

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

**AT AUCKLAND**

Application No 75914

**IN THE MATTER OF** An application pursuant to s129L of the  
Immigration Act 1987 to cease to recognise  
a person as a refugee

**BETWEEN** A refugee status officer of the Department of  
Labour  
**APPLICANT**

**AND**  
**RESPONDENT**

**BEFORE** A N Molloy (Member)

**Counsel for the Applicant:** V Wells

**Counsel for the Respondent:** R Kumar

**Dates of Hearing:** 7, 8 & 9 March 2007

**Date of Decision:** 28 June 2007

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**DECISION**

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[1] The respondent is a national of India who was granted refugee status by the Authority in 1995. This decision is in respect of an application made by a refugee status officer of the Department of Labour (DOL) that the Authority should cease to recognise the respondent as a refugee on the ground that his recognition in 1995

may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information (“fraud”).

[2] The application is made under s129L(1)(f)(ii) of the Immigration Act 1987 (the Act). The Authority is given the function of determining such an application pursuant to s129R(b) of the Act.

### **JURISDICTIONAL ISSUES**

[3] In considering an application for a determination under s129L(1)(f)(ii), the Authority must first determine whether the refugee status of the respondent “may have been” procured by fraud. If so, it must then determine whether it is appropriate to “cease to recognise” the respondent as a refugee. This will depend on whether the respondent currently meets the criteria for refugee status set out in the Refugee Convention: *Refugee Appeal No 75392* (7 December 2005) [10]-[12].

[4] Given that this is an inquisitorial proceeding, it is not entirely appropriate to use terms such as the burden or onus of proof. Nonetheless, the Authority’s view is that in cancellation proceedings, the DOL must present evidence by which it can responsibly be said that the grant of refugee status may have been procured by fraud: *Refugee Application No 75700* (28 June 2006) [12]. Counsel agreed with that approach.

[5] It is also the Authority’s view that the term “may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information” is deliberately imprecise. It signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion: *Refugee Appeal No 75563* (2 June 2006) [20].

### **BACKGROUND**

#### **The respondent’s original claim for refugee status**

[6] In order to properly assess the application, it is necessary to outline the basis upon which the respondent was granted refugee status by the Authority. A summary of the claim is set out below. It is recounted in detail in *Refugee Appeal No 1584/93* (12 May 1995).

[7] When the respondent arrived in New Zealand in 1990, he was in his mid-30s. He was issued with a visitor's permit upon arrival, but remained in New Zealand unlawfully after the permit expired. He lodged an application for refugee status with the New Zealand Immigration Service (NZIS) (as it then was) in October 1991.

[8] The respondent claimed that he was a farmer in a village in the state of Punjab. One evening during the late 1980s, he was accosted by four armed members of an outlawed organisation which was fighting for the right to create an independent Sikh state of Khalistan in the Punjab. The armed men demanded that the respondent provide them with food. The fact that he did so came to the attention of the local police force, by whom he was detained, interrogated and beaten. After his release from custody was obtained by payment of a bribe, the respondent fled in fear of further interrogation and mistreatment. He left India lawfully in 1990, using his own Indian passport.

[9] After interviewing the respondent in person in March 1993, a refugee status officer of the NZIS issued a decision, dated 20 May 1993, declining his application for refugee status.

[10] The respondent lodged an appeal which was heard by this Authority (differently constituted) on 15 March 1995. The Authority found the respondent's evidence to be credible and granted him refugee status.

### **CANCELLATION PROCEEDINGS**

[11] The DOL lodged its application with the Authority on 29 June 2006. On 28 July 2006, the respondent was served with a Notice of Application for Determination Concerning Loss of Refugee Status ("the Notice") in accordance with s129S (a) of the Act and the Immigration (Refugee Processing) Regulations 1999, reg 16.

[12] The DOL claims that the Authority's decision to grant the respondent refugee status was improperly made as it may have been procured by "fraud". It alleges in particular that:

- (a) after being granted refugee status in 1995, the respondent returned to India in 1996, 2000, 2002 and 2004. The DOL submits that the act of returning was inconsistent with the respondent's claim to have been at risk of being

persecuted by the Indian authorities, and

- (b) contrary to his claim to have been living in the Punjab at all relevant times, the respondent was a resident of village X in the state of Uttar Pradesh. The DOL therefore submits that the respondent's claim to have been detained, interrogated and mistreated by police in Punjab was false.

### **THE CASE FOR THE DOL**

[13] In 2003, 13 years after the respondent came to New Zealand in 1990, the respondent submitted a written application for New Zealand citizenship, in the prescribed form. During the intervening period his wife and three children joined him here. His children have since married, and the respondent has grandchildren born here who are New Zealand citizens.

[14] The completed form stated that the respondent had returned to India on three occasions since the grant of refugee status in 1995; in 1996, 2000 and again in 2002. That disclosure forms a central part of the DOL application.

[15] The DOL submits that the respondent's admission that he had voluntarily returned to India in 1996, only 12 months or so after claiming to this Authority that he was at risk of being persecuted there, indicates that his evidence before the Authority was not truthful.

