

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

**REFUGEE APPEAL NO. 72290/2000**

**AT AUCKLAND**

**Before:** J Baddeley (Chairperson)  
A Fitzgibbon (Member)

**Counsel for Appellant:** A McClymont

**Appearing for the NZIS:** No appearance

**Date of Hearing:** 25 October 2000

**Date of Decision:** 18 January 2001

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**DECISION**

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[1] This is an appeal against the decision of the Refugee Status Branch of the New Zealand Immigration Service (RSB), declining the grant of refugee status to the appellant, an Indian national Sikh, born in the Punjab.

**THE APPELLANT'S CASE**

[2] The appellant is 35 years old and was raised on the family farm in the Punjab. His parents and younger brother still live there. The appellant attended an agricultural university and then an engineering college, from which he graduated as a Bachelor of Engineering in 1988.

[3] While he was a student at the college, he became interested in the All India Sikhs Student Federation (AISSF) and eventually joined the Federation in 1986. He was elected secretary of the college branch in 1986 and held that position for

one year. His duties involved preaching at gatherings, and attending meetings with high-ranking AISSF members. He had no problems with the authorities during this period even though the AISSF had been banned shortly prior to his becoming a member. On leaving college, he became actively involved in helping Sikhs at the local Gurdwara, seeking support for the Akali Dal Mann Party and encouraging people to take *amrit*.

[4] The appellant went to work in New Delhi in 1988 as a quantity surveyor. Throughout his time in New Delhi he continued his activities at the Gurdwara. He did not experience any difficulties with the authorities until June 1994 when he was arrested by the Punjab police after he had come to Delhi. They detained him initially at a police station in New Delhi and then transferred him to C police station in a town near his home in Punjab. There he was accused of being part of a terrorist organisation led by LS, an acquaintance of the appellant from the same village. The police told the appellant that LS had implicated him in robberies. The police tortured and interrogated the appellant demanding to know the names of his associates and the location of weapons and money. He was made to lie on the floor, beaten on his back and a roller applied to his legs, which were forced apart. The soles of his feet were beaten and he was hung from the ceiling. He was hit on the mouth and lost consciousness during the beating. After three weeks of detention the appellant was released with the assistance of the *Panchayat* and a bribe paid by his father. The appellant sustained injuries during this detention for which he received medical treatment on release from the police station. He returned to work in July 1994 but due to his injuries was not able to work full-time.

[5] In October 1994, he was issued with a passport in his name. In November 1994 he was arrested from his lodgings in Delhi by the Delhi police and interrogated. He was accused of making bombs and repeatedly asked the reason for his earlier arrest by Punjab police. He was again mistreated by being beaten with sticks, his head held under water and his beard burned. On this occasion he was detained for about two weeks and released again on payment of a bribe.

[6] The appellant produced the following documents to the Authority as evidence of the injuries he had sustained during these two detentions:

- (a) A letter from the *Panchayat* describing his injuries and the date of his release (22.6.94).

- (b) A medical certificate dated 30 May 2000 detailing a scar on his tongue, broken teeth and deformities of his fingers.
- (c) A x-ray report dated 29 May 2000 describing a bony deficit and irregularity to the middle finger of his left hand.
- (d) A dental report dated 30 May 2000 stating that three of the appellant's lower anterior incisors required to be extracted due to extensive bone loss, mobility and non-vitality.

[7] In January 1995 the appellant married and decided to look for work overseas. In March 1995 the police came to his family home to arrest him but he was warned by a neighbour and evaded the police. He and his wife then left for New Delhi, whence they departed for Singapore to take up employment arranged for him by an agent. He left India legally without any harassment from the border officials.

[8] From May 1995 until August 1996 he worked in Singapore as a quantity surveyor. While he was in Singapore he was told his father was arrested twice by local police searching for the appellant. When his employment ended, the appellant returned to India, entering the country without difficulty. He went immediately to his parent's home and three days after his arrival there, the police came to question his parents about the appellant who was not present at the time. He left for New Delhi and stayed there for one month with his wife and child at the home of his wife's uncle, a *subidar* in the Indian army. He and his family were granted visitor's visa's for New Zealand and left India on 25 September 1996. At the New Delhi airport the appellant was separated from his wife and child for a short time and was made to pay a US\$500 bribe before they were allowed to leave. He arrived in New Zealand on 26 September 1996 and lodged an application for refugee status on 14 October 1996.

