

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75840

AT AUCKLAND

<u>Before:</u>	A N Molloy (Member)
<u>Counsel for Appellant:</u>	The appellant represented himself
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	29 June 2006
<u>Date of Decision:</u>	28 August 2007

DECISION

[1] The appellant is a national of Bangladesh. He appeals against the decision of a refugee status officer of the Department of Labour (DOL) declining his application for refugee status.

[2] This is the second time he has applied for refugee status. The Authority (differently constituted) dismissed his appeal in respect of his first application in its decision in *Refugee Appeal No 75245* (16 December 2004). It found that the appellant's first claim was not credible.

[3] The appellant lodged his second application for refugee status with the DOL 13 months later, on 24 January 2006. The DOL dismissed that application on the basis that it had no jurisdiction to accept the appellant's second claim.

[4] In respect of the appeal now before the Authority, the appellant claims that his young son has been murdered by supporters of the Bangladesh Nationalist

Party (BNP) who are trying to locate and kill the appellant. He claims that he is therefore at risk of being persecuted by the BNP if he were to return to Bangladesh. He also says that he is now being pursued by the Bangladeshi police as a result of a charge laid against him alleging that he was involved in a murder in Bangladesh in August 2005.

[5] Before considering the merits of any second appeal the Authority must first determine whether it has jurisdiction to do so.

JURISDICTION TO DETERMINE SECOND CLAIMS FOR REFUGEE STATUS

[6] 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. Section 129J(1) of the Immigration Act 1987 ("the Act") is headed "Limitation on subsequent claims for refugee status" and sets out the circumstances in which a refugee status officer may receive and determine a second or subsequent claim for refugee status:

"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]

[7] Where the refugee status officer declines a subsequent claim, or finds that there is no jurisdiction to consider the claim on the basis that the statutory criteria are not met, the claimant has a right of appeal to the Authority. Section 129O(1) of the Act provides that:

"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."

[8] The Authority will therefore compare the appellant's first claim with his second claim to determine whether it has jurisdiction to consider the second appeal. If jurisdiction exists, the Authority will then determine whether the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

The appellant's first claim for refugee status

[9] The appellant arrived in New Zealand in May 2003. After interviewing him in September 2003, a refugee status officer of the DOL issued a decision, dated 31 May 2004, declining the appellant's application for refugee status. The appellant's appeal against that decision was heard by a different panel of the Authority in late November 2004. A detailed outline of the account presented by the appellant at his first appeal is set out in the Authority's decision in *Refugee Appeal No 75245* (16 December 2004).

[10] In summary, the appellant claimed that he was at risk of being killed by his political opponents if he returned to Bangladesh. He claimed that he had been a member of the Jatiya Party (JP) since the mid-1980s. As a result of his activities on behalf of the JP, he attracted the unwelcome attention of local members of the BNP (particularly AA, the local Member of Parliament). They had been trying to convince the appellant to leave the JP in favour of the BNP from the late 1980s. The appellant was subsequently assaulted by BNP members on several different occasions. They also subjected him to intermittent demands for money. By 2001, the appellant had become the subject of death threats.

[11] Shortly after the terrorist attacks on various parts of the United States in September 2001, the appellant also incurred the wrath of a local Muslim cleric. He made vitriolic accusations about the appellant and accused him of having converted to Christianity because he did not openly support the attacks. On one occasion the appellant was beaten unconscious by the cleric's supporters.

[12] The appellant came to New Zealand because of the escalating danger he claimed to be in. About a week prior to the hearing before the Authority in respect of his first appeal, the appellant was informed that his father had been murdered in Bangladesh by supporters of the Muslim cleric referred to. He also learned that his mother had suffered a fatal heart attack upon hearing of the father's death.

[13] The Authority rejected the appellant's claim in its entirety. It did not accept that he was at risk from any quarter in Bangladesh. It found that his evidence was vague, inconsistent and implausible and that he lacked credibility as a witness.

Appeal to Removal Review Authority

[14] Following the Authority's decision dismissing the appellant's first appeal, his temporary permit to remain in New Zealand was revoked by notice dated 5 January 2005. The revocation was to take effect from 26 January 2005.

[15] The appellant lodged an appeal against removal to the Removal Review Authority by letter from his solicitors dated 8 February 2005. The appellant sought relief upon the basis that there were "exceptional circumstances of a humanitarian nature which would make it unjust or unduly harsh for [him] to be removed from New Zealand".

[16] His appeal was declined by the Removal Review Authority in a decision dated 21 December 2005.

The appellant's second claim for refugee status

[17] On 24 January 2006, the appellant lodged a second claim for refugee status with the DOL. That was approximately 13 months after his first appeal to this Authority was finally determined and approximately one month after his appeal to the Removal Review Authority was declined.

