

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76437

AT AUCKLAND

Before: A N Molloy (Member)

Counsel for the Appellant: Mr Chambers

Appearing for the Department of Labour: No Appearance

Date of Hearing: 5 February 2010

Date of Decision: 22 April 2010

DECISION

[1] The appellant is a national of India. He has applied for refugee status, claiming that he will be seriously harmed if returned to India because the police suspect that he is connected with a group of Sikh terrorists.

[2] The appeal is from the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the appellant's application for refugee status. It turns upon the appellant's credibility, which is assessed following the summary of his claim which appears below.

THE APPELLANT'S CASE

[3] The appellant is a married man in his early thirties. He was raised in X, a small village in the district of Kapurthala, within the state of Punjab. His

wife, children and parents still reside in X.

[4] The appellant became the priest of his local Hindu temple in around 1998 and was well-known in his locale. From about May 2007 the appellant noticed that some strangers had begun to attend the temple from time to time. The appellant became suspicious because the men in question roamed around the temple without having any apparent reason to be there.

[5] The appellant did not confront the men, but informed the committee responsible for administering the temple about his concerns. He was simply told not to worry.

[6] Against that backdrop it is relevant to note that in about July 2007 a dispute erupted between the local Sikh and Hindu communities over a piece of land to which each laid claim. It is also relevant to note that the appellant's difficulties began towards the end of that year.

First arrest: October 2007

[7] On 15 October 2007, the police conducted a search of the temple premises. After finding weapons and ammunition hidden in a storage area adjacent to the main building, the police arrested the appellant. He was taken to a police station, interrogated about where the weapons came from and was physically mistreated.

[8] The appellant was released that evening after the *Panchayat* came to vouch for him, and after his father bribed the police. Nobody else was detained or questioned about the weapons.

Second arrest: January 2008

[9] The police returned to search the temple again. Again they found weapons concealed in the adjacent storage building. Again the appellant was arrested. This time he was detained for two days. The appellant was again beaten severely. He was released for the second time when his father approached the police in concert with the *Panchayat* and paid a further sum of Rs50,000. After his release, the appellant's injuries were treated at the local hospital.

Agent

[10] In September 2008, the appellant saw an advertisement on a noticeboard which drew his attention to Abdul Kalam, the agent who eventually helped him to leave India. The appellant paid Abdul Kalam Rs500,000 to organise an entry visa for New Zealand and to secure a permit which would enable the appellant to work lawfully in New Zealand.

Third arrest: January 2009

[11] The appellant was detained by the police for a third time in January 2009 after the police found what they believed to be a bomb at the temple. He was released later the same day after being severely mistreated.

Fourth arrest: March 2009

[12] In February 2009 the appellant noticed that the temple was again being visited by unfamiliar people. He reported this to the committee, but his concerns were again ignored.

[13] The appellant was arrested by the police for the fourth time one morning in March 2009. He was again accused of being a party to the terrorists' agenda and questioned about where he had obtained the weapons. The *Panchayat* visited the station late that day and the appellant was released for a fourth time after another bribe was paid. The police threatened to kill the appellant if they caught him again.

Departure from India and arrival in New Zealand

[14] After his release, the appellant returned to work at the temple until he was able to depart Delhi by air in late June 2009. He arrived in New Zealand about two days later. The appellant was one of approximately two dozen Indian nationals who have applied for refugee status after arriving in New Zealand at about that time. He did not know any of them prior to coming to New Zealand.

[15] The offer of employment supposedly arranged for the appellant prior to his arrival in New Zealand did not materialise and the appellant was left without any means of supporting himself.

[16] The appellant lodged his application for refugee status in July 2009 after meeting a man called Kulwant Singh, a New Zealand citizen, who

informed him about the process. After interviewing the appellant in September 2009, an officer of the RSB issued a decision declining his application on 23 October 2009. The appellant appeals against that decision.

[17] The police continue to harass the appellant's family, and one of his brothers went missing a few days prior to the appellant's appeal hearing. The appellant believes that he may have been abducted by the police. He believes that if he were to return to India he would be singled out by the police and killed.

Material received

[18] Prior to the appeal hearing the Authority received a memorandum of submissions under cover from a letter from counsel dated 21 January 2010.

THE ISSUES

[19] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

"... owing to a 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."

[20] 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 CREDIBILITY

[21] In order to address the issues as framed, it is necessary to determine whether the appellant is a credible witness. For the reasons set out below, the Authority finds that he is not.

[22] The appellant's account related to a relatively simple factual background. However, the appellant's testimony was inconsistent in respect of fundamental aspects of his claim. It was also vague and mobile to the point that, as a whole, his account is implausible. The Authority is not satisfied that the appellant has given an honest account of his reasons for being in New Zealand and his core account is rejected in its entirety.

