

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76423**

**AT AUCKLAND**

<b><u>Before:</u></b>	B L Burson (Member)
<b><u>Counsel for the Appellant:</u></b>	R Chambers & H Craven-McLeay
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	25 January 2010
<b><u>Date of Decision:</u></b>	3 February 2010

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**DECISION**

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[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.

**INTRODUCTION**

[2] The appellant claims to have a well-founded fear of being persecuted in India by reason of the police seeking to extort money from him by raising false allegations against him that he has been colluding with Kashmiri-based Muslim terrorists in his native Punjab. The principal issue to be determined in this appeal is the credibility of the appellant's claims in this regard.

[3] The appellant arrived in New Zealand on 28 June 2009, having been issued with a work visa. His claim for refugee status was lodged on 9 July 2009. He was interviewed in respect of his claim by the RSB on 8 September 2009. By decision dated 9 October 2009 the RSB declined the appellant's claim. The appellant duly appealed.

[4] What follows is a summary of the evidence presented in support of the

appellant's appeal. An assessment follows thereafter.

## **THE APPELLANT'S CASE**

### **The appellant's evidence**

[5] The appellant was born in the mid-1960s in a rural village in Punjab state in India. He was the second of three sons born to his parents. His village comprised 2,000 people and his family had lived in the same village for generations. Family land owned by the appellant's grandfather was divided between the appellant's father and the appellant's uncle, upon the grandfather's death. His uncle continued to live in the village. The appellant's father grew wheat and other crops on the land, which he sold at a market in a nearby town.

[6] The appellant attended school in his village until the age of 14 or 15. At this age he was required to leave school to assist his father working on the family land to generate extra income for the family. His brothers had been required to do the same thing; his family were too poor to allow them to continue and complete their schooling.

[7] The appellant worked on the family land until 1984 at which time he began travelling to Middle Eastern countries working as a driver. The remittances he sent back to his family were used to pay for family expenses. The appellant travelled between India and various Middle Eastern countries for the next 12 years. He returned to India on a full-time basis in 1996 and resumed working on the family land as he had done previously.

[8] Approximately eight or nine years ago the appellant's father indicated to his three sons that on his (the father's) death, a certain piece of land would be divided into three parts and given to each of the sons. The parcel of land which the appellant was due to inherit was situated on a road that went around the village. The village did not have any shops and the appellant thought it might be a good idea to construct some basic structures out of brick and try and rent them out as shops. With his father's permission the appellant therefore constructed six basic block structures. The structures the appellant erected were serviced with electricity but did not have running water.

[9] No one approached him about renting the shops until approximately 2005, when a Muslim man named AA, originating from Kashmir, approached him about renting two of the shops. Although his first language was Hindi, AA spoke sufficient, if broken, Punjabi to enable the appellant to understand that AA had moved to the village with his wife and children and wanted to open a garage in one of the shops and live in another. The appellant agreed and received a total of 600 *rupees* per month in rent from AA for both premises.

[10] The appellant did not think anything suspicious of this as many people from other states came to live in the Punjab. The appellant did not interact much with AA. He saw him only when he went to collect the rent. There were no problems with the tenancy. AA paid his rent although occasionally he was a day or two late with the rent payment.

[11] Approximately eight or nine months after AA had taken up the tenancy of the shops the appellant overheard a conversation between two villagers during which it was mentioned that the police had been to see AA at the shops. The appellant decided to go and see AA to find out what this was about. AA assured him that the appellant had nothing to worry about and that he had done nothing wrong.

[12] In mid-2006, the police arrested the appellant's father. He was taken to a police station in a nearby village. The police accused the appellant's father of being involved in the Khalistani (pro-Sikh independence) cause and providing support to AA, who the police claimed was part of a Muslim terrorist group in Kashmir. The appellant's father denied these accusations. He was held overnight and released the next morning after the village *panchayat* (leader) paid a large amount of money to the police on behalf of the appellant's family.

[13] The appellant's father was arrested for a second time in December 2006 and again taken to the police station. During this detention, the same accusations were raised and the appellant's father was badly beaten by the police about the head and body with sticks. Again, the appellant's father's release was secured when the *panchayat* went to the police station and paid a large amount of money to the police. After his release, the appellant's father was taken to the village doctor but the doctor told the family that his father had serious injuries and he could not take the case. They were advised to take him to the hospital but the appellant's father died before they could get him there.

