

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76435

AT AUCKLAND

Before: A R Mackey (Chairman)

Counsel for the Appellant: R Chambers

Appearing for the Department of Labour: No Appearance

Date of Hearing: 4 February 2010

Date of Decision: 17 February 2010

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 India, of the Sikh faith.

INTRODUCTION

[2] The appellant is in his late 30s. He is a married man with two children. His wife and children remain in the Punjab, India. He arrived in New Zealand on a genuine passport in June 2009. A confirmation claim for refugee status in New Zealand was lodged the RSB in July 2009. He was interviewed by the RSB in September 2009; his representative was not present. The RSB declined his application for recognition as a refugee in October 2009. The appellant then appealed to this Authority on 28 October 2009.

[3] The hearing before the Authority proceeded with the use of a Punjabi interpreter and in the presence of his counsel, who had provided written submissions in support of the appellant, accompanied by country information

largely sourced from the UNHCR RefWorld website.

[4] The appellant predicts being persecuted on return to India by the Indian police because of attitudes and activities the police have imputed to him and his father before him. The central issues to be determined are those in relation to the appellant's credibility. Then, on the facts as found, the well-foundedness of his claim, and whether his fear of being persecuted is for a Refugee Convention reason are assessed. Finally, an internal protection alternative in other parts of India away from his home district is considered.

THE APPELLANT'S CASE

[5] What follows is an outline of the evidence the appellant gave in support of his appeal and other evidence that he has provided. The issues are then identified and an assessment based on the facts as found follows.

[6] The appellant adopted a short handwritten statement prepared on his behalf (pp54 and 55 of the file). This was provided with his application for recognition dated July 2009.

[7] The appellant was born in the village of Z, located between the Punjabi towns of Amritsar and Jalandhar. His family have a farm of approximately 10 acres that has been held for generations. In addition to the farm, they have a home in village of Z. The farmland is situated approximately "a 10-minute cycle ride" from the home in the village.

[8] The appellant is the only child of his parents - his father, AA (deceased) and BB. The appellant is a farmer as was his father and grandfather before him.

[9] The appellant's father had been a supporter of Sikh principles and, at the local *gurudwara* in the village had, from time to time, spoken in support of the Khalistan movement. This was particularly in the period from the late 1980s until approximately 1992. His involvement reduced when the pro-independence Khalistan movement began to wither away after significant conflict with the federal Indian authorities and the Indian police. The appellant's father was arrested a few times in the 1980s and 1990s, during the height of the Khalistan problems, and suffered injuries as a result of that. After the Khalistan movement substantively subsided in the early to mid-1990s, his father continued to be detained by the

Indian police several times, particularly when he was involved in making speeches at the *gurudwara*. On each occasion, the police beat him and demanded bribes for his release. These were paid by his mother. When his father was detained, the police would say that he had been working for Khalistan.

[10] In winter 2002, the appellant's father was again arrested, detained and suffered maltreated by the police. He was released on the payment of a bribe. However, shortly after he returned to the family home, he died as a result of the maltreatment by the police.

[11] On the occasion of his father's last detention, people from the village, along with his mother, went to the police to obtain his father's release. The appellant, who was then aged 30, did not accompany the villagers or become involved in any way with the police, as this was solely done by his mother who did not want the appellant to be in any way involved in case he was detained himself. Not only had the appellant not been involved in trying to secure his father's release on this last occasion, but on every previous occasion. His mother paid bribes each time.

[12] The appellant did not have any knowledge of there being a death certificate for his father. There was a funeral service in the village which he attended, but he did not speak at his father's funeral.

[13] After his father died, the family farm and property passed into the name of the appellant and his mother jointly. Between them, they ran the small farm, with the assistance of temporary workers hired on a daily basis as required. This continued until the appellant left India. His mother continues to operate the farm until the present time.

[14] After his father's death, the appellant did not go to the *gurudwara* but stayed at home because he thought the police may do similar things to him as they had to his father.

