

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75979

AT AUCKLAND

<u>Before:</u>	A N Molloy (Member)
<u>Counsel for Appellant:</u>	The appellant represented himself
<u>Appearing for INZ:</u>	No appearance
<u>Date of Decision:</u>	22 May 2007

DECISION

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of Immigration New Zealand (INZ) declining the grant of refugee status to the appellant, a citizen of Bangladesh.

[2] This is the second time the appellant has appealed to this Authority. The Authority (differently constituted) dismissed his appeal in respect of his first refugee claim on 26 June 2006. He completed a second refugee application on 28 June 2006, within two days of the date of the first appeal decision. The second application was lodged with the RSB on 30 June 2006. The RSB declined the second application on the basis that it had no jurisdiction to accept the appellant's second claim.

[3] This appeal turns upon whether the Authority has jurisdiction to determine the appellant's second claim for refugee status.

JURISDICTION: SECOND CLAIMS FOR REFUGEE STATUS

[4] Neither a refugee status officer nor the Authority has unlimited jurisdiction to receive and determine a further refugee claim after a first claim has been finally determined.

[5] Section 129J(1) of the Immigration Act 1987 (the Act) sets out the circumstances in which a refugee status officer may receive and determine a second or subsequent claim for refugee status;

“A refugee status officer may not consider a claim for refugee status by a person who has already had a claim for refugee status finally determined in New Zealand unless the officer is satisfied that, since that determination, circumstances in the claimant’s home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim.”

[6] Section 129O(1) of the Act provides a right of appeal from a decision made by a refugee status officer under s129J(1) of the Act;

“A person whose claim or subsequent claim has been declined by a refugee status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that circumstances in the claimant’s home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer’s decision.”

[7] When considering its statutory jurisdiction to hear and determine second and subsequent refugee claims under ss129J(1) and 129O(1) of the Act, the Authority has held, in *Refugee Appeal No 75139* (18 November 2004) and *Refugee Appeal No 75576* (21 December 2006), that jurisdiction is determined by comparing the previous claim for refugee status with the subsequent claim. In the absence of significantly different grounds in the respective claims, the Authority has no jurisdiction to consider the merits of the subsequent claim.

JURISDICTION OF THE AUTHORITY TO DISPENSE WITH AN INTERVIEW

[8] In circumstances outlined in s129P(5) of the Act, the Authority has a discretion about whether to offer the appellant the opportunity to attend an interview. The discretion arises where the appellant was interviewed by the RSB (as in this instance) and if the Authority considers that the appeal is *prima facie* ‘manifestly unfounded or clearly abusive’. The Authority’s jurisdiction in this regard was examined in *Refugee Appeal No 70951/98* (5 August 1998).

[9] After setting out the procedural history of the appellant’s case, the Authority will briefly outline the appellant’s current claim for refugee status. That claim will then be assessed in light of ss129J(1) and 129O(1) of the Act and a conclusion reached about whether to dispense with an interview under s129P(5) of the Act.

PROCEDURAL HISTORY OF THE APPELLANT'S CASE

FIRST CLAIM FOR REFUGEE STATUS

[10] The appellant arrived in New Zealand lawfully in December 2004. He was accompanied by his wife and children, who have since returned to Bangladesh. The family remained in New Zealand on the basis of successive visitors' permits until August 2005. When further applications for permits were declined by INZ, they obtained legal advice and claimed refugee status.

[11] The appellant's first claim was set out in his application lodged in September 2005. He was interviewed by a refugee status officer of the RSB in October 2005. The RSB issued a decision dated 21 December 2005, declining the appellant's first application for refugee status.

[12] After hearing the appeal against that decision in May 2006, the Authority published a decision dismissing the appellant's appeal in *Refugee Appeal No 75789* (26 June 2006). A detailed summary of the appellant's account is set out in that decision.

[13] The Authority found that the appellant's claim was not credible and rejected his account in its entirety.