[9] Since coming to New Zealand the appellant has received two letters from his uncle dated November 1996 and February 2000 which were both produced to the Authority. His uncle, who does not live in the appellant's village, had written these letters in English. In the 1996 letter he advises the appellant that the police had been searching for him at his parent's home. In the second letter dated 24 February 2000, he advises the appellant not to return to India. His father writes in a similar vein in a letter dated 29 March 2000, saying that the police had been to his home many times looking for the appellant. The appellant has also spoken by telephone to his parents and friends in the village. They say that the police are still

“making difficulties” for his parents. At the conclusion of the hearing, counsel requested and was granted leave to file further submissions. The Authority acknowledges and takes into account these submissions contained in counsel’s memorandum dated 30 October 2000.

[10] The appellant fears that if he were to return to India he would be persecuted by the police for reason of the political opinion they have imputed to him, namely, that he is a Sikh terrorist.

### **THE ISSUES**

[11] 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.”

[12] 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**

[13] Before any finding can be made as to the above-mentioned issues, an assessment must be made of the appellant's credibility. The Authority accepts as credible the appellant's account of his arrests in 1994 and the mistreatment he suffered at the hands of the police. However, the Authority is very sceptical of the claimed police interest in the appellant after 1994 and rejects the claims of police harassment contained in the family letters.

[14] The Authority accepts that the appellant was suspected of terrorist activities by both the Punjab and New Delhi police and was subjected to severe physical

mistreatment in 1994 which left him with the various injuries described in medical reports. However, in 1995 and 1996, the appellant was able to pass through the border at New Delhi on three occasions without interference from the police. The Authority is sceptical about any of the claimed police interest after 1994. The Authority finds that now, some six years later, there is no real chance that the appellant will be persecuted on his return to India. The reasons for our findings are as follows:

(a) Country Information

Counsel for the appellant argued that gross human rights abuses continue in the Punjab and that even a non high-profile Sikh, such as the appellant, is at risk of arbitrary attention and consequential abuse and torture while in custody. He submitted that the appellant's evidence was therefore consistent with the country information contained in various authorities where counsel referred to, namely:

- United States Department of State Report, 1997
- Amnesty International Report 1998
- Human Rights Watch: *Asia Dead Silence – The Legacy of Human Rights Abuses in Punjab* (May 1994)
- Home Office Report, September 1999
- Research Directorate Immigration & Refugee Board Ottawa, Canada Report 1997 *India: Information from Four Specialists in the Punjab*
- Amnesty International Report ASA20-2499 (August 1999) *India: A Vital Opportunity to End Impunity in Punjab*
- Research Directorate Immigration & Refugee Board Canada (10 December 1998) IND30758.EX *India: Current Information on the All India Sikhs Student Federation and the Treatment of AISSF Members by the Authorities.*

However, the Authority notes that the most recent United Kingdom Home Office Report 2000 portrays the situation in the Punjab in a somewhat different light. The UK Home Office Report *India Country Assessment* (April 2000) notes:

“The intervention [Operation Blue Star] had disastrous consequences for the Sikh community and the whole country. Sikh-Hindu communalism was aggravated. Sikh extremism was reinforced, and political assassinations increased ... Militant Sikh movements sprang up in the Punjab. Police responded with violent attacks, illegal detention and torture. ...

Various human rights organisations have strongly criticised the Punjab police for their misuse of power during the 1980s and early 1990s. Amnesty International reported that those who were arrested were detained for months or years without trial under provisions of special legislation. ... and reports of torture during interrogation was said to be common."

The situation of Punjab has improved. Central government has begun to rein in the Punjab police and Sikhs are no longer at risk of persecution because of their religion. The UK Home Office assessment (*supra*) reports:

"Sikhs do not constitute a persecuted group at the present time, and rank and file members of groups that were at one time targeted e.g. the AISSF, are in general terms now safe. There are exceptions such as people with a local history of abuse at the hands of the police, who may constitute a personal vendetta; and militants together with their close relatives and supporters who continue to be followed as potential seeds for further rebellion."

