

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76456

AT AUCKLAND

<u>Before:</u>	A R Mackey (Chairman)
<u>Counsel for the Appellant:</u>	R Chambers (for introductory purposes only)
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	5 March 2010
<u>Date of Decision:</u>	15 March 2010

DECISION

[1] This is an appeal against the 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 India, of the Sikh faith.

INTRODUCTION

[2] The appellant is a single man aged in his mid-20s. He arrived in New Zealand on a genuine Indian passport in late June 2009. A confirmation of claim for refugee status in New Zealand was lodged with the RSB in July 2009. He was interviewed by the RSB in September 2009 and his representative was present. The RSB declined his application for recognition as a refugee in November 2009. The appellant then appealed to this Authority on 20 November 2009.

[3] The appellant predicts being persecuted on return to India by the Indian police for reasons of support for the Khalistan movement, which had been imputed to him by the police. The central issues to be determined are firstly those relating to his credibility then, on the facts as found, the well-foundedness of his claim, and whether his fear of being persecuted is for a Refugee Convention reason. Finally, in the alternative, an internal protection alternative in other parts of India away

from his home district, is considered.

[4] Mr Chambers advised the Authority by letter dated 1 March 2010 that due to the very modest proportions of funding arrangements that had been made with this appellant and several others, who had come from India at approximately the same time, representation had to be on a very modest and largely *pro bono* basis. Therefore, he undertook the initial introduction and opening commentary and stated that he would depart when examination in chief commenced. This took place in this case. A synopsis of the case put forward by the appellant, related submissions and country information provided by Mr Chambers on 24 February 2010, has been taken into account by the Authority in this case.

THE APPELLANT'S CASE

[5] What follows is an outline of the evidence the appellant gave in support of his appeal and other evidence his representative has provided. The issues are then expressly identified and an assessment made on the facts as found.

[6] The appellant adopted a handwritten statement that had been submitted with his confirmation of claim on 7 July 2009.

[7] The appellant was born in the village of Bhet in Kapurthala district, Punjab State, India. His family have a small farm of approximately one acre which is situated close to the village where they have their own home. The family has grown crops on the property for many years. Currently his uncles farm the land. The appellant has an elder brother, AA, who now lives in Dubai. He left the Punjab because of troubles with the police in 2006.

[8] The appellant's father died, in his late 50s, in approximately August 2009 due to police harassment. His mother now lives alone in the family home.

[9] The appellant's father had been a strong supporter of Sikh principles and had spoken out in support of an independent Khalistan in the early 1980s.

[10] In the late 1980s, his father went to Dubai to work as a construction worker. He remained there until 2001, when he returned to the family home. Soon after his return he was detained by the local police force and questioned about his loyalty to the Khalistan movement. It was only after intervention from the village

sarpanch and local *panchayat* members that his release was obtained, after the payment of a bribe.

[11] The appellant's mother told him that his father had been detained before he went to Dubai and this was also because of his father's claimed support of the Khalistan movement.

[12] After the initial harassment and maltreatment of the appellant's father by the police in approximately 2005, the Indian Police began harassing and maltreating AA, also claiming that he had involvement with Sikh militant movements and the alleged activities of his father. This maltreatment and abuse by the police led to AA going to Dubai in 2006. Shortly after AA had gone to Dubai, his father was detained by the police and the village elders again had to obtain his release. At the time his father was unwell, suffering from pains in his knees which the appellant claimed was due to his father working outdoors for considerable periods.

[13] In February 2006, the appellant was detained by the police. He was working on the family farm in the tube well when police apprehended him. Four or five policemen came in a vehicle, captured him and took him to the central police station in Kapurthala. Thereupon they started beating him and asking him questions about his association with the Khalistan movement. Due to the beatings, the appellant's hand was split open and an injury to his leg occurred where it was opened up to the bone. After beating him for a period of time, people from the village came and arranged for him to be released. He was detained at approximately 10am and released at about 3pm. A bribe was paid to obtain his release. The appellant's comment on the detention was that the police "were only concerned with money". Nothing was said to him on his release and the police just took the money and then let him go. He had his wounds treated but otherwise said nothing as he considered he would get himself into further trouble by making complaints.

[14] About five to six months later, he was detained again. On this occasion he was with some of his friends ("boys") from the village with whom he had been working. The police came and captured him but did not take any of the other boys. They asked the appellant where were the "other people who were involved with Khalistan?". He was taken to the same police station in Kapurthala. After another beating he was released when village people came and paid a bribe which had been supplied by his mother.

[15] No other detentions took place after that but over the following three to four years until he left India, the police came and asked him about his brother and where he was. He was not detained however, as he tried to avoid being found by the police. His mother sometimes forewarned him of visits and sometimes he went to stay with relatives so he was not at home over long periods. On one occasion he stayed with an aunt for some six months.