[15] The appellant has lived all of his life with his parents. When he was married, his wife and their children joined him. He had approximately six years of schooling and contributed to the farm work from an early time in his life. He had a few friends in the village whom he saw from time to time when time permitted. There are no relatives living in the village. He pursued no political or other activities either in the village or away from it.

[16] After his father had died, for a period of time there were no visits by the

police to the family home. Eventually however, in 2005, at a date he could not recall exactly, the police did come and detain him for a short period of time. He was beaten and ultimately released when his mother paid a bribe to the police of Rs10,000. After this first detention in 2005, police started to come to his home quite a few times and on occasions would detain him for one or two days until a bribe was paid for his release. This continued until 2008. Many times when the police came, he was not detained but money was paid for the police to go away. The last detention was in February 2008 when he was held for two days and badly beaten and again released after a bribe had been paid. His mother and the local *Panchayat* made the arrangements.

Reasons for the visits and detentions

[17] From the first time that he was arrested in 2005, the police knew him by name and that he was the son of his father. He had no idea where the police had come from as they did not say. On the first occasion, he was in the fields working when five or six police arrived in their vehicle and detained him. They stated that they suspected him of being associated with some Kashmiri people who had come to live in the village. He did not know which Kashmiri people they were referring to but was told he had associated with Kashmiris and was going to be arrested. They then took the appellant away to the police station in Y, about 12 kilometres from his home. After taking him from the field and putting him in the police vehicle, they drove past the family home and, while they did not stop, they were able to tell his mother which police station they were taking him to. Local people saw the police arrest him and so his mother wanted to know why he was being taken. Apparently, she had seen the police come into the fields on the farm where the appellant was located, even though the family home was some distance away. The appellant explained that there were just plains between the home and the farm and thus he could be seen.

[18] At the police station he was only asked about the Kashmiri people. He was kept for two or three days on that occasion until his mother had him released. He was beaten with large sticks on his body and the soles of his feet. The appellant said nothing more than that he did not know any Kashmiri people.

[19] The appellant was detained on another occasion in approximately 2006 or 2007; he could not be definite on the date. On this occasion, the police warned him that they knew about his father and that he had been a sympathiser to the

Kashmiri and Khalistan movements. They accused the appellant on this occasion of getting weaponry from Kashmiri people who had been in the village. The only Kashmiris the appellant knew of had operated an itinerant clothes selling shop on a property near his for a short period of time, approximately one or two years earlier. The Kashmiris had actually left the district at the time of his detention. On this occasion, the police told the appellant that they had seized some weapons from a neighbour, CC, and accused the appellant of having obtained these weapons from the Kashmiris and passing them to CC. He was seized while walking along the road by a different group of men from those who arrested him in 2005. He was taken to an unknown destination blindfolded. His mother ultimately found out that he was detained at the Y police station and arranged his release after paying money to them.

[20] On every detention, he claimed the police “just wished to take money”. They would beat the appellant and then release him when money was paid to them. The appellant did not know if other people in the village had the same problems and had money extorted from them, as once the police started troubling him, no-one came near him. Once a person was seen as being at fault or had troubles with the police, the Indian police would capture and implicate another 10 people to get money from them. By pursuing this policy, they were able to get money from many people. The appellant considered that it was unfortunate that he just happened to be one of these people.

[21] His final detention by the police occurred in February 2008. On this occasion he was working on the farm when he was arrested. There had been a fight between young boys in the local village and some of them had sustained injuries. The appellant did not know where it happened but the police, for their own reasons, decided they would detain him. He was taken to a police station in X where he was detained and beaten until his mother and the village *Panchayat* gave Rs50,000 for his release. As a result of the injuries he suffered on this occasion, he needed to have some medical treatment for a wound on his right leg, which resulted from being hit with a baton.

