

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76555

AT AUCKLAND

Before: B A Dingle (Member)

Representative for the Appellant: The appellant represented himself

Appearing for the Department of Labour: No Appearance

Date of Decision: 27 September 2010

DECISION

[1] This is an appeal against a decision of the Refugee Status Branch (“the RSB”) of the Department of Labour (“DOL”), declining the grant of refugee status to the appellant, a national of Bangladesh.

[2] This is the third time the appellant has claimed refugee status in New Zealand.

JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL

[3] Because this is the third occasion on which the appellant has appealed to this Authority, the Authority must first determine whether it has jurisdiction to hear the appeal.

[4] Neither a refugee status officer nor the Authority has unlimited jurisdiction to receive and determine a further refugee claim after a first and second claim have been finally determined. Section 129J(1) of the Immigration Act 1987 (“the Act”) is headed “Limitation on subsequent claims for refugee status” and sets out the circumstances in which a refugee status officer may receive and determine a second or subsequent claim for refugee status as follows:

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.** [Emphasis added]

[5] Where the refugee status officer declines the subsequent claim, or finds that there is no jurisdiction to consider the claim on the basis that the statutory criteria are not met, the claimant has a right of appeal to the Authority. Section 129O(1) of the Act provides that:

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.

[6] The Authority therefore intends to consider the appellant's two previous claims, together with his further claim as presented at the third appeal, with a view to determining whether it has jurisdiction to hear the third appeal. If so, it will then determine whether the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

[7] Before doing so however, it is necessary to address the issue of whether the appellant should be granted an interview.

JURISDICTION OF THE AUTHORITY TO DISPENSE WITH AN INTERVIEW

[8] Pursuant to ss129P(5)(a) and 129P(5)(b) of the Act, where an appellant was interviewed by the RSB or, having been given an opportunity to be interviewed, failed to take that opportunity, the Authority has a discretion as to whether to offer the appellant the opportunity to attend an interview. In exercising this discretion, the Authority will consider whether the appeal is *prima facie* 'manifestly unfounded or clearly abusive'. Should that be the case, the Authority may determine the appeal on the papers, without offering the appellant an interview. The Authority's general jurisdiction in this regard was examined in *Refugee Appeal No 70951* (5 August 1998).

PROCEDURAL HISTORY OF THE APPELLANT'S CLAIMS

First claim for refugee status

[9] The appellant arrived in New Zealand on 16 September 1996 and lodged an application seeking refugee status on 30 September 1996. He was interviewed by a refugee status officer of the RSB on 12 April 2000.

[10] Briefly, the appellant's first claim was that he was at risk of serious harm in Bangladesh because of his Bihari ethnicity. Specifically, he claimed to be at risk of physical violence from a group of Bengali thugs who had previously robbed and beaten him. He also claimed that discrimination by Bengali people against Bihari people was so entrenched in Bangladesh that it amounted to serious harm from which there was no available state protection.

[11] A decision declining the appellant's application was published by the RSB on 5 July 2000, concluding that he did not have a well-founded fear of being persecuted in Bangladesh for reason of his Bihari ethnicity. The Authority (differently constituted) received notice of an appeal against that first RSB decision on 12 July 2000 and, in a decision dated 14 December 2000, the Authority declined his appeal (*Refugee Appeal No 72214*). While the Authority expressed some doubts about the appellant's Bihari ethnicity, it extended him the benefit of the doubt on that point. However, it went on to find that the appellant did not have a well-founded fear of being persecuted should he return to Bangladesh.

The second claim for refugee status

[12] After an unsuccessful appeal to the Removal Review Authority against a removal order against him, the appellant lodged his second claim to recognition as a refugee with the RSB. In essence, the appellant maintained all the grounds of his first claim, namely that he feared for his life in Bangladesh because of his Bihari ethnicity. The RSB declined the appellant's second claim and concluded that it did not have jurisdiction to hear the claim because circumstances had not changed significantly since the determination of the first claim.

[13] The appellant then appealed for a second time to the Authority (differently constituted). A decision dismissing the second appeal was delivered on 22 July 2004 (*Refugee Appeal No 74914*). After considering the second claim presented by the appellant, the Authority concluded at [25] that:

It is apparent that, even accepting the appellant's evidence, there is simply no evidence to suggest that the appellant's circumstances in Bangladesh have changed to such an extent that his further claim is based on significantly different grounds to the previous claim.

The current (third) claim for refugee status

[14] The appellant's third claim was submitted to the RSB on 24 February 2010.

[15] The basis of the appellant's third claim is that he fears he will be persecuted in Bangladesh for reason of his Bihari ethnicity. During the RSB interview in relation to his third claim, the appellant stated that "whatever I claimed before is the same claim".

[16] On 16 June 2010, the RSB issued a decision which declined the appellant's third claim on the basis that he had not satisfied the jurisdictional criteria such that his claim could be considered. The appellant now appeals against that decision.

