

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

**REFUGEE APPEAL NO 76431**

**AT AUCKLAND**

<b><u>Before:</u></b>	B A Dingle (Chairperson) S Aitchison (Member)
<b><u>Counsel for the Appellant:</u></b>	H Craven-McLeay
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	2 February 2010
<b><u>Date of Decision:</u></b>	1 March 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 is a married man in his early 30s. He arrived in New Zealand on 22 June 2009, having been issued a work visa in January 2009. On 9 July 2009, he lodged his application for refugee status.

[3] His brother, AA, travelled with him from India and has also lodged a claim for refugee status, which is now on appeal: *Refugee Appeal No 76441*. It is being heard by a different panel of the Authority. At the RSB, each brother signed a privacy waiver in favour of the other so that the evidence of each of them could be disclosed to the other. At the outset of the Authority hearing, this appellant, through counsel, gave consent that his own appeal evidence could be disclosed in

the appeal hearing of his brother. This appellant's hearing concluded prior to AA's appeal hearing. Accordingly, none of AA's evidence on appeal has been considered in the determination of this appeal.

[4] The appellant claims that he and AA are at risk of being persecuted by the Indian police because of this appellant's prior relationship with a policeman's daughter and because they are accused of links with a Kashmiri militant organisation.

[5] The determinative issue in this case is whether or not the appellant's account is a credible one.

### **THE APPELLANT'S CASE**

[6] The following is a summary of the appellant's evidence given in the appeal hearing. The credibility of this evidence will be assessed later in the decision.

[7] The appellant was born in 1977 and has lived all of his life in the family home in Z village in the state of Punjab. He has one brother (AA) and one sister (BB). Both of his parents are alive and remain living in the family home. The family are Sikh.

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

[9] In 1999, BB obtained New Zealand residence through marriage and she has lived here ever since.

[10] The appellant completed his schooling in 1997 and since that time has worked on the family farm. The family owns two plots of land outside the village which provided a good standard of income for the family.

[11] In 2001, the appellant was issued with his first Indian passport. Before travelling to New Zealand in 2009, he made three unsuccessful applications for visitor's visas to come to New Zealand (one each in 2003, 2005 and 2006).

[12] In April 2006, the appellant met a Hindu girl, CC, with whom he began a relationship. He met CC at the Bakari festival in Katurpur where they talked and exchanged telephone numbers. CC's father (DD) was a high-ranking police officer

who was the station chief either in Katurpur or in the town of Nadokar. The relationship continued for some eight or nine months, during which time DD was not aware of it.

[13] In January 2007, a group of eight or nine police officers, including DD, arrived at the appellant's home. Some of the officers came into the home and began beating and swearing at the appellant and AA. DD remained outside. The appellant and AA were then transported to Nadokar police station where they were sworn at and physically beaten throughout the day. The appellant asked why they had been arrested and what charges there were against him, but the police did not give any details. Rather, they simply indicated that he (the appellant) should be taught a lesson about how relationships should be conducted and they referred to his possible association with Muslim militants. No formal charges were laid and the appellant and AA were released in the evening.

[14] The appellant did not have any further difficulties with the police for the following year. At the end of 2007, he became engaged to (by arrangement of the families) and married a Sikh girl from a village some 60 kilometres from his own. The appellant and his wife continued to live in the family home.

[15] In January 2008, the appellant and AA were arrested for a second time. Approximately seven police officers came to their home at 4pm one afternoon, beat both of them and took them to the Nadokar police station. They were detained for two days. They were mostly kept together in one cell, although they were periodically separated when they were each taken for a beating. Throughout the detention they were accused of having links with Kashmiri Muslim militants, although they were never informed of any evidence linking them to such militants, nor were they formally charged with an offence or provided with any documents relating thereto. After two days of detention, the village council (*Panchayat*) intervened and secured their release with a bribe of Rs100,000. The money had been provided by their father.

[16] In March 2008, the appellant was issued with a second genuine Indian passport.

[17] In May 2008, the appellant and AA were arrested for a third time. At the time of their arrest, they were both working on the farm. The appellant was driving the tractor and AA was near the well pump when approximately eight or nine policemen arrived. Again they were taken to Nadokar police station where the

police repeated their accusations that the appellant and AA had links to Kashmiri terrorists. The police also resumed their beatings. During his detention, the appellant saw DD who also beat him. After two days, the appellant and AA were released on payment of a bribe of Rs150,000.

