

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76476

AT AUCKLAND

Before: B A Dingle (Member)

Counsel for the Appellant: R Chambers

Appearing for the Department of Labour: No Appearance

Date of Hearing: 25 March 2010

Date of Decision: 14 April 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.

INTRODUCTION

[2] The appellant is a single man in his mid-20s who has lived all his life in Z village in the state of Punjab. He claims to have been targeted for arrest, detention and physical mistreatment by the Indian police because he has been mistakenly linked with a terrorist group (supporting the Khalistan movement) led by AA. He asserts that the Indian police will pursue him wherever he lives in India and continue to arbitrarily detain and mistreat him.

[3] He also says that when he returns to India, the immigration authorities will note that one of his New Zealand limited purpose permits in his Indian passport refers to his refugee claim here and, on that basis, he will be handed over to the police who will mistreat him because of his existing adverse profile.

[4] The central issue to be determined in this case is whether or not the appellant's account is credible.

THE APPELLANT'S CASE

[5] What follows is a summary of the evidence given in support of the appellant's refugee appeal. An assessment of this evidence will follow later in the decision.

[6] The appellant was born and raised in Z village in the state of Punjab. He is one of three children. His parents continue to live in the family home in the village. The family support themselves by farming.

[7] For the purposes of this appeal, the appellant's early life was unremarkable.

[8] In 2007, the appellant completed his secondary schooling. In November 2007 he was issued with a genuine Indian passport. He had no particular reason for obtaining a passport, except that he knew he needed one to travel and he was encouraged by friends to obtain one.

First arrest

[9] In early January 2008, the appellant was arrested for the first time. Police came to his house and accused him of selling drugs and being associated with AA and his terrorist group. The police based their allegations on the fact that the appellant had attended school with AA and that they were known to have been friends. The appellant was taken to the XYZ police station and held in custody for approximately 24 hours.

[10] At the time of his arrest, the appellant had already heard that AA had been arrested. For approximately a month before his own arrest, the appellant had heard people talking about AA and the fact that the police were pursuing him and then had arrested him. The appellant estimates that AA was arrested two weeks before he (the appellant) was arrested. AA is well known in the appellant's village and the surrounding districts and everybody knows that he lead a terrorist group.

[11] At the time of his first arrest in January 2008, the appellant had not seen AA for two months.

[12] The appellant was released from custody after the village *Panchayat*

intervened on his behalf and paid Rs20,000 to the police. The appellant was not formally charged with any offence and his release was unconditional. Following his release, the appellant did not make any enquiries about AA because he saw no benefit in doing so. However he was aware that when he (the appellant) was released AA remained in custody at the central jail in Kapurthala.

[13] The appellant does not know if any other friends of AA's were arrested in January 2008.

Second arrest

[14] In April 2008 the appellant was arrested because the police searched the family farm and found two double-barrelled guns hidden under a pile of rice straw. The appellant was detained for three days and three nights and was slapped, beaten with sticks and strapped while in custody. Again, he was released through the intervention of the *Panchayat* who paid the police Rs50,000. The police had written something in the way of charges on a piece of paper but when the Rs50,000 was paid they tore the paper up. The appellant was released without conditions.

[15] After his release, the police frequently visited the family home and took money from the family. The police would also warn the appellant to behave properly and not become involved with terrorists or drugs.

Third arrest

[16] On 20 January 2009, the appellant was arrested for the third time. A few days earlier, AA was being transferred from the Kapurthala central jail to court. The police escort was attacked by AA's supporters and AA escaped custody. The appellant was arrested a week later and charged with being involved in the escape of AA. He was detained for seven days and physically mistreated by police during the detention.

[17] After release, the appellant went into hiding, staying with relatives in the Punjab and in Rajasthan. He stayed in Rajasthan for one month. The police continued to visit the family home and ask after the appellant.

[18] By late 2008, the appellant had already begun making arrangements through BB to travel to New Zealand because he wanted to escape the police harassment and mistreatment. He paid someone to obtain a police clearance

certificate for him. All the other travel and visa arrangements were made by BB.

