

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

**REFUGEE APPEAL NO 76351**

**AT AUCKLAND**

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

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

**Date of Decision:** 4 June 2009

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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 Malaysia.

**INTRODUCTION**

[2] The appellant arrived in New Zealand on 25 October 2006 and lodged an application seeking refugee status on 26 March 2009. An interview with the RSB was scheduled for 30 April 2009 and advice of this interview was sent to the appellant by letter dated 7 April 2009. The appellant did not attend the interview. A decision declining his application was published by the RSB on 30 April 2009. This Authority received notice of an appeal against that decline decision on 6 May 2009.

[3] Pursuant to ss129P(5)(a) and 129P(5)(b) of the Immigration Act 1987 (the Act), where an appellant has been interviewed by the RSB or, having been given an opportunity to be interviewed, failed to take that opportunity, the Authority has a discretion as to whether to offer the appellant the opportunity to attend an interview on appeal. In exercising this discretion, the Authority will consider

whether the appeal is *prima facie* 'manifestly unfounded or clearly abusive'. Should that be the case, the Authority may determine the appeal on the papers, without offering the appellant an interview. The Authority's general jurisdiction in this regard was examined in *Refugee Appeal No 70951/98* (5 August 1998).

[4] On 15 May 2009, the Authority, through its Secretariat, wrote to the appellant advising that the Authority's preliminary view of his appeal was that it was *prima facie* 'manifestly unfounded or clearly abusive', and giving reasons in this regard. Specifically, it was noted that the appellant appeared not to have identified any Convention reason relevant to the claimed fear of being persecuted that he asserts he would face on return to Malaysia.

[5] The Secretariat's letter stated:

"The Authority's enquiry is forward looking. Therefore, the question is not whether you have experienced persecution in Malaysia in the past but whether you have a well-founded fear of being persecuted for a Convention reason in the future.

For the purposes of refugee determination, a refugee is defined as someone who has a well-founded fear of being persecuted for one of the five Convention grounds, namely race, nationality, religion, political opinion or membership of a particular social group. It is well established in the Authority's jurisprudence that it is sufficient for an appellant to establish that the relevant Convention ground is a contributing cause to the risk of "being persecuted". It is not necessary for that cause to be the only cause, but a Convention ground must be identified as being relevant to the cause of the risk of being persecuted; see *Refugee Appeal No 72635/01* (6 September 2002); [2003] INLR 629 at [173].

The Authority's preliminary view is that your claimed predicament is not in any way linked to one of the five Convention reasons. Your claim, as outlined in your Confirmation of Claim Form (dated 26 March 2009), appears to be that you are at risk of harm from a "loan shark" and/or his associates because you have not repaid a loan which you took out some years previously. You have confirmed in your Claim Form that you do not fear returning to your country for any other reason; see E6, page 7 of the file. Therefore, none of the five Convention reasons appear to be relevant to your claim and your claim to refugee status cannot succeed."

[6] The Secretariat's letter also advised that the Authority has the jurisdiction to determine an appeal on the papers, without offering an interview pursuant to s129P(5) of the Act, in circumstances which, on a preliminary view, applied in the appellant's case. The appellant was provided with an opportunity to present submissions and/or evidence in response to these issues, by 29 May 2009. Notice was given that, unless the Authority was persuaded otherwise by such submissions and evidence, it could consider and determine the appeal without giving the appellant an opportunity of attending a further interview. Reference was also made to *Refugee Appeal No 70951/98* (5 August 1998).

[7] The Secretariat's letter also 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 and explained further in *Refugee Appeal No 72668/01* (Minute No 2) (5 April 2002) and in *Anguo Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA). The letter further advised that persecution has been defined as 'the sustained or systemic denial of basic or core human rights such as to be demonstrative of a failure of state protection'; see Hathaway, *The Law of Refugee Status* (1991) 104 to 108, as adopted in *Refugee Appeal No 2039/93* (12 February 1996) at 15.

[8] On 27 May 2009, the Authority received a letter (dated 25 May 2009 and unsigned) from the appellant which stated (verbatim):

"I refer to the notice of appeal received Dated 15 may 2009 of the above mention Matter. I would like to Advice that Regarding to My claim that I did not fear of returning to my country see Page 7 that I tick "NO" should be "yes" Instead this is because a friend have interpreted in an error to my understanding that I have tick "NO" instead of "YES".

I fear to return to my country due to constant life treating on me from the loan shark. There is no other way But to go far from my country, that on my mind at that moment in New Zealand.