[22] After his release on this occasion, the appellant decided to go into a form of hiding by spending virtually all of his time on the family farmland, sleeping in drainage ditches and small buildings on the farm and thus avoiding any contact with the police. He worked at night on the farm and employed people to work for him during the day.

[23] During this time, he heard, through a relative, that there was a person in Jalandhar, near the bus stop, who assisted people to leave India. The appellant went to meet this person in mid-2008 and ultimately agreed to pay him Rs800,000. Between August to October 2008, the appellant took steps to obtain a police certificate. This was issued from the X police station. It was obtained with the assistance of his relative's husband and the payment of a bribe of Rs25,000. He also obtained medical and chest x-ray certificates from a hospital in Jalandhar. These were put together with an application for a limited purpose visa which was then lodged with Immigration New Zealand. It appears this was in October 2008. The basis of the limited purpose visa was for him to accept a job offer from a company in Blenheim, for a position as a vineyard worker over a period of 12 months. Ultimately, the limited purpose visa was issued on the basis of the contract with the company on 18 June 2009 and the appellant then proceeded to travel to New Zealand soon thereafter.

Passport

[24] The appellant had obtained an Indian passport in 2006 because in 2005 and 2006 the police had been troubling him so it had been in his mind that he would not stay in India. Accordingly, he took steps to obtain a passport so that he could move out of India if he wished to.

Potentially prejudicial information

[25] At the outset, it should be noted that on 30 September 2009, the RSB wrote to Mr Chambers, setting out some potentially prejudicial information that they considered could impact on the assessment of the appellant's refugee claim. They requested a response to four areas of concern raised in the letter. Mr Chambers, the Authority is satisfied, passed this letter on to the appellant for comment at the last address he had been provided with. The appellant, however, either through a change of address or his inability to read English, did not respond to this letter and thus the areas of concern had not been addressed when the RSB made its decision. This situation continued up until the time of the hearing before the Authority. For this reason, the Authority asked the appellant to comment on the issues raised in the letter of 30 September 2009 and subsequent evidence. The four areas covered in the letter related to the death of his father (in this regard, information in the medical reports is relevant), the appellant's Kashmiri neighbours, the manner in which he lodged his application in New Zealand and the

issue of an internal protection alternative. The appellant's case in relation to these four areas now follows.

Medical information

[26] In the medical and x-ray report, which was submitted to INZ and completed by a doctor in Jalandhar in October 2008, it is stated that the appellant's father died "34 years ago" in an accident when aged 26. In the application for the visa, completed by another person on behalf of the appellant and dated 20 September 2008, it is stated that the appellant's father died in 1973 (which would appear to correlate to a death that took place 34 years before the medical/x-ray certificates were completed). In his evidence to the RSB, and again to the Authority, the appellant claimed that his father died in 2002 after serious maltreatment by the Indian police. When this discrepancy was put to him, the appellant stated that all the papers had been completed in India by the agent and the appellant had then merely signed them. He had told the agent the manner in which his father had died and his reply had been that if he stated that the police had killed his father, he would not be allowed to go anywhere. When it was also put to him that the same error had been made in two places, the appellant again stated that all the papers were made up by the agent and he had nothing to do with it.

[27] Also in relation to his father, it was put to the appellant that the Khalistan movement had virtually stopped in the 1990s and thus it seemed unusual that the police would continue to pursue his father and later the appellant would be detained about links with a movement no longer operating some 12 years later. The appellant replied many were taken into police custody years after the Khalistan movement had finished and they were still accused of being involved in that movement. Even after 20 years, he considered the police were going after people to get money from them and it did not matter how much time had elapsed, the police still simply wanted to extract money from the people. This is what had happened to his father and himself. He stated that the police want to capture and beat people and get money from them. They would put blame on the person detained and then get money from them and then destroy their lives. In the ultimate, people either had to move away from India or die as the police simply keep on beating people and getting money from them.