[19] The appellant departed India through the normal immigration processes at Delhi International Airport. He did not have any difficulty doing so.

[20] In June 2009, when he arrived in New Zealand, he was informed that the work arranged was no longer available but was transported to Blenheim where he hoped to find other work. By chance, he met Kulwant Singh, a New Zealand citizen who could speak Punjabi. The appellant told Kulwant Singh about his situation and was advised to apply for refugee status. Since then, the appellant has remained in New Zealand on a limited purpose permit.

[21] On 9 July 2009, the appellant lodged his claim for refugee status. He was interviewed by the RSB on 15 September 2009 and a decision declining his claim was issued on 21 December 2009. It is from that decision he now appeals.

[22] The appellant claims that if he returns to India, he will immediately be identified by Indian police as someone who has an adverse profile and will be seriously mistreated and possibly killed. He says that his predicament will be exacerbated because his passport contains a limited purpose permit issued by INZ which identifies him as an asylum applicant in New Zealand. He claims that he cannot live in any other part of India because wherever he lives he will be identified as a person of interest to the Indian police.

OTHER DOCUMENTS FILED

[23] The Authority and the appellant have been provided with the files of the Refugee Status Branch, including copies of all the documents submitted by the appellant at first instance. Counsel also wrote on 1 March 2010 to advise the Authority that he would not appear at the hearing because funding arrangements were not available for such an appearance. Counsel filed opening written submissions under cover of a letter of 8 March 2010. The appellant was unrepresented at the hearing.

[24] Under cover of a letter of 7 April 2010 counsel submitted copies of the following documents, copies of which had been sent by way of facsimile by the appellant:

- i. affidavit of the *Lamberdar* of the Z village;
- ii. affidavit of the appellant's father;
- iii. affidavit of the appellant's brother; and

iv. affidavit of the appellant's neighbour and family friend.

[25] All of the affidavits deposed to the events (or versions of events) that the appellant claims occurred in relation to his three arrests by police in 2008 and 2009.

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 finds that the appellant has not given a credible account as to his claimed difficulties in the Punjab. His evidence was marked by inconsistencies, implausibility and vagueness to the extent that none of his account of difficulties with the police can be believed. The specific reasons for this finding follow.

First arrest

[29] The appellant's evidence about his first arrest was inconsistent in several respects.

[30] He told the Authority that he initially found out about AA's arrest because everybody in the village was talking about it. He said that it was well-known among the local population that AA was wanted by the police for a month prior to the appellant's arrest on 5 January 2008. He confirmed to the Authority that he had not heard about AA's arrest in any way other than through the talk of villagers.

[31] In contrast, he told the RSB that he first heard about AA's arrest only three or four days before his own arrest. He also said that he heard about it through the *Jag Bani* newspaper. The appellant did not mention to the RSB that AA's difficulties or arrest were known generally by other villagers. When asked to explain the apparent inconsistency, the appellant stated that he told the RSB that he was told by the villagers and that it was in the paper as well. The Authority does not accept this explanation because the RSB transcript does not support his assertion and his explanation fails to explain why he did not mention the *Jag Bani* newspaper to the Authority.

[32] The appellant told the Authority that AA was arrested approximately two weeks before the appellant's own arrest. In contrast, he told the RSB that AA was arrested three or four days before the appellant's arrest. When asked to explain, the appellant said he had estimated the time and he did not know for sure what he had said to the RSB. The Authority does not accept this explanation because it does not explain why he gave significantly different estimates to the Authority and the RSB.

[33] To the Authority, the appellant said that he had not seen AA for two months before his arrest. He told the RSB that he had seen AA one week before the arrest. When alerted to the inconsistency he maintained his evidence to the Authority and could not provide a sensible explanation for his RSB evidence.

[34] The appellant told the Authority that he did not know if any of AA's other friends were arrested in January 2008. He told the RSB that other friends of AA were pursued and arrested at that time. In explanation of the inconsistency he said that he did not know if any friends were arrested or not. His explanation cannot be reconciled with his RSB evidence where he stated that other friends of AA were arrested.

