

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75918

AT AUCKLAND

Before: A N Molloy (Member)
Counsel for Appellant: S Sharma
Appearing for INZ: No Appearance
Date of Decision: 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 10 May 2006. His second refugee application was lodged with the RSB less than two weeks later, on 23 May 2006. It was declined by the RSB 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 in *Refugee Appeal No 75139* (18 November 2004) and *Refugee Appeal No 75576* (21 December 2006), the Authority held that under ss129J(1) and 129O(1), 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 an 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 on 10 December 2003. The following year he married a New Zealand citizen and subsequently applied for a work permit under the Partnership Category of Immigration New Zealand policy. This was declined.

[11] The appellant applied for refugee status for the first time in May 2005, one and a half years after arriving in New Zealand. After interviewing the appellant in August 2005 a refugee status officer of the RSB issued a decision dated 25 November 2005, declining the appellant's first application for refugee status.

[12] After hearing the appeal against that decision in March 2006, the Authority published a decision dismissing the appellant's appeal in *Refugee Appeal No 75774* (10 May 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 23 May 2006, less than two weeks 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 15 June 2006.

[15] In its further decision dated 30 June 2006, the RSB decided that it had no jurisdiction to consider 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. The appellant has appealed against that decision.

WHETHER TO DISPENSE WITH AN INTERVIEW

[16] 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.

[17] 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 his first claim for refugee status the appellant claimed that he had been a supporter and active member of the Awami League political party in Bangladesh since the early 1990s. He said that as a result of his political activities he had been targeted by members and supporters of the ruling Bangladesh Nationalist Party (BNP). Around the time of the general election held in Bangladesh in 2001, BNP supporters attacked the appellant's family home, looking for him. The appellant was fortuitously absent, but his mother was not. The shock of the attack caused her to have a stroke from which she later died. The appellant then went into hiding for two years before coming to New Zealand.

The Authority found that the appellant's claim was not credible and stated that his account was "grossly inconsistent in key aspects": *Refugee Appeal No 75774* (10 May 2006) para [19]. His evidence in relation to the substantive aspects of his claim was rejected in its entirety.

Second claim

For the purposes of his second claim the appellant states that the BNP supporters who had previously been trying to kill him have resumed their search for him in anticipation of the general election scheduled for the end of 2006. Their motivation remains the same, namely their hatred of the appellant because of his membership of and activities for the rival political party, the Awami League.

The BNP have launched attacks on the appellant's family members which have forced one of his brothers into hiding. One such attack involved the detonation of an explosive device at the appellant's house which killed his younger sister.

Preliminary view

It is the Authority's preliminary view that the appellant does not satisfy the statutory criteria for the acceptance for consideration of a second refugee claim under sections 129J and 129O of the Act.

This is because his second claim appears to be based on the same or similar grounds as his first.

For the purposes of the appellant's second claim to be at risk because BNP supporters are searching for him and will kill him he refers to the same protagonists as he named in his first claim.

Likewise his second claim with regard to the attacks on his family members is no more than a reflection of the predicament which he described in advancing his first claim.

In short, the appellant has not provided any evidence of a change in his circumstances, or in circumstances generally in Bangladesh, since the Authority declined his first appeal on 10 May 2006. The threats and treatment meted out to his family members in Bangladesh have not resulted in the appellant's second claim being based on significantly different grounds to his first."

[18] 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)).

[19] 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).

[20] The appellant was invited to provide the Authority with submissions and/or evidence to address these issues by Thursday 10 May 2007.

[21] The Authority received a letter from the appellant's solicitors, dated 3 May 2007, stating that they were without instructions, and confirming that they had been unable to contact the appellant since he had provided them with an authority to act in respect of his second appeal, in July 2006.

[22] The appellant's solicitors sought leave to withdraw. Leave is denied, although no criticism of the solicitors is to be inferred from that decision. For the purposes of an appeal, the appellant is required to provide an address in New Zealand to which communications relating to the appeal may be sent: s129P(3) of the Act and Immigration (Refugee Processing) Regulations 1999, r14(3). The appellant chose to provide the address of his solicitors, and they agreed to supply the address for that purpose. It is necessary for the Authority to have a means of communicating with the appellant, and it is appropriate that the address provided should continue to be used until the appeal is determined, or until the appellant advises the Authority in writing of any change.

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'. The reasons are set out below.

[24] As the appellant was interviewed by a refugee status officer on 15 June 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

[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 the attempts made by the appellant's political rivals to locate and harm him, and the claim that they would continue to do so. Members of the rival BNP had attacked the appellant's family home.

[27] The appellant's second claim for refugee status is based upon his assertion that BNP supporters have resumed their search for him, and that they have resumed their attacks upon the appellant's family.

[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. 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 10 May 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