[16] The respondent's citizenship application was accompanied by various documents submitted as proof of identity. Among these was a bank book issued in connection with an account opened in the respondent's name in Uttar Pradesh during the mid-1980s. The bank book contains an address in a village in Uttar Pradesh. That, too, forms a pivotal part of the DOL's case. It is relied upon by the DOL to show that the respondent was not living in Punjab at the time he claimed. From that, and from other evidence, the DOL invites the Authority to draw the inference that the respondent did not encounter problems with the authorities because of the political problems which arose in the state of Punjab in 1989.

[17] The DOL's case relies heavily upon documentary evidence which was compiled and submitted with its application. The following are of particular relevance:

- (a) the respondent's application for New Zealand citizenship lodged with the NZIS on 29 August 2003;

- (b) a transcript of an interview which took place on 30 March 2005 between Aaron Candy, an officer of the Department of Internal Affairs (DIA), and the respondent;
- (c) a Bank passbook (the bank book) issued in the name of the respondent, which discloses an address for correspondence in the state of Uttar Pradesh;
- (d) a letter from the Bank dated 26 February 2006 (the DOL's Bank letter) stating that the respondent was "R/O" the village in Uttar Pradesh;
- (e) a letter purporting to be signed by the "Former Village Head, Burya Nagar Village Council, District [A]" dated 26 February 2006 (the Former Head letter), stating that the respondent "is permanently residing in [B] Village";
- (f) a letter purporting to be signed by the "Village Prime Pradham" dated 24 May 2006 (the Prime Pradham letter), stating that the respondent "resided full time at his residence at [B] from 1982 to 1990 approximately";
- (g) a letter from a junior high school in Uttar Pradesh (the School letter) stating that the respondent's daughter was a pupil there in 1988-89;
- (h) various documents completed by or on behalf of the respondent, his wife and his children, relating to the respondent's claim for refugee status or in respect of the immigration status of his family members.

Respondent's application to exclude documents.

[18] Counsel for the respondent submitted that four of the documents produced by the DOL are inadmissible as evidence against the respondent. Objection is taken to the Bank letter, the Former Head letter, the Prime Pradham letter and the School letter.

[19] The respondent submitted that admitting those documents would amount to a breach of natural justice in contravention of s27(1) of the New Zealand Bill of Rights Act 1991, because the respondent had no opportunity to cross-examine the parties who purportedly prepared and signed them.

[20] The DOL opposes the application to exclude the documents.

[21] Counsel for the DOL submits that the Act enables the Authority to inform itself by means that are not necessarily consistent with the usual rules of evidence.

He relies in particular upon clause 9(1) of Schedule 3(c) of the Immigration Act 1987 which states:

“Inquiries and evidence

(1) For the purposes of any appeal under section 129O or other matter under section 129R, the Authority may make such inquiries and obtain such reports (if any) as it considers necessary and is not bound by any rules of evidence but may inform itself in such manner as it thinks fit.”

[22] Inquiries into refugee status typically involve consideration of the predicament of individuals who are claiming to have fled from countries or areas in varying states of socio-political disarray. Rules of evidence constructed within the common law system of adversarial criminal and civil litigation are not appropriate in this context.

[23] In considering appeals, the Authority is frequently called upon to accept evidence in hearsay form or to consider documents which cannot be formally authenticated. Likewise, in respect of applications relating to the cancellation of refugee status, there may be circumstances in which it is clearly appropriate to consider even prejudicial documents which are produced in a form which is less than ideal. This is appropriate given the predominantly inquisitorial nature of the application before the Authority. The issue is not usually one of admissibility but of weight.

[24] However, quite apart from the provisions of the New Zealand Bill of Rights Act 1991, it is inherent from the nature of an inquiry undertaken by the Authority that parties to such an application are entitled to have the inquiry conducted in accordance with the rules of natural justice.

[25] Just what is required in that regard will inevitably vary. It is neither necessary nor possible to state unequivocally that there will never be circumstances in which the Authority might find that documents ought to be excluded from consideration for these reasons.

[26] The Authority does not accept that admission of the documents in respect of which objection is now taken would amount to a breach of natural justice, and finds that it is entitled to inform itself by referring to those documents.

[27] In all the circumstances of this case, any potential prejudice to the respondent can be adequately compensated by making appropriate allowances for the weight able to be given to those documents.

[28] For reasons which are set out below, the Authority finds that little weight can

be given to these particular documents. In reaching that conclusion, the Authority has had regard to the content of the documents, the manner in which they were obtained, and the totality of the evidence produced for the purposes of this application.

### **WITNESSES FOR THE DOL**

[29] Counsel for the DOL lodged opening submissions in writing dated 2 March 2007 and called three witnesses to give oral evidence on behalf of the DOL. Their evidence is summarised below.

#### **Evidence of Wayne Newth**

[30] Mr Newth is a refugee status officer for the Refugee Status Branch of INZ. He confirmed the contents of his written statement dated 1 March 2007, filed in support of the application. His main function was to prepare and produce the file of documents which he had compiled for the DOL for the purposes of the application. This contained many of the documents listed at para [17] above.