Second arrest

[35] The appellant told the Authority that he was arrested in April 2008 because police found two guns on the family farm. He said that nothing else was found. In

contrast, he told the RSB that three guns had been found. When asked to explain the discrepancy, he stated that he may have made a mistake at the RSB. When asked why he would have been mistaken at the RSB he said "Maybe I was mistaken or I'd forgotten."

[36] His evidence to the Authority was also inconsistent with his written statement which says "In April 08, the police found some ammunition and weapons from the farm." When asked by the Authority to explain why his statement refers to ammunition when he told the Authority that only guns were found, he could not give a sensible explanation. Initially, he said he did not write the statement although he later conceded that his statement had his signature on the bottom and that he had instructed the writer of the statement what should go into it. No other explanation of the inconsistent evidence was provided.

[37] The Authority asked the appellant where AA was in April 2008 and the appellant answered that he did not know. When the Authority reminded him that he had told the RSB that AA was in the central jail, the appellant said that AA was in the central jail in January 2009 and that is what he had told the RSB. However, that explanation cannot be reconciled with the RSB record of interview which records his evidence that AA was in the central jail in April 2008.

Lack of independent corroborative evidence

[38] The appellant asserts that AA is a well-known figure in his district and that his arrest in late December 2007 (two weeks before the appellant's arrest on 5 January 2008) and escape from custody in January 2009 were events which were widely-known and reported in the news media. Despite this, the appellant has made no effort to obtain media reports of those events. Nor has the Authority's own research disclosed any reports of the events. The Authority finds it implausible that had the incidents been genuinely reported on, as the appellant asserts, he would not have made some effort to obtain those reports to corroborate his claim. This is especially so because the matter was raised at the RSB interview and therefore brought to the direct notice of the appellant.

[39] Furthermore, the Authority finds it inherently unlikely that given the seriousness of the allegations against the appellant, there are not some formal police or court documents relating to the charges that were made against him. This lack of evidence, while not determinative on its own, reinforces the findings of

the Authority (based on the concerns outlined above) that the account is not a credible one.

CONCLUSION ON CREDIBILITY

[40] For all the reasons outlined above, the Authority finds that the appellant's account of his difficulties with police in the Punjab since January 2008 is wholly untrue. It is rejected in its entirety.

[41] Following the hearing, four affidavits deposed by individuals in India were submitted and purport to testify to the fact of the appellant's claimed difficulties with police in the Punjab. The affidavits disclose several inconsistencies with the appellant's evidence such as the length of his second claimed detention (his father states it was eight days as against the appellant's evidence that it was three) and the nature of his relationship with AA. In light of these inconsistencies and the negative credibility findings above, the documents are given no weight.

[42] On that basis, the Authority finds that the appellant is an Indian national with a genuine passport, valid until November 2017. He has no adverse profile with the Indian police or any other Indian authorities and there is no basis to conclude that he will have any difficulties on return to India.

[43] Consideration has been given to the appellant's belated assertion that because one of the New Zealand limited purpose permits in his Indian passport refers to the fact that he is awaiting the outcome of a refugee claim, he will be identified by Indian immigration authorities as an asylum applicant, turned over to the Indian police and then seriously harmed because of his existing adverse profile.

[44] The Authority rejects this assertion on two accounts. First, his account of having an adverse profile with the Indian police is rejected and therefore the Authority does not accept that he will be mistreated on that basis. Second, the appellant has not produced any evidence or country information to indicate that individuals who return to India, having sought asylum elsewhere, are at risk of serious harm if the fact of the asylum application is disclosed in India. The Authority is not aware of any other information or evidence in that regard. The appellant's assertion is speculative and cannot form the basis of a finding that he has a well-founded fear of being persecuted in India.

[45] There is, therefore, no basis upon which the appellant can be found to be at

risk of serious harm in India should he now return there. The first principal issue as outlined in paragraph [27] above is answered in the negative. The second issue does not arise for consideration.

CONCLUSION

[46] For all of the reasons above, the Authority finds that 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 A Dingle"
B A Dingle
Member