[18] The appellant and his brother returned home and resumed work on the farm.

[19] From May 2008 until his departure from India in June 2009, the police visited the appellant's family home on many occasions. Usually the appellant and AA were not there and their father was able to pay the police officers to leave.

[20] In September 2008, the appellant heard about an agent who could help him travel from India. He met the agent, a Muslim man (EE), in his small office in Jalandhar. With EE's assistance, the appellant lodged a New Zealand work visa application with Immigration New Zealand (INZ). The visa application included various documents, some of which were provided by EE and the appellant was not sure whether or not they were genuine.

[21] In January 2009, the appellant's daughter was born.

[22] On 18 January 2009, INZ issued the appellant with a work visa.

[23] On 21 June 2009, the appellant and his brother departed India from Delhi airport. They did not encounter any difficulties between the time of their last arrest in May 2008 and their departure in June 2009.

[24] Since arriving in New Zealand, the appellant has maintained regular contact with his wife and parents, talking to them once or twice each week by telephone. Once they were here in New Zealand, the appellant decided to claim refugee status with the help of a New Zealand resident, Kulwant Singh, who travelled to Blenheim and met with the appellant and his brother and assisted them to lodge their confirmation of claim forms with INZ. The appellant could not explain why Kulwant Singh gave them that assistance.

[25] The appellant does not know why in excess of 20 other Indian nationals, who travelled from India at or around the same time as him, also claimed refugee status on 9 July 2009. He claims to know nothing about their personal situations and maintains that his own refugee claim is a genuine one.

[26] The appellant's wife and child remain living at the family home with his parents in the village.

#### Further documents submitted

[27] The Authority has received a copy of the INZ file. Under cover of a letter dated 20 January 2010, Mr Roger Chambers filed opening written submissions in support of the appeal, with one set of annexures containing country information relevant to the Punjab and the treatment of civilians by Indian police. At the appeal hearing, the appellant was represented by Ms Craven-McLeay who relied on the written submissions and annexures and did not make further oral submissions. No further documents or material have been submitted.

### **THE ISSUES**

[28] 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."

[29] 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**

[30] The Authority finds that the appellant has not given a credible account as to his claimed difficulties in the Punjab. Every part of his account was marked with inconsistencies (both with his own previous evidence and with the RSB evidence

of his brother, AA), implausibilities and evasiveness. The Authority is in no doubt that the account has been fabricated for the purpose of mounting a refugee claim. The specific reasons for this finding follow.

#### Meeting CC

[31] The appellant told the Authority that he first spoke with CC and exchanged telephone numbers with her during the Bakari festival held on 13 April 2008 in Katurpur. Through a series of questions, the Authority confirmed this date and the fact that he first met her during this festival. In contrast, he told the RSB that he first met CC in September 2008. When asked by the Authority to explain the inconsistency in his evidence, he said that because he is under pressure (meaning in the refugee claim process), he does not remember dates well and that it was only when the Authority asked him a series of questions that he was able to recall the date.

[32] The Authority does not accept this explanation because in the appeal hearing he was able to quickly recall that he had met her at the Bakari festival and he was also able to name the exact date (13 April) when the festival occurs in Katurpur. He mentioned neither April nor meeting her at a festival during his RSB interview. The Authority finds that had he genuinely met her at the festival, he would have mentioned it to the RSB and that would thereby have jogged his memory as to the date on which he met her. The fact that he gave the date of September 2008 to the RSB indicates that he was fabricating the events and had not met her at the festival.

### The first arrest

[33] The appellant told the Authority that DD arrived with seven or eight other uniformed police officers to his home to make the first arrest. In contrast, he told the RSB that he did not see DD until he arrived at the police station. When asked to explain the inconsistency, he simply said that he may have misremembered or not understood, impliedly asserting that perhaps he did not understand the refugee status officer's question.

[34] The appellant also told the Authority that during that first detention, he was accused of being associated with Muslim militants connected to the Kashmiri cause. However, to the RSB he said that they made no specific accusations against him. When asked by the Authority to explain the apparent inconsistency, he was unable to give a sensible answer. The appeal evidence is also at odds with his RSB evidence that the accusations of links to Muslim militants were first developed at the time of his second arrest and detention. The Authority concludes the evidence is inconsistent because it is untrue.