[18] The appellant was interviewed by a different refugee status officer of the DOL on 21 February 2006. In its further decision, dated 12 April 2006, the DOL decided that it had no jurisdiction to accept the appellant's second claim. The appellant's second appeal is against that decision.

[19] For the purposes of his second claim, the appellant asserts that his young son was killed in Bangladesh in January 2006 by the same political opponents who forced him to leave Bangladesh in 2003. He also claims that he is now being sought by the Bangladeshi police, after his political enemies alleged that he committed a murder in Bangladesh in August 2005.

WHETHER THE AUTHORITY HAS JURISDICTION TO CONSIDER THE SECOND APPEAL

[20] While the alleged murder of his son arises out of the same political vendetta that the appellant has relied upon throughout, the allegation that the Bangladeshi police are now in pursuit of him in connection with a murder enquiry amounts, on the face of it, to a significant change of circumstances.

[21] After comparing the appellant's respective claims the Authority is satisfied that it has jurisdiction to consider this second appeal.

THE APPELLANT'S ACCOUNT

[22] Having found that it has jurisdiction to consider the appeal, the account which follows is a summary of the evidence given by the appellant at his second appeal hearing. Its credibility will then be assessed.

[23] In August 2005, the appellant's political opponents filed a complaint against the appellant with the police, alleging that he was directly involved in the murder of a man in Nobabgonj.

[24] In January 2006, the appellant learned from a friend in Bangladesh that his political opponents had murdered his two-year-old son as part of their vendetta.

[25] The appellant produced various documents from Bangladesh which purport to substantiate his claims. These included court documents and correspondence from various individuals, including his former wife and a lawyer. After the hearing before the Authority, he also lodged a copy of a clipping from a Bangladeshi newspaper in respect of his son's death, together with an English translation.

THE ISSUES

[26] 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."

[27] 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

[28] For reasons which follow, the Authority finds that the appellant is not a credible witness.

[29] Section 129P(9) of the Act provides that :

"In any appeal involving a subsequent claim, the claimant may not challenge any finding of credibility or fact made by the Authority in relation to a previous claim, and the Authority may rely on any such finding."

[30] Credibility findings expressed in such robust and unequivocal terms as the Authority's findings in *Refugee Appeal No 75245* (16 December 2004), summarised below, are not to be lightly ignored. The Authority has heard from the appellant in person for the purposes of the second appeal. Having considered all of the evidence available to it, the Authority relies upon the findings of credibility and fact made in respect of the appellant's first appeal for the purposes of determining this second appeal.

The Authority's findings in respect of the appellant's first appeal

[31] The Authority's adverse credibility findings are set out in full in *Refugee Appeal No 75245* (16 December 2004). The Authority rejected his evidence in its entirety. It did not believe his claims to have been involved with the JP, to have had any problems with the BNP, or to have had problems with the Muslim cleric.

[32] In rejecting his credibility, the Authority found, for example, that the appellant gave inconsistent evidence with respect to the timing of his difficulties with AA. He informed the Authority during his first appeal hearing that these

began during the late 1980s. That contradicted the evidence he gave before the DOL and in an affidavit filed in respect of his first appeal, where he claimed that his problems with AA began more than a decade later, in 2001.

[33] Likewise, the appellant informed the Authority during his first appeal hearing that he had been subjected to demands for money since the mid-1990s. In contrast, he had told the DOL that the demands for money began several years later, in around 2001.

[34] Further, his unequivocal evidence before the Authority was that AA had been a Member of Parliament for the BNP from the end of the 1980s. In sharp contrast he had earlier told the DOL that AA was not a Member of Parliament at all, but was simply a member of the BNP.

[35] The Authority also rejected the appellant's evidence with regard to the Muslim cleric as being wholly unreliable. In particular, it rejected his claim that his father had been beaten and killed by the cleric about a week or 10 days before the first appeal hearing.

[36] The supposed proximity of the death to the hearing of the appeal, some three years after the argument which gave rise to the antagonism between the appellant and the cleric, was found to be implausibly convenient. Significantly, the Authority referred to the fact that the appellant had failed to even refer to the death in an unsworn affidavit which he had lodged the day before the appeal hearing.

The Authority's findings in respect of the appellant's second appeal

[37] The Authority, as constituted for the purposes of the second appeal, is satisfied that it is appropriate for the purposes of s129P(9) of the Act, to rely upon the Authority's findings of credibility and fact in respect of the appellant's previous claim for refugee status.

[38] For the additional reasons set out below, the Authority rejects the appellant's claims that his political enemies have reported him to the Bangladeshi police and murdered his son. The appellant is a deceitful and untrustworthy witness who is intent upon advancing false propositions which will enable him to remain in New Zealand. His second refugee claim is not credible and it is rejected in its entirety.