[16] The appellant had obtained a passport in 2005 as he saw the problems his brother was having and he thought he should be ready to leave India himself. It was common knowledge amongst people in his district that once the police started coming to extort money from families they would not give up.

[17] In 2008, after seeing an advertisement in a local newspaper which advertised that an agent could arrange for people to be taken to New Zealand, the appellant followed up the advertisement and made contact with an agent, Abdul Khalam. He met him in Jalandhar near the bus stop and they then went to another person's house to have a discussion. The appellant then made arrangements with Abdul Khalam and another man to pay Rs700,000 for all the arrangements, including securing a limited purpose visa to travel to New Zealand, a police certificate and an employment contract to work with a New Zealand company based in Blenheim.

[18] The appellant arrived in New Zealand in June 2009 and after travelling initially from Christchurch to Blenheim found that the company he planned to work with had ceased to exist and the employment contract was invalid. He then met a New Zealand national, Kulwant Singh, who assisted him in lodging a claim for recognition as a refugee with the RSB.

[19] The appellant then moved to the Tauranga area where he has found lodgings with some other Indian nationals and obtained occasional casual work.

[20] In August 2009, he telephoned his family and learned that his father had died. This came about as his father suffered a lot of shock when the police came to question him about the appellant and where he had gone. They told his father that if no money was given to them they would arrange for the appellant to be returned from New Zealand. They did not detain his father although he had paid them some bribes to get them to go away. In approximately August 2009 his father died, due to the "police troubles". The appellant had not obtained a death certificate but offered to supply one.

[21] No other problems have been reported to him by his mother over recent months although she was under stress and pain.

[22] The appellant considered that he could not move to other parts of India away from the Punjab area to avoid the attention of the local police. People in India were notorious for gossiping and wherever he went he would be found and have to move on. While noting that there were millions of Sikhs living outside of the Punjab, he considered that people would look at him and notice his different accent and that the police would then come after him. Also, it would be difficult for him to live elsewhere because of the employment difficulties that he would have.

[23] He reiterated in his final statement that the problems that he and his family had with the police were always related to money.

THE ISSUES

[24] 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."

[25] 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?

[26] In this case, on its particular facts, the issue of the appellant having a potential internal protection alternative as a possible "antidote" to the risk of being persecuted in his home district is potentially relevant and therefore considered. The details of the test to be applied have been adopted from the Authority's decision in *Refugee Appeal No 76044* (11 September 2008) and are taken into account briefly in the alternative assessment made later in this decision.

ASSESSMENT OF THE APPELLANT'S CASE

CREDIBILITY

[27] At the outset it is necessary to establish the appellant's credibility on all aspects of his claim as presented. The appellant was an unimpressive witness who gave vague, evasive and often mobile evidence. Assessed in the round, the Authority found the appellant so lacking in credibility that the core of his claim is rejected in its entirety. His claim is only accepted to the extent that he is a young Sikh man from the Punjab and an Indian national. He would be returning with that profile. The reasons for the Authority rejecting his credibility follow.

Police arrests

[28] The appellant claimed that he had been detained on two occasions by the police and taken to the Kapurthala police station. In his original statement he said that the first detention was in 2006 and the second detention had been in July 2008. To the RSB he claimed that his first detention had been in February 2006 and the second detention in July 2008. On the first occasion he had been released after a bribe of Rs13-14,000 had been paid and on the second occasion a bribe of Rs20,000 had been paid.

[29] To the Authority he stated that his first detention had been in February 2006 and then five or six months later, in approximately June of the same year, he had been detained again. On the first occasion he had been released after a bribe of Rs20,000 had been paid and on the second occasion Rs15-18,000 had been paid in bribes.

[30] When these inconsistencies were put to him the appellant stated that it had actually been in 2007 that the detentions took place and that in relation to the payment of the bribes he thought that possibly the Rs20,000 bribe had been paid in respect of his brother. He then later corrected his evidence stating it was difficult for him to recall the exact dates but that in fact both arrests had taken place in 2006 and it was now some three to four years since the arrests had taken place.

[31] While the Authority would agree that the evidence the appellant was recalling not only in respect to himself but possibly his brother and father would have been stressful and harrowing, the appellant's evidence was highly mobile and evasive in this regard. The evidence was so confused that the claims of being

detained and paying bribes is, in the Authority's view, part of a fabricated story. These would have been highly important traumatic events in his life and to be so confused on the details is highly implausible.