The Kashmiri neighbours – weapons

[28] When it was put to the appellant that it seemed unusual that the police would not search his home and yet were accusing him of obtaining weapons and distributing them, the appellant agreed that they had not searched his home but again repeated that the police just wanted to capture and beat people so they could extract money from them.

Internal protection alternative – relocation

[29] The appellant considered that he could not relocate anywhere else in India as the police would come after him no matter where he was outside of the Punjab. He considered that for every person in India who was jailed for criminal offences the police will extract money and ruin five or six other people by accusing them of an association with the real criminal. Apart from this risk, he considered there would be no other problems if he moved to other parts of India.

THE ISSUES

[30] 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."

[31] 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?

[32] In this case, on its particular facts, the issue of the appellant having a potential internal protection alternative as a possible “antidote” to the risk of being persecuted in his home district appears relevant and therefore is considered. The details of the test to be applied have been adopted from the Authority’s decision in *Refugee Appeal No 76044* (11 September 2008) and are set out briefly later in this decision.

ASSESSMENT OF THE APPELLANT'S CASE

CREDIBILITY

[33] It is first necessary to establish the appellant's credibility on all aspects of his claim as presented. The Authority partially accepts his credibility but with some exceptions noted below. The parts of his evidence accepted and the reasoning of the Authority for rejecting other parts of it follow.

[34] The appellant's claim that the police detained and maltreated him because of some association with a small number of Kashmiri people who had been living in the appellant's neighbourhood at some time in the period around 2005, the Authority finds to be exaggerated and stretched in an endeavour to add some imputed political opinion to the reasons why he was maltreated by the police. The appellant's evidence in relation to the "Kashmiris" was inconsistent, vague and ill-defined. Before the Authority, he stated that he knew no Kashmiris and had no association with anyone at the time when he was detained by the police in 2006 or 2007. However, in his evidence to the RSB, he had stated that in 2005, two Kashmiri people had been living nearby and that the police accused him of helping them. He explained that that they lived three houses away and that they had set up a business in a vacant shop. He did not, however, know their names. In the later incident where he claimed that the police had seized some weapons from a neighbour, CC, the appellant had claimed before the RSB that the had arrested him a day after CC. It was only when the Authority reminded him and asked him about whether Kashmiris had lived near him that he spoke of some Kashmiris coming to sell cloth in the district for a short period of time and that he did not know who they were. His evidence was extremely vague and somewhat inconsistent on this incident. In addition, it is highly significant that the appellant stated that the police had not searched his own property searching for weapons. If the police were genuinely interested in following up on illegal weapons, it is highly unlikely they would fail to search the appellant's home.

[35] The Authority therefore finds, when the appellant's evidence is considered in the round on this issue, that his involvement and the accusations by the police of an involvement with the Kashmiris had either been fabricated or was of a very minor, inconsequential nature.

Khalistan movement linkages

[36] The appellant's evidence before the Authority was only that his father had some association with the Khalistan movement in the late 1980s and early 1990s and that, beyond this, the police, when they had detained him, had stated that like his father, he was a support of the Khalistan movement. Again, the Authority considers that the appellant has exaggerated any possible linkage he personally would have to the Khalistan movement. That movement was virtually defunct from the mid-1990s, as is confirmed in a report from the Immigration and Refugee Board of Canada, extracted from the UNHCR RefWorld website: "India – the security situation in Punjab, including patterns of violence, the groups involved, and the government response (2002 – 2005)". That report states that there is no indication of the movement continuing, given that virtually all of the former Khalistan movements were not operating. In fact, the report states that the Punjab state was an area "free from terrorist violence in 2002". On the appellant's own evidence, the Authority is satisfied any linkage between his detentions by the police over the period 2005 – 2008 for allegedly being a supporter of the Khalistan movement are fanciful and have been grossly exaggerated in an attempt to add some imputed political dimension to his claim. The Authority is satisfied that any such imputation is highly remote and speculative.

