

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76156

AT AUCKLAND

<u>Before:</u>	A R Mackey (Chairperson)
<u>Representative for the Appellant:</u>	Salim Singh
<u>Appearing for the Department of Labour:</u>	No appearance
<u>Date of Decision:</u>	14 January 2008

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 Fiji.

INTRODUCTION

[2] The appellant arrived in New Zealand in October 2006 on a visitor's permit which was valid until 23 December 2006. That was extended until 24 March 2007 when he applied for a New Zealand work permit. That application was declined. On 30 May 2007, he applied for refugee status in this country. He made a further application for a work permit in June 2007, which was issued with validity to 21 January 2008. A decision declining his application was published by the RSB on 31 October 2007.

[3] A notice of appeal against that decision was lodged with this Authority on 5 November 2007. That appeal notice was presented by Salim Singh, an

immigration consultant. His postal address was given as the address to which postal communications relating to the appeal should be sent.

JURISDICTION OF THE AUTHORITY TO DISPENSE WITH AN INTERVIEW

[4] In certain circumstances the Authority is permitted to determine an appeal on the papers without giving the appellant an interview. This arises under s129P(5)(a) and (b) of the Immigration Act 1987 (“the Act”), where the appellant was interviewed by the RSB (or given an opportunity to be interviewed but failed to take that opportunity) and where the Authority finds the appeal to be *prima facie* ‘manifestly unfounded or clearly abusive’. The Authority’s general jurisdiction in this regard was examined in *Refugee Appeal No 70951/98* (5 August 1998).

[5] In this case, the Authority, through its Secretariat, wrote to the appellant’s representative on 13 December 2007. That letter advised the Authority’s preliminary view that the appeal was *prima facie* ‘manifestly unfounded or clearly abusive’, for reasons set out in that letter. It was noted that the appellant had not provided any evidence in support of his claim that he had a well-founded fear of being persecuted in Fiji.

[6] In summary, the Secretariat’s letter stated:

“[The appellant] claimed that he feared ethnically motivated discrimination by indigenous Fijians against him as an Indo-Fijian. He claimed that this had built up over time, originally in disputes that took place in 2000 and that, more recently, there has been discrimination by indigenous Fijians against him and his family since the December 2006 Bainimarama military coup. Full details of the appellant’s claim and alleged risks he will face on return to Fiji are set out in the refusal letter and decision of the RSB, dated 31 October 2007. There is thus no need to repeat them fully in this letter, but merely to bring them to your attention.

On the basis of the evidence now before the Authority, which includes the whole of the RSB file, and the Authority’s knowledge of recent refugee appeal decisions of a like nature, such as *Refugee Appeal No 76039* (28 June 2007) and *Refugee Appeal No 76082* (31 October 2007), there is no indication that the appellant faces a real chance of being persecuted in Fiji should he return there now. His experiences in Fiji in the past did not constitute persecution and there appears to be no well-founded basis for any prediction of him being persecuted in Fiji in the future.

Recent human rights reports indicate that although there are racial tensions in Fiji, there is no evidence that Indo-Fijians suffer persecution for reasons of their ethnicity, or that the Fiji state is unwilling or unable to provide protection to its Indo-Fijian citizens.

The United States Department of State *Country Report on Human Rights Practices 2006: Fiji* (6 March, 2007) which is referred to extensively in the decision of the RSB, certainly indicates some erosion in the respect for human rights. However,

as also noted, the Bainimarama government has professed a commitment to multi-racial politics and to Fijians of many ethnic backgrounds.

Beyond this, the specific profile of the appellant, when considered in the round, against the totality of the objective evidence available, does not on the face of it, indicate evidence of a well-founded fear of being persecuted on return.

In addition to this, there is a presumption of state protection in Fiji. It is a well-established principle of refugee law that nations should be presumed capable to protecting their citizens. Clear and convincing evidence is required to demonstrate a state's inability to protect its citizens; see *Refugee Appeal No 523/92* (17 March 1995). The Authority does not consider that the appellant has provided such evidence. Random acts of crime occur in all parts of the world, and the Convention was not intended to protect persons against any and all forms of even serious harm, but to restrict the recognition of refugee status to situations in which there is a risk of type of injury that is inconsistent with the basic duty of protection owed by a state to its citizens; see Hathaway, *The Law of Refugee Status* (1991) 103. The Authority is not aware of any credible source which identifies the Fijian state as being in breach of its duty to afford reasonable levels of protection to all of its citizens.

Accordingly, it is the Authority's preliminary view that the presumption of state protection applies to the appellant's circumstances in Fiji."

[7] As noted, the Secretariat's letter referred to recent decisions in which an examination of the situation in Fiji has been carried out in some detail. Those decisions were in *Refugee Appeal No 76039* (28 June 2007) and *Refugee Appeal No 76082* (31 October 2007), which in turn referred to a more detailed determination in *Refugee Appeal No 75780* (19 April 2007). On the basis of that analysis and the most up-to-date information available, the Authority is satisfied that the December 2006 coup and subsequent events have not led to a deterioration in the security of the Indo-Fijian community, or to violence by or against indigenous Fijians. The police force is maintained by joint military and police operatives and it appears that there is still a police force capable of maintaining law and order.

[8] The Secretariat's letter advised the appellant that the Authority had jurisdiction to determine the appeal on the papers without offering an interview, in the circumstances which, on a preliminary view, apply in this case. It was explained that the responsibility for establishing an appellant's refugee claim lay with the appellant, pursuant to ss129P(1) and 129P(2) of the Act, as referred to in *Refugee Appeal No 72668* (Minute No 2) (5 April 2002) and in *Anguo Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA).