As to the above matters I would be appreciate if you would consider my application."

The Authority will consider this submission later in this decision.

[9] On 29 May 2009, the Authority received a letter from Dr Christine Williams of Te Puke who stated that the appellant had consulted her that day and provided the following medical opinion (verbatim):

"He is unwell, with a fever and abdominal pains and is unable to attend today's hearing at 4 o'clock.

I am arranging tests and he may requie hospital admission"

[10] In fact, there was no hearing at 4 o'clock, as asserted. No further material or submissions have been received by the Authority.

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

[11] 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'. The Authority notes that the appellant, having been offered an interview by the RSB, failed without reasonable excuse to attend that interview. It is appropriate to now proceed to determine the appeal on the papers pursuant to

ss129P(5)(a) and 129P(5)(b) of the Act, without giving the appellant an opportunity to attend a further interview. The appellant's letter of 25 May 2009 has been taken into account in determining this appeal.

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

[12] The appellant's claim, as set out in his Confirmation of Claim form, is that he would be seriously harmed if he returned to Malaysia. This assertion was made because he had borrowed money from a loan shark and had failed to repay that loan. At E1 of the Confirmation of Claim form the appellant stated that he "would probably get killed" if he returned to Malaysia. At E2, in response to the question "Why would this happen to you?" the following statement was made (verbatim):

"When I was in Malaysia I borrowed money due to hard family financial difficulties and also death in family. So had funeral costs also. I borrowed money to cover cost's. Person I borrowed from turned out to be a loan shark who charged very high interest."

[13] At E8 of the form, when he was asked to set out key events which caused him to leave his country and apply for refugee status his statement (in full) was as follows:

"After this I was constantly threatened so I had to keep moving throughout Malaysia as my life and also my families lives were threatened with death threats from the loan shark and his people. No matter where I went in Malaysia they would track me down and the threats got worse for me."

[14] He also indicated that he has been in fear for this reason for five years.

[15] The appellant has not submitted a statement or any other substantive evidence in relation to his claim. He did submit to the RSB his Malaysian identity card, driver's license and passport.

[16] The appellant's letter of 25 May 2009 merely reiterated his original claim and advised that he feared returning to his home country.

## **THE ISSUES**

[17] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly 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, is unable or, owing to such fear, is unwilling to return to it."

[18] 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**

[19] As the Authority has determined not to interview the appellant, his account, as recorded above, is accepted for the purposes of determining this appeal.

[20] However, the appellant's claim can be dealt with shortly. Even if the appellant is at risk of future harm at the hands of the loan shark, such a risk is not linked to a Convention ground. To fall within the ambit of the Refugee Convention, it is necessary for a claimant to have a well-founded fear of persecution *for a Convention Ground*, as is clear from the second issue raised at [18](b) above. These grounds are a person's race, religion, nationality, membership of a particular social group, or political opinion.

[21] It is clear that there is no evidence to support the claim that any harm faced by the appellant is for a Convention reason. Nothing in the appellant's letter of 25 May 2009 displaces the Authority's *prima facie* view (set out in the letter on 15 May 2009 and excerpted above) that his claim must fail for lack of nexus to a Convention ground. In fact, the appellant has not addressed the issue at all. Put simply, the Authority finds that any harm faced by the appellant would not be for one of the Convention grounds. Thus, on this basis alone, the Refugee Convention has no application to the appellant's circumstances and his claim for refugee status must fail.

### The appellant's immigration history in New Zealand

[22] Although not strictly necessary, the Authority also observes the following. The appellant has been in New Zealand since 2006 and in the intervening years has been granted various seasonal work permits, visitor permits and a transitional work permit. His most recent permit expired on 8 January 2009. On 5 January 2009, the appellant applied to Immigration New Zealand for a further visitor permit. The application was declined because, given his history of employment in New Zealand since 2006, INZ did not accept that he was a genuine visitor but rather considered he was seeking to extend his stay in New Zealand to continue employment. He made a further application on 19 February 2009 which was declined on 6 March 2009, approximately two weeks before his refugee application.

[23] While it has not been necessary to consider the appellant's immigration history in New Zealand in the determination of his refugee status on appeal, it nevertheless indicates that his claim has likely been motivated simply as a last resort path to extend his stay in New Zealand. The Authority does not expect to see a further claim lodged by the appellant.

### **CONCLUSION**

[24] 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.

"B A Dingle"  
B A Dingle  
Member