The Authority was referred to Human Rights Watch: *Asia (Dead Silence – The Legacy of Human Rights Abuses in the Punjab)*. This publication of May 1994 exposed human rights violations principally prior to 1992. The most recent of these reports, Human Rights Watch 2000, does not mention the Punjab as an area of current concern in its review of human rights violations throughout India.

In the *Amnesty International Report 1999* London, Amnesty International (1999) the Punjab is mentioned only in respect of the arrest of several human rights defenders and the fact that the recently appointed National Human Rights Commission had not yet begun investigation. There was no other mention of human rights abuses in Punjab.

Counsel referred to the decision in *Refugee Appeal No. 71058/98* (28 October 1999) p9, where the Authority stated:

"The Authority is not aware of any meaningful reduction in recent times of the human rights violations caused by Punjabi police over the last one and a half decades."

This statement must be properly considered in the context of that appellant's circumstances. It cannot be advanced as a proposition of general application to all cases of Punjabi asylum seekers. The Authority does not regard this decision as establishing any principle of universal application. There was no review of country materials in that case, and it is inconsistent with the most recent country information.

- (b) The most recent country information contained in the UK Home Office Report *India Country Assessment* (April 2000) limits the current targets of persecution to “those with a local history of abuse at the hands of police and may constitute a personal vendetta and militants together with their relatives and supporters”. Although the appellant claims that the police are still visiting his parents since his departure for New Zealand, none of his family are targets of persecution. (Significantly, his 27 year old brother has never been harassed by the police). This would appear to belie his claim that he is still perceived by the police as a militant. In 1994 the appellant was detained twice by police – once by local police and once by police from New Delhi. Such police interest does not constitute “a local history of abuse at the hands of police”. The appellant does not appear to fit the profile of Sikhs at risk of persecution by the police in 2000. Accordingly, his claimed fear of persecution appears to be contrary to country information.
- (c) The appellant was arrested by the Punjab police in June 1994 because of his suspected support of a known terrorist LS. That person has already been captured by the police and his activities curtailed. After three weeks the Punjab police released the appellant, presumably satisfied that he was not involved with LS. The Punjab police showed no further interest in him until March 1995 when he claimed they came to arrest him at his parent’s home but he was not present. The New Delhi police, according to the appellant, were interested in him because of his earlier arrest by the Punjabi police. They released him after a few weeks and showed no further interest in him. The appellant’s own evidence is that the New Delhi police are not enquiring about him. The appellant has never been charged with an offence nor has any search warrant ever been issued. The Punjabi police released the appellant and dealt with LS (whom the appellant believes was killed by the police) the terrorist with whom they thought the appellant was involved. The basis for their suspicion of the appellant in 1994 therefore no longer exists. The appellant could provide no reason why the police would continue to falsely suspect him of terrorism nor does his family state any reasons given by the police for continuing to search for the appellant. There appear to be no further reasons why the appellant would be of interest to the police.

- (d) The appellant stayed in his home village for only four months from November 1994 to March 1995 (other than three days in April 1996). Since then he has never been in his local district. It seems implausible that the local police would continue to be interested in him in 2000 (presumably for activities in the local district) five and a half years after he had left that area.
- (e) In November 1994 the appellant returned to his village - the site of his earlier persecutors (the police from C police station). Presumably he did not expect any further difficulties from them. Again, on his return from Singapore he went directly back to his home village despite the earlier reports he claimed to have received of his father being arrested on his account during his absence. The appellant is a well-educated man who speaks Hindi, English and Punjabi. He is not an illiterate peasant confined to his village of origin. He has been employed all of his working life away from his village, either in New Delhi or overseas. If he were genuinely fearful of the local police at C there were other places he could have gone to in November 1994 and August 1996. The Authority finds that his conduct in returning twice to his village belies his claims that his father was arrested during the appellant's stay in Singapore and that he himself was fearful of persecution from the police in 1996 on his return.
- (f) The appellant initially applied for a passport in C towards the end of 1993 but his application was unsuccessful. However, after his initial arrest and release by the C police he obtained a passport in October 1994. Presumably the authorities no longer had any objection to his travelling. There was no official interference with his travelling overseas in April 1995 or returning to India in August 1996. Again, he was presumably not wanted by the authorities. He enjoyed the same freedom from official interference when he finally left India in September in 1996. His ability to travel in and out of the country on his own passport without interference is inconsistent with a claimed terrorist profile and contemporaneous diligent pursuit of him by the Punjabi police (in 1995 and 1996).
- (g) The appellant produced to the Authority letters from his family describing the police searches for him at the family home. The Authority accepts that these letters were sent by his family but the contents appear to be contrived for the purposes of supporting the appellant's claim of persistent police interest.