[31] While he could not recall precisely why he had been asked to compile the file, Mr Newth believed that it was to do with documents submitted by the respondent in conjunction with his application for citizenship. He recalled that the application had referred to trips the respondent made back to India after being granted refugee status.

[32] Mr Newth also confirmed that after receiving a copy of the bank book supplied by the respondent with his application for citizenship, he wrote a letter dated 13 December 2005 to the branch manager of that Bank in Uttar Pradesh. In that letter he had asked the Bank to provide the following information:

- (a) whether the respondent was a resident of B village;
- (b) if so, how long he had lived there;
- (c) whether the respondent was a farmer in that district;
- (d) how long he had worked in that area; and
- (e) whether the Bank would provide a copy of the respondent's file and banking activity.

[33] The Bank did not respond to his request.

Evidence of Aaron Candy

[34] Mr Candy was formerly employed by the DIA as a citizenship officer. In that capacity, he interviewed the respondent on 30 March 2005 in respect of the respondent's application for the grant of New Zealand citizenship (the interview).

[35] Mr Candy confirmed the contents of a witness statement which he had signed on 8 September 2006 and produced various exhibits, including:

- (a) a transcript of his notes of the interview (the transcript);
- (b) a copy of a letter dated 4 April 2005, from the respondent's lawyer, Mr Kumar, to the DIA, in which Mr Kumar outlined his concerns in respect of various aspects of the interview;
- (c) a typewritten file note which Mr Candy prepared on 4 April 2005, after his conversations with various people in respect of the interview; and
- (d) a copy of notes taken by a "J Broad" on 5 November 2003 for the purposes of assessing the respondent's comprehension of and ability to speak English in connection with his application for citizenship.

[36] According to Mr Candy, the interview was conducted with a view to resolving concerns about some documents forwarded by the respondent with his citizenship application. He could no longer recall precisely what those problems were, but believed that they were related to the bank book and possibly to entries in the respondent's passport.

[37] Some of the answers given by the respondent during the interview were, Mr Candy said, inconsistent with the account which he gave for the purposes of obtaining refugee status in 1995. In particular, the respondent appeared to admit that he had lived in Uttar Pradesh for several years before he came to New Zealand. He had always previously claimed to have lived permanently in the state of Punjab, which was why he came to be a victim of the Sikh uprising in that state.

[38] In Mr Candy's view, the respondent realised his error during the DIA interview, and tried to change his evidence to hide the inconsistency. Mr Candy said that the respondent also admitted that he had returned to India in 1996, which seemed to contradict his claim to have been at risk of serious harm in India at the



time he obtained refugee status in 1995. The DOL submitted that the respondent's subsequent explanations were dishonest.

[39] Mr Candy advised that, when asked to do so, the respondent refused to sign the transcript which Mr Candy had prepared of the interview. He also confirmed that in Mr Kumar's letter dated 4 April 2005, he had objected to the fact that the respondent was not advised in advance that the interview was to be undertaken for the purpose of an investigation. Mr Kumar asserted in that letter that the respondent should have been offered an interpreter and indicated that the respondent's ability in the English language was "limited".

[40] Mr Kumar's letter effectively asserted that the respondent had been intimidated by the manner of the interview and that he could not understand most of the questions asked. It also alleged that Mr Candy had attempted to coerce the respondent into signing a "statement" but said that the respondent refused to sign without consulting Mr Kumar.

[41] While Mr Candy said that in his view the respondent had a sufficient grasp of English for the interview to proceed without the services of an interpreter, he conceded that, in hindsight, it may have been preferable for an interpreter to have been present.

#### Evidence of Kevin Bonnici

[42] Mr Bonnici is an employee of the DOL, for which he has performed a number of roles since 2002. In early 2006, when he was a Verification Officer for the Central Verification Unit (CVU), Mr Bonnici was asked by an officer of the RSB to arrange for various documents to be obtained in respect of the DOL investigation relating to the respondent. The documents are described in more detail below.

[43] Mr Bonnici stated that the documents were obtained and verified by a professional overseas agency contracted by Immigration New Zealand (INZ), also a part of the DOL. The agency was not informed why the documents were being sought, nor was it instructed as to what form the documents ought to take.

[44] While Mr Bonnici acted as the conduit through which information was obtained, he could not personally attest to the veracity of the documents supplied. However, he said that there is a formal memorandum of understanding between this agency and INZ. His evidence was that the agency undertakes to perform its

operations professionally, and that INZ has a considerable degree of confidence in the organisation. In his experience, the agency is competent and its standard of verification is consistently high.

[45] Mr Bonnici said that he would not reveal the name of the agent or the agency to the respondent for the purposes of this proceeding. He claimed that doing so could compromise their ability or willingness to assist the DOL in the future. He said that individuals in the organisation live and work in various countries. If their identity were revealed, it could at best harm their ability to perform their role on behalf of INZ. At worst, their personal safety could (in some cases) be compromised.