Well-founded fear

[37] The Authority is left, therefore, accepting that the appellant's father may have been detained and maltreated by the police over a period of many years between the mid-1980s and the date of his death in 2002. The original reasons for that detention may have been related to his father being a low level supporter of one or other of the Khalistan movements. However, that linkage ebbed away with the collapse of the various Khalistan movements and became, in reality, both in the eyes of the Indian police and, no doubt, his father, for reasons of pure extortion and as a way of the police obtaining money from persons of apparent, even if moderate, wealth or substance in the Punjab.

[38] The Authority also finds that the appellant himself may have been detained on a few occasions and maltreated. Because his evidence was vague and lacked the detail that would be expected for such traumatic events, the Authority does not consider these detentions were substantive or that the level of maltreatment was sustained or systemic. Objectively assessed, however, on the facts found, the reasons for the detention establish at most any linkage at a very minimal level, if at all, to any imputed support by him to the Khalistan or Kashmiri militants.

[39] In this situation, after assessing the objective country information, which does show that the police in the Punjab continue to torture with impunity and that there is a high level of corruption, the Authority accepts that if the appellant returned to his home district, there is a real chance that he would be subjected to further extortion from time to time by the Indian police in the Punjab. The Authority accepts that the appellant may be maltreated to the level of being persecuted during such short detentions. However, the Authority is fully satisfied that, on the objective evidence, the reasons for any detention and maltreatment are not related, beyond the most remote linkage, to any of the five Convention reasons stated above. The detentions and associated maltreatment are purely for reasons of corruption and extortion on the part of the police in the Punjab in the area surrounding the appellant's home district. The appellant, in his own evidence, stated that once the police found that a person was a likely source for bribery and extortion, they would continue to make money from them. The Authority is satisfied that this is an almost purely economic situation resulting, rather sadly, from an endemically corrupt police force.

Convention reason

[40] While the Authority has found that the appellant may have a well-founded fear of being maltreated on return to his home district which would satisfy the first issue set out above, the Authority is equally satisfied that the appellant's prediction of being persecuted is not for one or any of the five Convention reasons set out above, but purely of reasons of criminal extortion on the part of the local police.

[41] For this reason, therefore, the appellant cannot be recognised as a refugee as any nexus between the prediction of being persecuted and the Refugee Convention reasons set out in Article 1A(2) of the Refugee Convention is highly remote and speculative and the required nexus is not established on the evidence in this case.

Internal protection alternative

[42] Because of the findings set out above, it is unnecessary for the Authority to reach firm conclusions on the possibility of an internal protection alternative for this appellant in other parts of India, away from his home district. However, after considering the requirements for the assessment of internal protection, as set out in *Refugee Appeal No 76044* (11 September 2008), the Authority is satisfied that

all of the four requirements set out in [178] can be met.

[43] Firstly, if the appellant were to move to another state in India or one of the major cities outside of the Punjab, there are many locations accessible to him which would be practical, safe and legal. In a proposed site outside the Punjab, there is no risk of him being persecuted for a Convention reason, again for the reasons set out above. Thirdly, there are no new risks of being persecuted. The appellant, in fact, would have a much lower profile when he was not located in a position of some apparent, although not excessive, wealth when he was away from his farm and home in the Punjab. It would be highly unlikely that he would be targeted without any apparent trappings of wealth, as modest as they may have been in the Punjab. As is noted in the objective information before the Authority, several million Sikhs live outside the Punjab and are able to enjoy equal social and economic rights. There is no apparent reason why the appellant should not enjoy the same situation.

CONCLUSION

[44] For the reasons given, the Authority considers that the appellant does not have a well-founded fear of being persecuted in his home district of India for one or more of the five Refugee Convention grounds. The second issue is therefore answered in the negative. In the alternative, an internal protection alternative is available to him in sites outside of his home district of the Punjab.

[45] Accordingly, the appellant is not recognised as a refugee within the meaning of Article 1A(2) of the Refugee Convention. The appeal is dismissed.

"A R Mackey"
A R Mackey
Chairman