Implausible chronology

[39] The Authority in the first appeal found the appellant's claim that his political enemies had murdered his father was a belated fabrication aimed at bolstering a false claim for refugee status:

"Against this background, his claim that his father was beaten and killed by BB some 10 or so days prior to the hearing, is rejected – it is too convenient. It is implausible that despite three years elapsing since the argument between BB and the hearing, it is only shortly prior to the hearing of his appeal that this event is said to occur. The Authority here observes that this incident was not even mentioned in the unsworn affidavit filed the day prior to the hearing (that is after his father's death is said to have occurred)." *Refugee Appeal No 75245* (16 December 2004) para 34.

[40] Within a month after the appellant's appeal to the Removal Review Authority had been declined, the appellant claimed that his son had been shot. The timing of that incident is equally "convenient". The Authority's observations with regard to the implausible timing of the death of his father are also apt in this context. The BNP have supposedly been trying to force the appellant to give up his support of the JP since the late 1980s. It is implausible that they would now decide to take it upon themselves to kill the appellant's son, even though the appellant has not been present or politically active in Bangladesh for years.

[41] It is also implausible that the appellant would have significant difficulties with the police in connection with a murder which occurred at a time when he was outside Bangladesh.

No weight can be given to the documents proffered by the appellant

[42] The appellant produced various documents in support of his second appeal. These include documents supposedly created by a Bangladeshi court in connection with the charges laid against the alleged murderers of the appellant's son. There were also letters from various parties, including a lawyer acting in respect of those charges (the lawyer's letter) and letters from the appellant's embittered former wife. None of the witnesses was available to give evidence before the Authority and the authenticity of the documents could not be tested. In the circumstances, the evidence can be given little weight.

[43] The Authority has previously noted in a number of decisions that, because of the ease with which certain types of documentary evidence can be obtained in order to support refugee claims, findings as to the reliability of documents will usually follow findings with regard to the credibility of witnesses: *Refugee Appeal*

No 72570 (11 November 2002) and *Refugee Appeal No 75794* (23 May 2006) at [56]. Here the appellant has demonstrated on a consistent basis that he is prepared to give false and unreliable evidence in pursuit of his claims for refugee status.

[44] In addition, many of the documents are demonstrably false. For example, the lawyer's letter is dated 6 April 2006 and addressed to the appellant. It states that the case has been transferred to the "Speedy Trial Tribunal". It is to be read in the context of the court documents, one of which states that the matter would be called before the court again on 3 May 2006.

[45] When the Authority interviewed the appellant eight weeks after that court date, he confirmed that he had spoken to the advocate since then. However, he had no news about what had happened when the matter came back before the court and could not adequately explain why he had not sought any further news from his lawyer.

[46] If the appellant's account were true, it is inevitable that he would have been aware of the court date. The appellant's inability to provide any information about this suggests that he did not discuss the progress of the court case when speaking to the lawyer on the telephone. In reality, if his account were true, there would have been no other reason for them to be speaking to each other. His suggestion that there was no news is simply implausible. In the circumstances, the Authority cannot rely upon either the lawyer's letter or upon the court documents.

[47] The two letters supposedly written by the appellant's wife are also entirely self-serving. The first was in the form of a declaration and states:

"I, undersigned declared and affirmed that my [son] died on [date] by shoot. My son was killed by the political enemies of his father. ...

I lost my son for your political enemies. You are guilty for the death of my son. I do not forgive you forever."

[48] The letter is typed in English and signed in Bengali in the name of the appellant's former wife. The appellant told the Authority that his wife did not speak English, although she could write it. He said that the letters from his wife were written in English because he had asked his friend to obtain letters of support for the purposes of his appeal. It is surprising that his supposedly estranged and embittered wife would be prepared to corroborate his account in order to support his application for refugee status.

[49] These observations are not intended to be a comprehensive analysis of all of the material provided by the appellant. It is clear, however, that the appellant has provided documents which cannot be relied upon. They are not genuine and do not provide evidence of the events which they purport to convey. No element of the appellant's evidence is accepted.

CONCLUSION

[50] The Authority finds that it has jurisdiction to consider the appellant's second appeal. Turning to the first principal issue which therefore arises, the Authority finds that objectively, on the facts as found, there is no real chance of the appellant being persecuted if returned to Bangladesh. The second issue does not need to be addressed.

[51] For all of the reasons set out the Authority finds that the appellant is not a refugee within the meaning of Article 1A (2) of the Convention. Refugee Status is declined. The appeal is dismissed.

"A N Molloy"

A N Molloy

Member