[46] The first request for information sent by Mr Bonnici to the overseas agent on 26 January 2006 included the following paragraph:

“Can you please verify with [the Bank], the village Panchayat, the children’s school or whatever to ascertain whether [the respondent] resided in [B], [A], Uttar Pradesh, from approximately 1982 to 1990.”

[47] In response to that request, the agency provided Mr Bonnici with the Bank letter dated 26 February 2006, confirming that the respondent held an account with that Bank which was opened in mid-1985. According to the letter, the respondent is “R/O Vill [B]”, and the respondent’s account with the Bank is “surviving with us satisfactorily”. Mr Bonnici was also provided with the Former Head letter, dated 26 February 2006, stating that the respondent “is permanently residing in [B] village”. It continued “The family owns their [agricultural] land and permanent dwelling.” Neither letter makes apparent the names of their respective signatories.

[48] On 19 April 2006, Mr Bonnici forwarded a further information request to the local agent in India :

“1. ... is there a record of [the respondent’s eldest daughter] attending a school in the area before 1989? It may have been Junior High School, [name of village].

2. Are there any telephone listings, electoral listings, ratepayer listings, membership of farmer’s cooperative or any other proof of residence/physical presence of [the respondent] in this area before 1989? Can the Village Pradhan confirm that [the respondent] resided full-time in [B] from 1982 to 1990 approximately?”

[49] A copy of the INZ request relating to this information was handed up to the Authority by counsel for the DOL on 8 March 2007.

[50] Mr Bonnici’s further request elicited the School letter from the unnamed principal of a junior high school in Uttar Pradesh, according to which the

respondent's eldest daughter studied at that school during the academic year 1988-89. It also elicited a letter purportedly signed by the "Village Prime Pradham", dated 24 May 2006. That letter mimicked almost identically the terms of paragraph 2 of the further information request, in that it stated that the respondent "resided full-time at his residence at [B] from 1982 to 1990 approximately".

[51] Mr Bonnici provided all of the information obtained to the RSB and has had no further involvement in any aspect of the application concerning the respondent.

### **THE RESPONDENT'S CASE**

[52] The respondent opposes the DOL's application. He maintains that the core of his refugee claim is true.

[53] He told the Authority that he was living in Village X in the District of Y in Punjab during the late 1980s when he was approached by four men from a Sikh organisation whose aim was to promote the cause of an independent Sikh state. They asked him to help them by providing a meal, which he did. Word somehow got to the local police who located the respondent the following day. He was arrested and beaten in custody. After the village *sarpanch* secured the respondent's release, the police returned to the respondent's home to look for him the following day. The respondent's family told him to run away. He went to stay with family before leaving India to come to New Zealand.

[54] The respondent denies that he was ever a resident of Uttar Pradesh. He says that he visited his family there frequently over the years, and that his wife's family had always lived there.

[55] The respondent admits that he opened a bank account in Uttar Pradesh in around 1985, and says that he did so with the help of his brother-in-law. The account was opened so that the respondent and his wife had access to money when they visited the wife's family in Uttar Pradesh. The respondent's wife has operated the account from time to time.

[56] The respondent said that it was his brother-in-law's address that appears in the bank book because the bank required someone living in the district to give their address for the purposes of correspondence.

[57] However, he maintains that his own farm and home were in the Punjab, as

he had claimed for the purposes of his application for refugee status.

[58] The respondent denies going to India in 1996. He says that he went to Nepal so that his family members could visit him easily from their home in Uttar Pradesh, just across the border. He admits going to India in 2000 for the wedding of one of his daughters and again in 2002 and 2004. The last two visits mentioned were to see his mother who was ill and to visit family. The respondent says that, by that time, he felt safe enough to return because the problems of the 1980s and 1990s had come to an end. Despite this he was not confident enough to return to the Punjab on any of those visits.

### **THE AUTHORITY'S FINDINGS**

#### **Stage one: Whether Refugee recognition may have been procured by fraud**

[59] In its decision *Refugee Appeal No 1584/93* (12 May 1995), the Authority made the following observation with regard to the respondent:

“In the present case the Authority ... takes into account that the [respondent] is an unsophisticated, illiterate man.”

[60] The Authority has no hesitation in agreeing with that appraisal. The respondent remains an unsophisticated man. His oral English is rudimentary, and his written English is virtually non-existent. These characteristics have contributed significantly to the confusion and apparent contradictions which have formed the basis of the DOL's application. It has led, for example, to imperfect communication between the respondent and his legal advisers or between interviewer and interviewee. However, the Authority is satisfied that these have occurred for reasons other than dishonesty on the part of the respondent.

[61] It is possible that the DOL application, unchallenged, could have crossed the threshold at which it could responsibly be said that the grant of refugee status may have been procured by fraud: *Refugee Application No 75700* (28 June 2006) [12]. However, having heard and observed the respondent giving evidence and having considered all of the evidence, the Authority finds that the threshold is not reached.

[62] The respondent gave evidence in a forthright manner. He appeared to the Authority to be a frank and spontaneous witness, if not necessarily altogether easy to understand. Having heard his testimony and considered his explanations in light

of the evidence as a whole, the Authority finds him to be a credible witness.