[14] On both occasions the appellant's father was arrested, the appellant had been at home. However, when he saw the police coming towards the house he ran from the back door to the neighbour's house. The appellant, as a young Punjabi man, was wary of the police and thought his father, as an elderly man, would be able to handle the situation.

[15] In 2007, AA was arrested by the police. Although interrogated about what he was doing, he was not charged with any offence.

[16] In late 2007, the appellant was arrested. He was taken to a nearby police station and questioned about AA. They accused the appellant of being associated with a Khalistani militant group. They said AA was part of a Kashmiri militant group and that he was providing support to the Khalistani militant group the appellant supported and vice versa. The appellant denied this. During his detention the appellant was hit with a stick over his joints, including his knees, elbows and shoulders. The local village *panchayat* came to the police station the following morning. The appellant's brother had arranged for the *panchayat* to attend and again money was paid to the police to secure the appellant's release. He was not charged with any offence.

[17] A few months later AA was arrested again by the authorities and taken away. He did not return to the shop and the appellant has not seen him again.

[18] In mid-2008, the appellant was arrested for the second time. Again, he was accused of being involved with a Khalistani militant group in the Punjab. The appellant was held for two nights in detention before the village *panchayat* could secure his release through paying money to the police. During this time the appellant was beaten by the police. He was suspended upside down by a rope and hit with sticks. The police told him they would kill him.

[19] After his release the appellant became very frightened for his safety. He decided to go into hiding and remained in hiding for the next twelve months. He stayed with friends and relatives at various places within Punjab state. During this time the appellant went to Jalandhar. There he saw an advertisement for a travel agent indicating they were sending people overseas. The appellant visited the agent who told him that he could send him to New Zealand. The appellant gave the travel agent his passport and he completed all the necessary paperwork there. The appellant paid money to have a false police clearance certificate issued to support his application for a work permit.

[20] On 18 June 2009, the appellant was issued with a limited purpose visa authorising him to work as a vineyard worker for an employer in Blenheim for a period of seven months. After receiving the visa the appellant departed India in late June 2009 and arrived in Christchurch the following day.

[21] On the advice of the agent in Jalandhar, the appellant took a bus from Christchurch to Blenheim. Upon arrival at the bus station, the appellant was met by a man who took him to a house in Blenheim. There were four other Punjabi men in the house. He understood they were also to be employed by the same employer. After three or four days the man stopped coming to the house and the appellant was not given any work. While walking around in Blenheim the appellant met another Indian man and told him his story. This man advised him to apply for refugee status.

[22] Since the appellant has been in New Zealand he has kept in regular contact with his wife, telephoning her every two weeks or so. He understands that the Punjabi police have been to the family home about two or three times a month asking for his whereabouts. However, his wife has told the police that she does not know his whereabouts.

[23] The appellant is concerned that he will be killed if he returns to India. The police are using the fact that he had a Kashmiri tenant to extort money from him and they have made a threat to kill him. He does not believe anywhere is safe for him in India; the police will come and find him no matter where he is.

### **Documents and submissions**

[24] On 19 January 2010, the Authority received from Mr Chambers a written memorandum of submissions dated 18 January 2010. Attached to these submissions was a bundle of country information relating to the treatment of Sikhs in the Punjab and their ability to live elsewhere in India.

[25] At the conclusion of the hearing Mr Chambers made brief oral submissions to the Authority. He relied on his written memorandum of 18 January 2010 and submits that the Authority should take a 'cautious approach' to the assessment of the appellant's credibility. In particular, the Authority should not draw any adverse inference from the fact that over 20 other Punjabis have lodged claims for refugee status at around the same time as the appellant. Mr Chambers further submits

that there is no viable protection alternative available to the appellant in India because it can be difficult for Sikhs to assimilate in regions outside the Punjab.

## **THE ISSUES**

[26] 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."

[27] 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**

### **Credibility**

[28] The Authority does not find that the appellant has given a truthful account of his circumstances in India. The Authority has been driven to this conclusion by the discrepancies and mobility displayed in the various oral and written accounts the appellant has given in the course of his application for refugee status and before the Authority on appeal.

[29] Although the appellant, as a man of limited education and from a rural background in India, cannot reasonably be expected to recall his life with photographic clarity, (for example, he could not remember dates and times very well), the problems with the appellant's evidence relate to the underlying events themselves and not their timing. The discrepancies and mobility set out below relate to a range of matters going to the core of the appellant's claim to have rented a shop to a Muslim man and been harassed by the police as a result. The

Authority is satisfied that this cannot be explained satisfactorily by reference to the appellant's poor socioeconomic background and limited educational background.