[9] The appellant was provided with an opportunity to present submissions and/or evidence to support his claim by 8 January 2008. The appellant was notified that, unless the Authority was persuaded otherwise, it could consider and

determine the appeal without giving the appellant an opportunity of attending a further interview.

[10] The Authority has received no response to its letter.

CONCLUSION ON WHETHER TO DISPENSE WITH AN INTERVIEW

[11] The appellant was interviewed by a refugee status officer on 19 September 2007. After considering all relevant matters, the Authority is satisfied that the appellant's appeal is, on the face of it, manifestly unfounded or clearly abusive, for reasons which are set out below.

[12] The appeal will therefore be determined on the papers, pursuant to ss129P(5)(a) and 129P(5)(b) of the Act, without giving the appellant an opportunity to attend a further interview.

THE APPELLANT'S CASE

[13] The following is a summary of the appellant's case as it is set out in the DOL file.

[14] The appellant is a single man in his mid-20s from Fiji and is of the Muslim faith and Indo-Fijian ethnicity. He stated that he had never experienced any difficulties because of his religion.

[15] He claimed that after the coup by the group of Fijian nationalists led by George Speight in 2000, his home was stoned and damaged by a group of five or six indigenous Fijian youths from a local village. Other houses in the village were also similarly damaged and some cane fields were set alight, including fields farmed by the appellant's family. The incident was reported to the local police. The report was followed up but no-one was found responsible for the attacks. Other incidents occurred later in 2000 when livestock owned by the appellant's neighbours were stolen.

[16] The appellant then appears to have pursued his life and employment without significant incident until 2006, when the lease of the family farm was renewed for 10 years. At that time, the appellant claimed that the indigenous owners asked silly questions and delayed the renewal which the appellant

considered was provocative and evidence of discrimination. It was approximately at this time that the appellant applied for a New Zealand visitor's visa on the sponsorship of a paternal aunt.

[17] After the coup by Commodore Bainimarama in December 2006, the appellant, who did not have personal experience of any difficulties as a result of the coup because he was in New Zealand, contacted his mother who advised that some indigenous Fijians had been roaming through the local village, swearing at Indo-Fijians.

[18] In August 2007, an uncle based in Fiji told the appellant that the situation was not good as indigenous Fijians were causing trouble and harassing people. In September 2007, another uncle advised him that indigenous Fijians had been burning cane on his farm which was close to the appellant's family farm.

[19] The appellant claimed that he feared general societal discrimination by indigenous Fijians in Fiji and also discrimination in relation to his ability to access the fish and land resources that were owned and claimed by indigenous Fijians. He did state, however, that he had not experienced discrimination in the past.

THE ISSUES

[20] 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."

[21] 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

[22] As the Authority has determined that it will not interview the appellant, an assessment of his credibility will not be made. Accordingly, his account, as recorded above, is accepted for the purposes of determining this appeal.

[23] In refugee law, persecution has been defined as the sustained or systemic denial of basic or core human rights such as to be demonstrative of a failure of state protection; Hathaway, *The Law of Refugee Status* (1991) 104 to 108, as adopted in *Refugee Appeal No 2039/93* (12 February 1996) at [15].

[24] The Authority has previously noted that discrimination, in itself, is not sufficient to establish refugee status, nor does every breach of a claimant's human rights amount to being persecuted; *Refugee Appeal No 71404/99* (29 October 1999) [65] to [67]. In that regard, the Refugee Convention was not intended to protect persons against all or any forms of harm, but confers protection where there is a real risk of serious harm that is inconsistent with the basic duty of protection owed by the state to its citizens.

[25] While events in his home village that have been reported to the appellant may be disturbing to him, these incidents and those the appellant experienced in the past do not amount to serious harm that in any way equates with a risk of being persecuted, even when all elements of this appellant's case are considered in the round.

[26] The focus of the Refugee Convention is a prospective one, looking forward at risks that may be encountered by individual applicant on return.

[27] As the Authority found in *Refugee Appeal No 75780* and the other subsequent appeals in *Refugee Appeal Nos 76039* and *76082*, the December 2006 coup was notable for the absence of violence against Indo-Fijians in contrast to the earlier coups of 1987 and 2000. The Authority is satisfied that the country information available shows that, to date, the political environment following the December 2006 coup has not led to deterioration in the security of the Indo-Fijian community beyond the level of the occasional discriminatory event.

[28] In addition, it is a well-established principle of refugee law that nations are presumed capable of protecting their citizens. Clear and convincing evidence to the contrary is required to demonstrate a state's inability to protect its citizens; see *Refugee Appeal No 523/92* (17 March 1995). It is noted that the Authority's preliminary view, that the presumption of state protection applies in the appellant's

case, was put to him and his representatives for comment in the Authority's letter of 13 December 2007. There was no reply received.

[29] The Authority is satisfied that even were the appellant to experience any discrimination or harassment on return to Fiji, he has not presented any evidence that he would be denied basic or core human rights by the Fijian authorities, demonstrative of a failure of state protection. This is particularly significant given that the appellant bears the responsibility for establishing his claim for refugee status; ss129P(1) and 129P(2) Immigration Act 1987.

[30] The Authority therefore finds that the appellant does not have a well-founded fear of being persecuted on return to Fiji. The first issue is therefore answered in the negative. The second issue accordingly does not arise for consideration.

CONCLUSION

[31] 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.

"A R Mackey"
A R Mackey
Chairperson