuing to look for him and harass his family, including threatening his mother and attempting to extort money from his father who, when he refused to pay the money, was physically assaulted; and
- ii. that the police have laid a fresh criminal charge against him as a further means of harassment in relation to his former political involvement.

[33] With regard to both grounds listed above, the Authority finds that there is no change in circumstances between the first and second claim such that the latter can be said to be based on significantly different grounds. The Authority's decision in respect of the first refugee claim clearly records ongoing interest in the appellant of the same sort that he now asserts is novel; see *Refugee Appeal No 75242* [22] (11 July 2005). That decision also recorded the existence of a First Information Report which had been issued in relation to the false charge laid against the appellant; see *ibid* at [19].

[34] The fact that the appellant now claims that harassment of his family and ongoing interest in his whereabouts from political opponents has continued since the determination of the first appeal does not, in this context, create the grounds for a second refugee claim. That individuals attempted to extort money from his father to increase the pressure for information as to the appellant's whereabouts is simply a continuation of the circumstances which existed at the date of the Authority's decision regarding the first claim. Likewise, the alleged false charge against him simply mirrors the false charge he claimed existed in his first claim.

[35] The appellant has not presented any evidence that, since the determination of his first claim on 11 July 2005, circumstances in Bangladesh have changed to such an extent that his claim is based on significantly different grounds from his first claim.

## **CONCLUSION**

[36] The appellant does not satisfy the requirements of ss129J and 129O(1) of the Act. It follows that the Authority has no jurisdiction to consider the appellant's second claim to be recognised as a refugee in New Zealand. The appeal is dismissed.

.....  
B A Dingle  
Member