*AA's arrests*

[30] In the statement filed by the appellant in support of his refugee application the appellant first stated that AA had been arrested on two occasions – first in April 2007 and again in April 2008. After his second detention he disappeared and the appellant did not see him again. However, when questioned by the RSB, the appellant changed his evidence to say that AA had been detained in April 2007 and that he had not seen him after this date. When the discrepancy was put to him by the RSB in an interview report, the appellant reverted in his reply to his first account but gave no explanation for his categorical statement at his interview that he had not seen AA after the arrest in April 2007. When giving evidence before the Authority the appellant again reverted to the version given in his statement although he could not remember when in 2007 AA had been first arrested and he indicated that his second arrest was some 10 or 11 months thereafter.

*When the authorities first began harassing the appellant about AA*

[31] In his written statement the appellant asserted that following AA's first detention in April 2007, the police began harassing him and accusing him of supporting the Khalistani cause. He states that he was first arrested in December 2007 and that his tenant, AA, disappeared in April 2008. When interviewed by the RSB, the appellant repeated this version of events. However, when first questioned by the Authority, the appellant was clear in his evidence that the only person who was questioned by the police in relation to AA prior to AA's disappearance was his father. It was only after AA's disappearance in 2008 that the police began harassing him. However, later in his evidence the appellant changed his account to reflect that which he had given previously in his statement to the RSB.

*Whether he asked AA to vacate the premises*

[32] The appellant told the Authority that at no time did he or his father discuss asking AA to vacate the premises in response to the pressure being placed on them by the police. When the Authority informed the appellant of its surprise that this issue had not even been raised in discussions between the appellant and his father in response to the police harassment, the appellant replied that there was

no point as landlords in India were simply unable to have tenants leave premises. Not only is this a fanciful explanation but it also contradicts the appellant's written statement and statement to the RSB in interview that he tried to speak to AA to have him leave the premises but he refused to do so. Again, the appellant had no compelling explanation for this discrepancy

*Whether AA was his only tenant*

[33] The appellant told the Authority that after he built the shops, approximately eight or nine years ago, the only person who rented the premises was AA. The remaining shops were vacant and had never been occupied. However, in the statement he filed in support of his refugee application, the appellant stated that he has six different tenants. By way of explanation, the appellant told the Authority that the person who assisted him to make this statement in English must have made a mistake. However, the appellant told the refugee status officer that this statement had been read back to him in Punjabi prior to him signing it. He had no proper explanation for this variation.

[34] More generally, the appellant's explanation for the discrepancies and mobility in his evidence was that he was being asked many questions by the Authority that he had answered before and he had simply got confused. This explanation is rejected. The issues highlighted above are both straightforward and fundamental. They go to the heart of the appellant's case. They do not relate to when things occurred but rather what actually took place. The appellant can be reasonably expected to recall such basic features with greater overall consistency throughout his refugee application if the underlying claim is true.

**Conclusion on credibility**

[35] On their own, none of the above discrepancies and mobility would have caused the Authority to reject the appellant's account given his personal characteristics. However, when viewed and weighed cumulatively, and after giving all due weight to the appellant's limited educational background and relatively poor socioeconomic condition, the Authority is satisfied that their combined effect is to evidence a claim that is, at its core, not true. The Authority does not accept that the appellant faces any problems as he has claimed.

[36] The Authority's finding in this regard appears reinforced by the fact that a number of claims have been filed by Sikhs from the Punjab at around the same



time as the appellant's claim was lodged. Each of the appellants was issued with a limited work permit to work for the same employer arranged by the same agent in India. All lodged their refugee applications at around the same time as the appellant lodged his and were assisted by the same individual in Blenheim. There being no country information of which the Authority is aware to evidence the contemporary mass displacement of Sikhs as a result of ethnic or other conflict, this shared background suggests a degree of artificiality. While the mere fact that a number of claims have been presented at the same time as the appellant's does not of itself mean that the appellant's claim is untrue, the Authority's decision to reject the appellant's account is not based on this factor, the coincidence inherent in multiple contemporaneous claims by persons entering New Zealand to purportedly work for the same employer serves to highlight that these claims must be approached with some degree of caution.

[37] For these reasons, the Authority finds the appellant does not have a well-founded fear of being persecuted in India. The principal issue is answered in the negative. The need to answer the second does not, therefore, arise.

## **CONCLUSION**

[38] For the reasons mentioned above, the Authority finds 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 L Burson"

B L Burson  
Member