

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76459

AT AUCKLAND

<u>Before:</u>	M A Roche (Member)
<u>Representative for the Appellant:</u>	The appellant represented himself
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	17 March 2010
<u>Date of Decision:</u>	18 March 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 from the state of Punjab.

INTRODUCTION

[2] The appellant is a single man aged in his early 20s. He arrived in New Zealand on 22 June 2009, having been granted a limited purpose visa on 18 June 2009 to work as a vineyard worker for a corporation in the upper South Island. The job offer from the corporation was not genuine.

[3] On 9 July 2009, the appellant claimed refugee status. He was interviewed by the RSB on 21 September 2009. His claim for refugee status was declined in a decision dated 26 November 2009, against which he appeals to this Authority.

[4] The appellant claimed that he had been detained and mistreated by the

police in the Punjab because of his relationship with a Muslim girl which had caused the police to suspect he had links with Muslim terrorists.

[5] The appellant appeared unrepresented at the hearing and confirmed he wished to represent himself. He had been delivered to the hearing by AA, who had assisted him with his refugee application. He advised the Authority that his refugee account had been untrue and that he had no fear of returning to India.

THE APPELLANT'S CASE

[6] After taking an affirmation, the appellant began to give evidence. This evidence concerned his sister and his brother who has recently relocated to England from Spain.

[7] The appellant then informed the Authority that his refugee story was untrue and that it had been made up for him by a man named BB who is a New Zealand citizen. The appellant stated that he had paid the sum of 15 *lakh* to BB and his brother in the village of Z in the Punjab before travelling to New Zealand. In return, he was promised that he would be able to travel to New Zealand and work for seven months before returning to India and then returning again to New Zealand for a further seven months of work.

[8] On 22 June 2009, the appellant flew to Christchurch with a group of other Punjabi men. After arriving in New Zealand, he learned that he did not have work arranged for him and that his visa was therefore not valid. After finding this out, he was advised by BB that if he applied for refugee status, he would be able to stay in New Zealand. Accordingly, he made a refugee status application with the assistance of an agent named AA. The details in the application were untrue.

[9] The appellant would like to return to India but first wishes to recover the money he paid to BB. He obtained this money by taking a loan from a bank. This loan is presently accruing interest and the appellant is worried about this debt. He is also worried that he will be questioned at length by the Indian immigration authorities upon his return. Members of his group have heard from one of their number who has returned to India from New Zealand. This man informed them that he was extensively questioned upon his arrival in India. Apart from this, the appellant has no fear of returning to India. He would like to make a complaint about BB to the police or to the Immigration Service fraud section but fears that if

he does so, he will be immediately removed and lose the opportunity to recover the money that he paid to BB.

THE ISSUES

[10] 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."

[11] 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

[12] An assessment of an appellant's credibility is usually made prior to determining the framed issues.

[13] The appellant was a credible witness. After giving the affirmation, he stated that he had no intention of lying or giving false evidence to the Authority about a fictitious refugee claim and instead gave details of his predicament. He was tearful at times when explaining this predicament. The Authority accepts that he was an honest witness and that he gave a truthful account of his predicament.

[14] The appellant confirmed that he had no fear of returning to India for any reason, but that he had some concerns about being vigorously questioned on arrival at the border because of his unwitting participation in a large-scale immigration fraud scheme.

[15] The appellant clearly has no well-founded fear of being persecuted if returned to India. Although the appellant may be questioned on return, there is nothing to suggest that he would be mistreated during such questioning. He made no allegation that his former travelling companion had been physically mistreated during the questioning to which he was subjected.

[16] As the first issue framed for consideration is answered in the negative, it is unnecessary to consider the second framed issue of Convention ground.

CONCLUSION

[17] 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.

"M A Roche"
M A Roche
Member