WHETHER TO DISPENSE WITH AN INTERVIEW

[17] On 26 August 2010, the Authority, through its Secretariat, wrote to the appellant advising that the Authority's preliminary view of the appellant's appeal was that it was *prima facie* 'manifestly unfounded or clearly abusive', and giving reasons in this regard. The letter noted that his third claim appeared to simply be a repetition of his two previous claims and appeals and concluded that:

It is the Authority's preliminary view that your third claim does not satisfy the statutory criteria for the acceptance for consideration of a subsequent refugee claim. This is because the grounds of the subsequent claim are exactly the same as the grounds advanced in support of your first and second refugee claims in New Zealand.

In summary, and based on the information in the INZ file enclosed, you have advanced no new grounds for your claim. In fact, the RSB report of your last interview [for the third claim], on 3 May 2010, states:

'At interview, when [the appellant] was asked how, since the previous determination, circumstances have changed in Bangladesh to such an extent that his subsequent claim is now based on significantly different grounds, he replied: "I have no claim. Whatever I claimed before is the same claim."' Page 353

The Authority's preliminary view is that there have been no changed circumstances for you in Bangladesh since the decline of your second appeal. It appears that you are unable to satisfy the jurisdictional criteria for second and subsequent refugee claims established by ss129J and 129O Immigration Act 1987.

[18] The Secretariat's letter also advised that the Authority has the jurisdiction to determine an appeal on the papers, without offering an interview pursuant to s129P(5) of the Act, in circumstances which, on a preliminary view, applied in the

appellant's case. The appellant was provided with an opportunity to present submissions and/or evidence to support his claim, by 10 September 2010. Notice was given that, unless the Authority was persuaded otherwise by such submissions and evidence, it could consider and determine the appeal without giving the appellant an opportunity of attending a further interview.

[19] The Secretariat's letter advised that it is the appellant's responsibility to establish his or her 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* (HC, Auckland, M.207-PLO2, 29 July 2002, Potter J).

[20] On 8 September 2010, the Authority received a letter from the appellant enclosing: a copy of a letter from the (then) New Zealand Immigration Service (17 December 2004), in which he was notified that he had been granted a work permit; a bundle of letters from Bangladesh containing statements relating to the appellant's life in Bangladesh and the predicament he claims he would face on return (that of a ethnic Bihari living in Bangladesh); and, several work and character references from individuals in New Zealand. None of these documents disclose any evidence or assertions that circumstances in Bangladesh have changed for the appellant since the final determination of his second refugee claim, such that his third claim can be said to be based on significantly different grounds from his first and second claims.

CONCLUSION AS TO WHETHER TO DISPENSE WITH AN INTERVIEW

[21] Having carefully considered all relevant matters, for the reasons which will be apparent later in this decision, the Authority is satisfied that the appellant's appeal is *prima facie* 'manifestly unfounded or clearly abusive'.

[22] It is appropriate to now proceed to determine the 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. All material and submissions tendered throughout the determination process have been taken into account in determining this appeal.

HAS THE JURISDICTIONAL THRESHOLD BEEN MET?

[23] It is now necessary to consider whether the jurisdictional threshold for the hearing of a second or subsequent claim is met: see s129O(1) and *Refugee Appeal 75139* (18 November 2004).

Comparison of claims

[24] The appellant's first claim for refugee status was based on his Bihari ethnicity.

[25] The second claim was based on the same account and grounds as the first claim. On appeal the Authority found that the second claim did not meet the jurisdictional threshold for subsequent claims.

[26] The third claim is, once again, a re-statement of the first and second claims. The appellant himself concedes that the grounds of his third claim are the same as those advanced in support of his earlier claims.

[27] It is well established in the Authority's jurisprudence that a decision of the Authority is final once notified to the claimant (s129Q(5)). For reasons set out in *Refugee Appeal No 75139* (18 November 2004), the Authority does not have jurisdiction to sit as an appellate body in respect of its previous decisions (at [44]-[47]). The Authority also noted in that decision that it does not have a "miscarriage of justice" jurisdiction and cannot rehear an appeal already determined as if it were an appellate authority (at [55]). If a refugee claimant contends that the previous decision of the Authority was flawed, the appropriate remedy is judicial review, not the submission of a subsequent refugee claim.

Conclusion on jurisdiction

[28] The Authority finds that the jurisdictional threshold for consideration of a subsequent refugee claim is not met. The present claim is based on the same account as the first and second claims, which have been finally determined by the Authority. There is no significant difference in the grounds between the appellant's first two claims and the appellant's third claim. The production of new documents to corroborate facts which have previously been found not to establish a finding of a well-founded fear of being persecuted does not satisfy the jurisdiction threshold.

[29] The appellant does not satisfy the requirements of ss129J and 129O(1) of the Act and it follows that the Authority has no jurisdiction to consider this third claim to be recognised as a refugee in New Zealand.

CONCLUSION

[30] 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.

"B A Dingle"

B A Dingle

Member