[63] While the Authority has considered the evidence in its entirety in reaching those findings, it is convenient to set out its reasons by reference to the broad categories relied upon by the DOL.

Whether the respondent returned to India in 1996

[64] The DOL submit that there is evidence that the appellant returned to India of his own volition in 1996, a year or so after the Authority found that he would be at risk of being persecuted in India. The DOL point first to an entry to that effect in the respondent's application for citizenship. They also rely upon answers given by the respondent to questions asked by Mr Candy during the interview in 2005.

(a) The citizenship application form

[65] The respondent told the Authority that he went to Nepal in 1996, but was adamant that he did not go to India at that time. He said that he was afraid to do so because the Indian police were still arresting and shooting Indian "boys" at that time. He remained in a Nepali village close to the border with India, and was frank about his reason for doing so. He said that he wanted to be close to his family, and that remaining in Nepal provided the perfect solution to his problem. He was safe from the clutches of the Indian police, yet near enough for his family to visit him.

[66] The respondent says that the entry in the citizenship application form is simply wrong. He said that his lawyer at time completed the form for him, and must have been responsible for the error in the content of the form. He does not know why, but he says it is a mistake nonetheless.

[67] The Authority notes that, while the form was signed by the respondent, it appears from the differing handwriting to have been completed by someone else. Certainly, whoever completed the form was clearly mistaken in at least one respect. It is apparent from an entry stamp in the respondent's passport that he did go to Nepal in 1996. Another stamp shows that he left in around April 1997. Yet there is no reference to that visit in the citizenship application form. Nor does the passport contain entry or exit stamps for India in the relevant period.

[68] The DOL point out that the respondent could easily have crossed the border from Nepal into India in 1996, and that the lack of border controls would explain the lack of any stamps in the respondent's passport. That is pure conjecture.

However, even if it were true, in seeking to enter India by such a circuitous route the respondent would have been acting in a manner entirely consistent with someone who did not wish to risk having his presence in India noted by the Indian authorities at that time. That would be consistent with the respondent's claim to have fled from India in fear for his safety.

(b) The transcript

[69] It appears to have been the reference to a trip to India in 1996 in the citizenship application form which led Mr Candy to interview the respondent in March 2005. Mr Candy's transcript of the interview records the following exchange:

“Q: Why did you travel back to India for the period 27 July 1996 to 8 April 1997?”

A: Because my wife there and my son and his daughter where there [sic].”

[70] Mr Candy says that the transcript of the interview is accurate. He believes that the respondent was able to understand the questions asked of him, and that his answers were entirely unambiguous. Mr Candy believes that the discrepancies which arise from the answers given are not due to misunderstandings. He believes that the respondent inadvertently gave answers which contradicted his earlier claim for refugee status, he then realised he had done so and feigned an inability to understand.

[71] The respondent denies telling Mr Candy that he went to India in 1996, and says that he did not understand the questions asked. The respondent agrees that he understands some English, and said that he copes with normal conversations about every day things such as the weather. However, he says that he does not understand every word which is said, and that he has a habit of simply saying “Yes” to people when he does not understand what they are saying.

[72] The respondent says that when Mr Candy asked him to sign the transcript, he refused because he did not know how to read it and he could not understand it. Instead, the respondent gave the transcript to his lawyer, Mr Kumar, who wrote a letter dated 4 April, objecting to what had happened.

[73] There was some dispute about whether Mr Candy advised the respondent before the interview that he was entitled to bring a person to act as an interpreter at the interview. Mr Candy said that he was aware of the respondent's right to do so, and that by turning up without an interpreter, the respondent was signalling his

ability to participate in the interview in English.

[74] Mr Candy concedes that a standard paragraph referring to the right of the interviewee to bring an interpreter to the interview had mistakenly been deleted from the letter which he had written to the respondent prior to the interview. He says that he addressed that error during a subsequent telephone conversation with the respondent's daughter a day or two before the interview.

[75] The Authority notes that there is no reference to that advice in Mr Candy's broadly contemporaneous file note of telephone conversations he had had in respect of this matter. He could not explain why he had not made a note of it at the time.

[76] Mr Candy also says that it was his practice to engage in simple conversation about, for example, the difficulty of car-parking in Auckland, in order to put an interviewee at ease and to gauge what state of mind they were in. From that brief conversation, which he agreed probably took a few minutes, he formed the view that the respondent's ability to comprehend English was acceptable for the purposes of the interview.

[77] He also relied upon notes of assessment undertaken by "J Broad" for the respondent's language test for his citizenship application in November 2003. The test, which appeared to comprise a series of innocuous questions about everyday aspects of the respondent's life, was conducted orally. It indicates that the respondent "passed". Mr Candy agrees that the purpose of that assessment was to determine whether the person concerned is capable of conducting everyday conversations about rudimentary aspects of everyday life.

[78] With respect to Mr Candy, that is considerably different from a finding that someone is capable of understanding the type of questions asked in an investigative interview at which a preliminary caution is given to the effect that:

"I have been advised that I am free to leave the interview at any time and that I am not obliged to say anything but anything I say may be used in evidence."