Inconsistent and contradictory evidence

[23] The appellant informed the RSB during his interview that he was detained by the police and mistreated on three occasions: in October 2007, in January 2009 and in March 2009. His testimony on that occasion was consistent with the content of a statement prepared and lodged on his behalf in support of his application for refugee status. In contrast, the appellant told the Authority that he was detained by the police on four occasions. He spoke of an additional arrest in January 2008, to which he had not previously referred.

[24] In explanation, the appellant claimed that he "got confused" and that the fourth arrest must have slipped his mind when he had previously discussed his claim.

[25] However, the appellant also made inconsistent claims about the nature of the mistreatment he had experienced while under police interrogation. When describing his January 2009 detention to the RSB, the appellant expressly claimed that the police administered electric shocks to his body.

[26] The appellant did not expressly refer to electric shocks during his appeal hearing, even though the Authority offered him an extensive opportunity to do so. In fact, the Authority expressly asked the appellant whether he had ever been subjected to mistreatment of that nature. He said that he had not.

[27] When this discrepancy was put to the appellant, he said that it is possible that when someone was mistreated by the police they might become unconscious and the police might administer electric shocks. That disingenuous answer fails to explain why he has given two fundamentally contradictory answers.

[28] These discrepancies relate to matters at the core of the appellant's claim and his inability to recount them in consistent fashion undermines his credibility.

Lack of supporting evidence

[29] The appellant described the mistreatment he experienced on each of the four occasions he was detained as excessive and violent. Despite this, he required only minimal medical attention after each incident and has provided no objective medical evidence which supports his claim to have been tortured.

Vague and mobile testimony

[30] The inactivity and inertia of the temple committee in the face of the appellant's protracted difficulties is so remarkable as to be implausible. The appellant was initially unable to explain why the temple committee remained so apparently unconcerned about either the fact that illicit firearms were being stored in the temple buildings, or the fact that the appellant was continually being subjected to detention and severe mistreatment by the police because of this. Even if they were truly so unconcerned about the safety of their own priest, it is extraordinary that they would have been uninterested in the storage of illicit firearms in the temple premises.

[31] When asked why the temple committee was apparently so uninterested in his predicament, the appellant eventually said that it was possible that one of them could be involved with the terrorists who were planting the ammunitions. However, while he claimed that he had held such a suspicion for some time, the appellant was unable to identify which, if any, of the members might have been implicated, or why they might have been involved. The Authority also notes that the appellant had not previously made such a suggestion and finds that his answer was simply a spontaneous and self-serving attempt to address a perceived weakness in his account.

[32] The appellant was also unable to explain why he was never prepared to take even rudimentary steps to try to prevent the further storage of arms in the temple outbuilding. He was asked why no lock was placed on the door and replied simply that this was a matter for the temple committee. He was then asked whether he had asked the temple committee to take such a step and replied that he had not. When asked why not, he could not explain.

[33] Given that the appellant was repeatedly detained and mistreated by the police for the same reasons, the Authority is not persuaded by his explanation for his failure to take any action.

[34] Despite supposedly being detained and mistreated by the police over a period of more than two years, and despite being the subject of continual accusations that he was connected to terrorists, the appellant was unable to articulate who those terrorists might be. He confirmed that he was unaware of any groups which were active in his area, or whom the police might have suspected of being active in his area.

[35] When describing the strangers who appeared at the temple from time to time, the appellant was asked whether there was anything distinctive about their appearances. He said that they “seemed to be Sikh”. When asked to explain what he meant, the appellant said that they did not wear a turban or have long hair like most Sikhs. Given that he had ruled out two of the most obvious distinguishing features by which a man might be identified as Sikh, the appellant was again asked to explain what he meant. He was unable to do so. The Authority formed the clear impression that the appellant was not spontaneously recalling actual events. On the contrary, he appeared to be elaborating upon a false account.

[36] The appellant prevaricated with respect to his own actions following the ongoing detentions and beatings by the police. He claimed on the one hand that he went into hiding yet, when pushed, gave only vague and non-specific answers as to where he went into hiding.

[37] Finally, the appellant could not identify anyone else in his village or in surrounding villages who had been targeted in the same way he had. He said that such things could happen at any time, and referred to other young males who had been killed in a village nearby. However, when asked, he confirmed that that the incident he had in mind had occurred in a different village, in 2006, and was unconnected to his current predicament.

Summary of findings

[38] In the context of his evidence as a whole, the Authority is satisfied that the appellant’s core account is untrue. The appellant’s claim to have been detained by the police in connection with terrorists or criminal elements is rejected. The Authority also rejects the appellant’s claims that he left India

because he was being pursued by the police and that he would be apprehended and mistreated by the Indian police if he were to return to India.

[39] The only relevant aspects of the appellant's claim that the Authority accepts can be stated briefly. The Authority finds that he is a national of India from the Punjab and that he has a genuine Indian passport which he used to leave India without difficulty. The Authority finds that there is no credible evidence that the appellant is at risk of serious harm in India. The appellant does not have a well-founded fear of being persecuted on return to India for any reason.

CONCLUSION

[40] For the reasons mentioned, 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.

"A N Molloy"
A N Molloy
Member