SECOND CLAIM FOR REFUGEE STATUS

[14] On 28 June 2006, only two days after the appellant's first appeal to the Authority was finally determined, the appellant lodged a second claim for refugee status with the RSB. The appellant was again interviewed by a refugee status officer, on 2 September 2006.

[15] The RSB issued a further decision dated 12 September 2006, deciding that the RSB had no jurisdiction to accept the appellant's second claim. The RSB was not satisfied that circumstances in the appellant's home country had changed to such an extent that his further claim was based upon significantly different grounds to his previous claim. Accordingly, refugee status was declined.

[16] The appellant lodged a notice of appeal against that decision on 13 November 2006. In accordance with s129P(3) of the Act and reg 14(3) of the Immigration (Refugee Processing) Regulations 1999, the notice contained an address in New Zealand to which communications relating to the appeal may be sent.

[17] The Authority wrote to the appellant the same day, at the address provided, to acknowledge receipt of the appeal. In its letter the Authority informed the appellant that he must advise the Authority in writing about any change of address, and reminded him that any communications would be sent to the address provided in the notice of appeal, unless the Authority was advised of a change in the address.

WHETHER TO DISPENSE WITH AN INTERVIEW

[18] The Authority formed the preliminary view that the appellant's second appeal was *prima facie* 'manifestly unfounded or clearly abusive' because it did not meet the jurisdictional threshold for second or subsequent claims. That view, and the basis upon which it had been formed, was set out in a letter from the Authority's Secretariat to the appellant dated 26 April 2007. That letter was also forwarded to the address provided by the appellant in his notice of appeal.

[19] The letter noted that the appellant had been interviewed by the RSB in respect of his current application for refugee status. It also noted that this was the second refugee application lodged by the appellant, and set out the relevant jurisdictional requirements. The appellant was advised that, in the Authority's preliminary opinion, the appellant's second claim did not meet the jurisdictional requirements. The letter continued:

"First claim

For the purposes of your first claim for refugee status you claimed that you had been an active supporter of the Jatiya political party in Bangladesh since the late 1980s. As a result of your political activities you had been targeted by members and supporters of the ruling Bangladesh Nationalist Party (BNP), and by members of the opposition Awami League Party. You were eventually expelled from university and, while you were allowed to sit your final examinations, you were barred from pursuing post-graduate study.

You also claimed that your activities had brought you into conflict with the police on several occasions.

You lived outside Bangladesh for five years during the late 1990s and early 2000s. Upon returning to Bangladesh in 2003 you learned that family members have filed false criminal charges against you. You believed that these were still outstanding.

In dismissing your first appeal the Authority found that your evidence was "inconsistent, mobile and implausible" and rejected the credibility of your entire account: *Refugee Appeal No 75789* (26 June 2006) at [36].

Second claim

Within two days of the date of the Authority's decision you lodged a further claim for refugee status, supported by a handwritten statement which was dated 28 June 2006.

For the purposes of your second claim you state that your life is in danger in Bangladesh and that you can not go back there. Your statement outlined aspects of your upbringing in Bangladesh, and repeated much of the detail about your political activities which you had recounted for the purposes of your first claim for refugee status, and during your first appeal.

Your second claim outlines the problems you had with the BNP and the domestic conditions in Bangladesh which led you to leave in the late 1990s. You claim that your life is at risk from the BNP, the Awami League, from elements within your own family and from the police.

Preliminary view

It is the Authority's preliminary view that you do not satisfy the statutory criteria for the acceptance for consideration of a second refugee claim under ss 129J and 129O of the Act. This is because your second claim appears to be based on the same or similar grounds as your first. Your claims, when compared, do not establish that circumstances in Bangladesh have changed to such an extent that your further claim is based upon significantly different grounds to your first claim.