[79] Whether or not Mr Candy informed the respondent's daughter that he could bring an interpreter to the interview, it is beyond dispute that no interpreter was present. In hindsight, Mr Candy agrees that it may have been preferable if an interpreter had been present during the interview.

[80] In short, the DOL points to the extract outlined at para [69] above, as evidence that the respondent returned to India in 1996. The Authority finds that

the transcript is simply unreliable. It is a disputed record disclosing a single response to a leading question which was asked during a DIA interview in respect of which no interpreter was present, and in respect of which the respondent had not previously been advised about the partly investigative nature of the interview.

[81] The Authority has already observed that the respondent is not highly educated. To that it can be added that his responses to questions during the hearing of this application, even with the assistance of an interpreter, were sometimes confusing and required clarification.

[82] The Authority accepts the respondent's evidence that he did not make the admissions which appear from the face of the interview transcript.

[83] In all the circumstances the Authority finds that the respondent did not return to India in 1996-97. It is assisted in reaching that finding by the respondent's evidence in connection with his returns in 2000, 2002 and 2004.

(c) The respondent's subsequent visits to India

[84] While the respondent denies going to India in 1996, he admits that he returned there in 2000, 2002 and 2004. He returned in 2000 for the wedding of one of his daughters and went to visit his mother in 2002 because she was unwell. She came to village A and stayed with the respondent's father's sisters. The respondent went back again in 2004 to visit family.

[85] On each of those occasions the appellant entered India through Delhi and spent time with his wife's family in Uttar Pradesh. He was not confident enough to take this course in 1996.

[86] He said that he felt confident about returning to India from 2000. He had heard by then that the political problems in the Punjab had subsided, and he did not think that the Indian authorities were still looking for him by then. Despite this, he avoided the Punjab on all three occasions.

[87] That is certainly consistent with country information known to the Authority. In its decision in *Refugee Appeal No 70983* (30 July 1999), the Authority considered the declining level of risk to individuals sought by the police in the Punjab from 1984 until the mid to late 1990s. After considering a comprehensive amount of country information the Authority concluded that the Sikh militancy which had been a feature of the 1980s and early 1990s had been "crushed" by about 1994. It found that this had lead to:



“... a very significant reduction in the abuse by the police and security forces of suspected Sikh terrorists since the levels seen at the height of the government crackdown in 1991 and 1992. The grim statistics recording deaths at the hands of both the terrorists and the police set out in the Authority's decision in *Refugee Appeal No 523/92* (17 March 1995) (at pp 71-72) show an unmistakable trend towards modest or negligible levels by 1994. ...

There has been much improvement in the human rights position in the Punjab since about 1995 and the widespread and systematic human rights abuses during the crackdown are at an end. In May 1995, the law under which thousands of persons were held for prolonged periods without charge, the Terrorist and Disruptive Practices (Prevention) Act, was allowed to lapse by the government. The government has established a National Human Rights Commission in the Punjab which actively investigates past and present human rights violations. In 1998, the Supreme Court acknowledged and condemned the serious abuses of the early 1990's and delegated responsibility for their investigation to the National Human Rights Commission. Human rights activists report that approximately 100 police officials were either facing charges, had been prosecuted or were under investigation for human rights abuses by December 1998.”

[88] In that context, the fact that the respondent returned to India from 2000 onwards is not evidence that he may have procured refugee status in 1995 by “fraud”. The Authority finds that in respect of this respondent, it simply reflects the fundamental change in circumstances which occurred in India from the time that the respondent sought and obtained asylum, until the time he returned.

[89] Nor has the Authority overlooked the content of a statutory declaration dated 14 August 2004, relied upon by the DOL, in which the respondent stated that he married his wife in India in 1996. In fact, the Authority is satisfied that the contradiction apparent from such a statement demonstrates the difficulty faced by the respondent's legal advisers and others, in obtaining full and accurate instructions from the respondent. There are numerous other documents on the file which contradict the suggestion that the respondent married in 1996. Some, such as his application for New Zealand citizenship in 2003, (in which he claims he married in 1980), post-date the alleged date of marriage in 1996 and the grant of refugee status in 1995.

[90] However, the DOL file contains a declaration signed by the respondent's wife that also says that they married in 1980. That document was signed in India in 1995, before she came to New Zealand, and before the alleged “marriage” in 1996. The wife's Indian passport also refers to her as the respondent's wife. According to the DOL file it was issued on 7 August 1995. Finally, the respondent also described himself as married when he applied for a visitor's visa in 1989, before he even applied for refugee status.

[91] In short, having considered the reference in the statutory declaration dated

14 August 2004 in light of all of the available evidence, the Authority places no weight upon it.

The respondent was resident in Punjab

[92] The DOL also alleges that the appellant was not living in the Punjab at the time that he claimed to have been beaten by the Punjabi police. Once again, it relies in part upon answers given by the respondent during the interview with Mr Candy, and upon entries in various other documents on the DOL file.

(i) The transcript

[93] The transcript of the interview with Mr Candy discloses various apparent discrepancies and inconsistencies in the respondent's answers. For example:

"Q: Prior to coming to New Zealand, where did you live in India?