The first of the letters from his uncle is dated 9 November 1996, approximately one month after he lodged his application for refugee status. This letter contains news of a death in the family and then warns the appellant not to return home as the police have been asking his parents as to his whereabouts. The author of this letter (his uncle) lives about 50 kilometres away from his parent's village. He did not personally witness any visits by the police. The relevant parts of the letter read:

"The police are in search of you. Although you have not done any illegal work and you are not a criminal minded man but it is too difficult to live peacefully for the man here in Punjab who is in the doubtful sights of police. Your parents are passing through very difficult circumstances of life because many times they did ask by the police to bring you to them. But if you want to save your life, please do not come here and pass your time there."

The second letter written by the uncle dated 24 February 2000 reads as follows:

"We are here well and happy and hope and pray God that you also will be happy and quite well. Though I do not want to write that you should not come here in India but when one's life is not safe here I cannot live without writing that you should not come here. It is very difficult for anyone to leave his motherland. Although you are not a criminal and guilty in any matter but our police have power indirectly to make any person criminal to non criminal and non criminal to criminal. Specially in the cases where one is poor and have not any legal and administrative approach ... so you are advised to pass your life in New Zealand by virtue of your good character and you are a educated and healthy person, work honestly, punctually and prove yourself a good citizen and share in the progress of the society where you live. So once again I want to say to you not to come here and save your life from the inhuman catch of the police."

Notably this letter reads rather like a character reference and gives no news about any recent events at home other than to exhort the appellant not to return. This letter has an air of unreality and appears contrived specifically for the purpose of attesting to the appellant's good character and the danger of life in India.

The latest letter received by the appellant is from his father dated 29 March 2000. It states as follows:

"You should live in New Zealand and save life of your children because here in Punjab police is looking for you. There is not very good for you in Punjab. Punjab police have been many time at home to find you. They gave us very hard time. Wherever you live in India they will find you. You have to live somewhere else for you and your children's life."

This letter, which is the only one from his father and his mother (his mother is illiterate), gives no family news - concentrating solely on reasons why the appellant should not return to India. It gives no details of the police inquiries. The appellant's evidence is that he and his wife have received other letters from the family about police visits but none of these were produced at the hearing.

This letter from his father also appears to have been written solely for the purpose of supporting the appellant's claim to being harassed by the police. The Authority finds that all these letters have been contrived solely to support the appellant's claims. The Authority therefore places no reliance on these documents.

- (h) When asked about the nature of the continuing police inquiries, the appellant mentioned that the police questioned his parents only concerning his whereabouts. He said he does not know what his parents had told the police but they were supposed to say he was abroad. It was put to the appellant that it would be easy for the police to confirm from border officials that he had left the country and his exact destination could be ascertained from his New Zealand visa. The appellant replied "maybe they could". Indeed in his submissions, counsel had stated that communication networks across India had greatly improved allowing police to access information outside their local districts. The Authority finds it implausible that the police would not have made such inquiries of border control and obtained confirmation of his departure. If they were looking for the appellant, they could have followed this procedure rather than constantly visiting his parents.

## **SUMMARY**

[15] The Authority finds that given the appellant's low political profile his ability to traverse the border without harassment and the length of time elapsed since he has lived in the Punjab, there is no real risk of persecution if he were to return to India. On both the issues (a) and (b) as framed are decided in the negative.

**CONCLUSION**

[16] For the above reasons given, 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.

.....  
[J Baddeley]  
Chairperson