Association with Khalistan movement

[32] When it was put to the appellant that the Khalistan movement had become virtually defunct by the mid-1990s and that it was implausible that the police would continue to harass his father about such an involvement many years after the Khalistan movement had ceased its operations, the appellant professed to have no knowledge at all of the Khalistan movement. He also had no idea of the names of any of the various groups that had operated in the 1980s and 1990s. The Authority is satisfied that the appellant has fabricated the police associating him with the Khalistan movement in an effort to give some possible political or racial nexus to his claim. This aspect of his claim is made further implausible by the appellant's claim that firstly his brother and then the appellant himself had associations with the Khalistan movement. Whilst the Authority would accept from the objective evidence presented, that the police force in the Punjab is seriously corrupt and extortion is carried out with impunity, to link this appellant to the Khalistan movement which had been effectively defunct for some 10 years (that is, when he was a young boy) is highly unlikely. The Authority is therefore fully satisfied that this appellant's claim, that the police authorities were detaining him and claiming that he had links or supported the Khalistan movement, is utterly fanciful and part of a fabricated claim.

The date of his father's return from Dubai

[33] Again, this was an area where the appellant was highly mobile in his evidence. In his original statement he claimed that his father had gone to Dubai in the late 1980s and had returned in 2001. Before the Authority he stated that his father had gone to Dubai in 1980. He was quite adamant that it was 1980 and repeated this on several occasions. He also claimed that his father had not returned on more than one or two occasions. He initially stated that his father had actually returned to the family home in India in 2007. It was only when the Authority pointed out to him that he had earlier claimed his father had returned in 2001 that he corrected his evidence, stating that 2001 was the correct date.

[34] The appellant's evasion and extreme vagueness on the subject of his father's time in Dubai and dates of return may be partly explained through difficulty

in recalling dates when his father may have returned briefly to India, however, the appellant appeared to maintain that his father had never returned from Dubai over a long period of time in the 1980s and 1990s. His evidence, therefore, in this regard is found to be unreliable. Indeed, if his father had been away for the majority of the 1980s and 1990s he could have had no involvement in the Khalistan movement at all and would hardly have been seen as a Sikh nationalist of any significance. It was simply impossible to find any rational or consistent evidence from the appellant on this subject.

Details of the appellant's father's death

[35] The appellant's evidence in relation to this quite recent and obviously highly important event was again vague and inconclusive. The appellant appeared to have no idea of the cause of his father's death apart from saying that it was caused by "police troubles" and that his father "got a shock". The only illness he could recall relating to his father was that he had sore knees from working outdoors.

CONCLUSION ON CREDIBILITY

[36] When assessed in the round, the Authority finds that the appellant's evidence is completely lacking in consistency and plausibility to the extent that it is rejected in its entirety with the exception of his nationality and Sikh background. The Authority is left therefore, accepting only that this is a young man from the Punjab of the Sikh faith.

Well-founded fear

[37] On that profile, when assessed against the objective country evidence, the Authority is satisfied that this appellant has not established that he has a well-founded fear of being persecuted on return to India.

[38] The Authority, after assessing the country information, does note that the police in the Punjab continue to torture with impunity and that there is a high level of systemic corruption. Thus, there is a remote possibility, as opposed to a real one, that a Sikh man returning from overseas after a period of time earning overseas funds, may be targeted for extortion purposes, from time to time, by the Indian police. This appellant, however, has not established that such a risk rises above a remote or highly speculative chance.

[39] He is thus not found to be a refugee.

ADDITIONAL FINDINGS

Convention reason

[40] The Authority has found that the appellant does not have a well-founded fear of being maltreated, thus the first issue set out above is answered in the negative. However the Authority is also equally satisfied, on the evidence that this appellant provided, that any prediction by him of being persecuted on one or more of the five Convention reasons simply does not arise. Even on the remote and speculative risk of criminal extortion by the local police a nexus to a Convention reason is simply not established.

Internal protection alternative

[41] Because of the findings set out above, it is unnecessary for the Authority to reach conclusions on the possibility of an internal protection alternative for this appellant in other parts of India. However, the Authority does note after considering the requirements for assessment of internal protection, as set out in *Refugee Appeal No 76044* (11 September 2008), that it is satisfied that all of the four requirements set out at [178] can be met. There is no reason why this appellant should not enjoy the same social and economic rights as other Indian citizens including the several million Sikhs who live outside the Punjab. The Authority accepts that there may be some discrimination but this certainly would not rise to the level of being persecuted.

CONCLUSION

[42] For the reasons given, the Authority considers the appellant does not have a well-founded fear of being persecuted in his home district in India for one or more of the five Convention reasons. The first and second issues are therefore answered in the negative. In the alternative, an internal protection alternative is available to him.

[43] Accordingly, the appellant is not recognised as a refugee within the meaning of Article 1(A)(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

"A R Mackey"

A R Mackey
Chairman