A: India, I live in Upr state (Uttar Pradesh).

Q: What town did you live in?

A: District [A].

Q: How long did you live in the district of [A] for?

A: On 13 years, maybe 15 years."

[94] The DOL correctly points out that these answers contradict the respondent's claim to have been living in the village of X in the Punjab in 1989 when he claimed to have been accosted and beaten by the Punjabi police.

[95] However, the next question which appears in the transcript was:

"Q: When did you move to [A] from Punjab, what year?"

To which the respondent replied:

"A: In 1990 I come here she (wife) moved there. My parents were already in Uttar Pradesh."

[96] Not only is that answer quite contrary to the previous answer recorded, it is consistent with the account given by the respondent when he was granted refugee status. He said that he did not move to village A until 1990, and that his wife moved to Uttar Pradesh, where her parents lived, at around the time he came to New Zealand.

[97] The DOL submits that the respondent realised in the course of giving the answers outlined, that he had given an answer that was inconsistent with the refugee appeal he had filed 12 years earlier.

[98] After considering all of the evidence, the Authority does not agree. It has already found that the respondent did not properly understand all of the questions asked of him. It is also possible that Mr Candy may have misunderstood or wrongly recorded some of the answers given. For example, there is no reason to believe that the respondent's parents had ever lived in Uttar Pradesh, yet the transcript states that Mr Singh answered one such question to the effect that "my parents" lived there. The transcript then contradicted that almost immediately because in response to the question "When did your parents go to Pilibhit to live?", he replied "My parents live in Punjab."

[99] The respondent is subsequently recorded as saying that his wife's parents live in Uttar Pradesh, which may account for the apparent confusion. In any event, when asked whether he lived in Uttar Pradesh prior to December 1989, the respondent replied "No."

[100] For these reasons and for reasons already given in connection with the content of the transcript, the Authority finds that the apparent contradictions which appear within it are not evidence of fraud or dishonesty on the part of the respondent.

(ii) Documents obtained by the CVU

[101] The RSB asked the CVU to obtain documents which tended to demonstrate that the respondent was living in Uttar Pradesh (and not the Punjab) in 1989, in order to establish that his claim to have been apprehended and mistreated by the police in the Punjab was false.

[102] To that end, the first request for information sent by Mr Bonnici on 26 January 2006 included the following paragraph:

"Can you please verify with [the Bank], the village Panchayat, the children's school or whatever to ascertain whether [the respondent] resided in Pindara Pilibhit, Uttar Pradesh, from approximately 1982 to 1990"

Mr Bonnici's first request did not elaborate upon, or provide any guidance with respect to what he meant by "resided".

[103] The CVU was provided with two documents in response to that request. The first was the Bank letter, which referred to the respondent as "R/O Vill. Pindhra". However, even if "R/O" is an abbreviation of "resident of", the letter does not identify the basis upon which the respondent is said to be a resident of that village. It does not outline what is meant by "resident", where he lived, or how long

he lived there. It is simply a general response to an open-ended enquiry. In addition, the Authority notes that the identity of the person who signed the letter is not apparent.

[104] The Authority notes Mr Newth had earlier written to the branch manager of the Bank in December 2005, requesting confirmation that the respondent was a resident of Pindara village, how long he had lived there, whether he farmed in the district and if so, how long he had done so. It is notable that the DOL has not obtained explicit evidence answering any of those perfectly sensible queries, either in response to Mr Newth's preliminary enquiry, or as a result of the efforts made by Mr Bonnici from the CVU.

[105] The DOL Bank letter also states that the account is "surviving with us satisfactorily", which is consistent with the respondent's claim that the account was opened on his behalf by someone else, and that his brother-in-law had operated the account in the past.

[106] The second document obtained by the CVU was a letter from the "Former head" dated 26 February 2006. This document is equally unsatisfactory. It does not disclose the name of the person who purports to sign it, nor does it outline how that person knows or knows of the respondent. It indicates that the respondent "is permanently residing" in that village but, again, fails to explain what is meant by "residing". Further, the use of the present tense to describe the respondent as still being a resident undermines the evidential value of the letter. The respondent has lived in New Zealand since 1990.

[107] On 19 April 2006, Mr Bonnici forwarded a further information request to the agency, seeking the following additional information:

"1. ... (his eldest daughter): is there a record of her attending a school in the area before 1989? It may have been Junior High School, [place name]."

2. Are there any telephone listings, electoral listings, ratepayer listings, membership of farmer's cooperative or any other proof of residence/physical presence of [the respondent] in this area before 1989? Can the village Pradhan confirm that [the respondent] resided full-time in Pindara from 1982 to 1990 approximately? [emphasis added].

[108] In response to that second request, Mr Bonnici was provided with the School letter, namely a letter from the unnamed Principal of a school which claimed that the respondent's eldest daughter studied at that Junior High School in Uttar Pradesh during the academic year 1988-89. However, the School letter is clearly unreliable. According to the translation provided by the DOL, the letter

states that the daughter was enrolled in the New Zealand equivalent of Forms 3, 4 or 5, which is entirely implausible given that the uncontroverted evidence is that the respondent's daughter was six years old at that time.