### Second arrest

[35] To the Authority, the appellant stated that at the time of his second arrest from home, his father was present along with his mother, wife, AA and AA's wife. In contrast, when asked by the RSB who was at home, he stated that it was just himself, AA and the "ladies". When the refugee status officer asked him where his father was, the appellant replied "He was away for work." When asked to explain the inconsistency, the appellant told the Authority that his father was there and stated "I must have said the wrong thing last time." He gave no sensible reason why he would give inaccurate evidence to the RSB.

### Third arrest

[36] As to the third arrest, the appellant told the Authority that DD was present both when the appellant and AA were arrested from his farm and also during his detention at the police station. When asked by the Authority whether DD talked to him at the police station on that occasion, he answered "Yes. He started beating me there." In contrast, the appellant told the RSB that DD was not present at all during his third arrest and detention. When asked to explain the discrepancy, the appellant repeated his previous assertion that because of the tension he felt, he could not understand anything.

[37] The appellant's evidence as to the third arrest was also inconsistent with the evidence AA gave to the RSB about the same arrest. The appellant told the RSB and the Authority the arrest happened at the farm whereas AA told the RSB that the arrest occurred at their home. When the Authority asked the appellant why such an inconsistency would occur, he said "I don't know."

[38] The appellant also gave inconsistent evidence about police visits between the third arrest and his departure from India. To the Authority, he said that the police visited the family home on a number of occasions after his third arrest but that he and his brother were not home and his father paid the police to go away. The appellant confirmed that his father had told him of the visits before he left India. In contrast, he told the RSB that there were no further problems with police after the third arrest and he did not mention any visits or bribes being paid between that time and his departure from India. When asked to explain the inconsistency, he stated that the police did not arrest him again after July 2008, impliedly asserting that that was why he told the RSB that there were no problems with the police after July.

[39] The Authority does not accept this explanation because the refugee status officer did not just ask about arrests after July 2008 but asked whether the appellant had any problems with police after July 2008. A similarly open question was asked by the Authority. The fact that he has answered those similar questions with different answers on each occasion indicates that his assertion to the Authority to have been subject to further police visits after July 2008 was fabricated at the appeal hearing.

#### The agent

[40] The appellant also gave inconsistent evidence about the agent who organised his travel to New Zealand. He told the Authority that he first met the agent in September 2008 while he told the RSB that they met in January 2009. When asked by the Authority to explain his RSB evidence, he again asserted that he was confused and could not understand. The Authority finds that the evidence is different because it has been fabricated and recalled inconsistently.

[41] This view is further underlined by the fact that his evidence about where he met the agent was inconsistent. To the RSB he said he met the agent near the bus depot in Jalandhar. He made mention to the RSB of attending at the agent's office. In contrast, he told the Authority that he went to the agent's office but he



could not identify which part of Jalandhar the office was in. When pressed for details about the office location and asked what it was near in relation to particular buildings or other areas of the town (a question asked to jog his memory about the bus depot), he simply repeatedly said that the office was in a “locality” but he could not explain what that locality was.

[42] When reminded of his evidence to the RSB about the bus depot, he then asserted that by locality he meant the bus depot. However, the word he used in the Punjabi language, “basti”, does not denote bus depot or have any known relation to a bus depot. The Authority finds that the appellant’s evasive answers whereby he just referred to a generic “locality” as being where the office was strengthens the view that the evidence is untrue.

### **CONCLUSION ON CREDIBILITY**

[43] All of the concerns outlined above lead the Authority to conclude that the appellant’s claimed difficulties in India are wholly untrue. The Authority rejects the appellant’s claim to have been threatened and mistreated by police officers in the Punjab. There is no credible evidence before the Authority that the appellant is at risk of serious harm for any other reason.

[44] The Authority therefore finds that the appellant is a national of India who has a genuine Indian passport and has departed India without difficulties. He has no profile whatsoever with the Indian authorities, either generally or at the Nadokar police station in the Punjab. There is no reason that the appellant would be of any interest to the authorities should he now return to India. The appellant does not have a well-founded fear of being persecuted on return to India for any reason.

[45] The first issue having been answered in the negative, the second issue does not therefore arise for consideration.

### **CONCLUSION**

[46] For the above reasons, the Authority finds that the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. The appeal is dismissed.

"B A Dingle"  
B A Dingle  
Chairperson