Your second claim appears to have been filed out of dissatisfaction with the Authority's findings in connection with your first appeal. Indeed, in your handwritten statement dated 28 June 2006 you write that:

"As the refugee status hasn't been granted at this stage I'm totally frustrated and upset as because I'm truly a refugee in view of my situation [in Bangladesh]"

However the Authority does not have jurisdiction to rehear an appeal after a full hearing and the publication of a decision, and nor does it have jurisdiction to sit as an appellate body in respect of its own previous decisions: *Refugee Appeal No 75139* (18 November 2004) at [55].

The Authority observed, in *Refugee Appeal No 75576* (21 December 2006), that the potential for abuse of second claim procedures led Parliament to allow this only in limited circumstances (at [27]-[28]).

It is open to the Authority to find that by lodging a second claim within two days of the publication of the Authority's decision finally determining your first, virtually identical, application, your second claim is an abuse of the second claim procedure. This is particularly so given that you have not provided any evidence of a change in your circumstances or in circumstances generally in Bangladesh since the Authority declined your first appeal on 26 June 2006."

[20] The Secretariat's letter dated 26 April 2007 reminded the appellant that he bears the responsibility for establishing his refugee claim pursuant to ss129P(1) and 129P(2) of the Act (as referred to in *Refugee Appeal No 72668/01* (Minute No 2) (5 April 2002) and in *Anguo Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA)).

[21] Notice was also given that, unless the Authority was persuaded otherwise, it could consider and determine the appeal pursuant to s129P(5)(a) and (b) of the Act, without giving the appellant an opportunity of attending a further interview. Reference was also made to *Refugee Appeal No 70951* (5 August 1998).

[22] The appellant was invited to provide the Authority with submissions and/or evidence to address these issues by Thursday 10 May 2007. The letter was sent to the last address provided by the appellant in accordance with s129P(3) of the Act. Despite this, the letter was returned to the Authority, unopened, by New Zealand Post, with a note to the effect that the address is incorrect. Subsequent attempts made by the Secretariat to contact the appellant by telephone were similarly unsuccessful.

CONCLUSION AS TO WHETHER TO DISPENSE WITH AN INTERVIEW

[23] Taking into account all relevant material available to it, the Authority finds that the appellant's second appeal is *prima facie* 'manifestly unfounded or clearly abusive'.

[24] As the appellant was interviewed by a refugee status officer on 26 October 2006 in the course of the determination of his second refugee claim, the Authority determines this appeal on the papers pursuant to ss129P(5)(a) and 129P(5)(b) of the Act, without giving the appellant an opportunity to attend a further interview.

THE JURISDICTIONAL THRESHOLD

COMPARISON OF CLAIMS MADE

[25] In order to determine whether it has jurisdiction to consider the second appeal, the Authority must compare the appellant's first and second claims. For the purposes of this analysis it is assumed that the appellant's second claim is credible.

[26] As noted in the letter from the Authority's Secretariat to the appellant dated 26 April 2007, the appellant's first claim for refugee status was based on his assertion that he was at risk of being seriously harmed by the police and by political opponents within Bangladesh. He also claimed that family members had filed false criminal charges against him, which he believed were still outstanding.

[27] His second claim for refugee status, lodged within days after the Authority's decision to decline his first appeal, again outlined the problems the appellant had with the BNP, and the domestic conditions in Bangladesh which led him to leave in the late 1990s. He claimed that his life is at risk from the BNP, the Awami League, from elements within his family and from the police.

[28] Comparing the appellant's first and second claims, and taking into account all of the material available to it, the Authority finds that there is no significant difference in the grounds upon which the appellant's first and second claims are based. In fact, both claims are based upon the same grounds.

[29] The appellant has not presented any evidence that, since the determination of his first claim on 26 June 2006, circumstances in Bangladesh have changed to such an extent that his second claim is based on significantly different grounds to his first claim.

CONCLUSION

[30] The appellant does not satisfy the requirements of ss129J and 129O(1) of the Act. It follows that the Authority has no jurisdiction to consider the appellant's second claim to be recognised as a refugee in New Zealand. The appeal is dismissed.

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A N Molloy
Member