[109] With regard to the second paragraph of Mr Bonnici's second request, it is significant that no telephone listings, electoral listings, ratepayer listings, or evidence of membership of a farmer's co-operative was forthcoming.

[110] The CVU did supply the Prime Pradham letter, dated 24 May 2006, which states that the respondent "resided full-time at his residence in Pindara from 1982 to 1990 approximately?" [emphasis added].

[111] Not only is that inconsistent with the letter dated 26 February 2006, (which says the respondent is residing there permanently), it simply repeats almost word for word the wording of the request in response to which it is made. Once again the letter contains no explanation as to who the signatory is, whether or how he or she was acquainted with the respondent, what is meant by "his residence", or in what sense it is "his". There is no indication whether this information was obtained through personal acquaintance, by reference to public records or in some other manner.

[112] The DOL relies heavily upon the credibility of the documents obtained by the CVU. It submits that their reliability should be accepted because they were independently acquired from individuals who had nothing to gain by being deceitful and who did not know why the information was being obtained.

[113] The Authority does not agree. Each of the documents is on its face open to criticism. Considered collectively, they must be disregarded. This particularly so given the obvious unreliability of the School letter; and when the suspect information supplied is contrasted with the absence of any response to the substantive requests for information made in paragraph 2 of Mr Bonnici's second information request, and the letter from Mr Newth to the Bank dated 13 December 2005 (see para [32] above).

(iii) Miscellaneous evidence relating to domicile

[114] The DOL also seeks to emphasise the effect of discrepancies apparent from various documents filed by and in respect of the respondent and his family members in connection with their immigration status in New Zealand.

[115] The DOL refers to conflicting evidence relating to where the respondent's

parents lived. In her residence application, the wife referred to them living in M district. In other documents there are references to A.

[116] The respondent explains that he has used M and A broadly and interchangeably because his wife's family has homes in both places, and they are only seven kilometres apart from each other. That is consistent with the wife's residence application, which disclosed that two of her sisters were living in M and A.

[117] Nor does the Authority attach any significance to the different meanings apparent from the various references made by the respondent to family members. He claims, and the Authority accepts, that when he refers to "family", it is in a broad sense that may not always be consistent with the manner in which family relationships are described in New Zealand.

[118] The Authority also accepts that residence applications lodged in respect of the respondent's three children in January 1996 asserted that they were born in Punjab, when it is apparent from the birth certificates for each child that they were born in Uttar Pradesh. Likewise there were inconsistencies about where the respondent and his wife married. He said Uttar Pradesh on some occasions, and Punjab on others.

[119] The DOL submit that this is evidence that the respondent and his family were resident in Uttar Pradesh, and not in Punjab. Taken in isolation, that may be understandable. However, the Authority finds, for the reasons already given, that when considered in light of all of the evidence available, the inconsistencies are not evidence that the respondent may have obtained refugee status by "fraud".

[120] The Authority now turns to the documents which are on file and which support the respondent's claim that he was living in Punjab at the relevant times, and not in Uttar Pradesh.

[121] First, there is a copy of the respondent's birth certificate which shows that he was born in Punjab. The Authority also notes that the respondent's passport discloses a permanent address in Punjab. It was issued in late 1985, several months after the bank account was opened. There is no apparent reason why he would have given a permanent address in Punjab if he had been living in Uttar Pradesh at that time, as the DOL alleges.

[122] Finally, when applying for a visitor's visa in 1989, before he had applied for refugee status, the usual address and the address for correspondence given by

the respondent were in Punjab.

**CONCLUSION AS TO WHETHER REFUGEE STATUS “MAY HAVE BEEN”  
PROCURED BY FRAUD**

[123] The Authority has previously held that s129L(1)(f)(ii) of the Act is deliberately couched in imprecise terms. Whatever threshold “may have been” is intended to create, the Authority finds that the DOL has failed to meet that threshold in respect of this application.

[124] While mere suspicion may be an appropriate place for an investigation to begin, it is not an appropriate basis upon which this Authority might find that the threshold has been crossed.

[125] After observing the respondent and after hearing him give evidence, and having taken into account all of the evidence available, the Authority is not satisfied that the grant of refugee status to Mr Singh “may have been procured” by fraud and the like.

[126] In respect of this application, the Authority finds that the existence of inaccuracies and contradictions are consistent with the appellant’s lack of sophistication, his lack of English, and his tendency to concur with propositions put to him in English even when he does not understand them. However, the Authority finds that this is not evidence of dishonesty or “fraud” on his part. The Authority is satisfied that the appellant’s explanations are credible.

**Stage two: Whether the respondent should cease to be recognised as a Refugee**

[127] On the basis of the Authority’s finding that refugee status was not procured by fraud, the second issue does not fall to be determined.

**CONCLUSION**

[128] The following determinations are made:

- (a) The evidence does not establish that the refugee status of the respondent may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information.

- (b) The question of whether it is appropriate to cease to recognise the respondent as a refugee does not arise.

[129] The application is therefore declined.

.....  
A N Molloy  
Member