

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76133

AT AUCKLAND

<u>Before:</u>	J Baddeley (Member)
<u>Representative for the Appellant:</u>	A J Bale
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	20 November 2007
<u>Date of Decision:</u>	24 January 2008

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Department of Labour, declining the grant of refugee status to the appellant, a national of Fiji.

INTRODUCTION

[2] The appellant is a married Fijian man who arrived with his wife in New Zealand on 19 March 2000. He applied for refugee status on 20 April 2007, was interviewed by the Refugee Status Branch (RSB) on 25 May 2007 and a decision declining the grant of refugee status was published on 20 July 2007. It is against this decision that the appellant now appeals to this Authority. The principal issue to be determined in this case is whether the appellant's claimed fear of being persecuted on return to Fiji is well-founded.

THE APPELLANT'S CASE

[3] The appellant was born in Fiji in 1960. His early life was unexceptional. The appellant married in 1980 and joined the Fijian army the same year. He

moved to Suva and served in the Multi-National Forces and Observers operations in Egypt under the auspices of the United Nations from 1982 to 1983.

[4] After that he returned home to W on X island and had casual jobs on the docks. This was his principal source of income together with a small rental income he received from tenants on his family land. He remained in his village until he returned to the army to work with the United Nations Interim Force in Lebanon (UNIFIL) from 1985 to 1986.

[5] The appellant disapproved strongly of the brutality that was meted out by the army to civilians during the first coup led by Sitiveni Rambuka in 1987. However he rejoined the army in 1987 in answer to a call-up. He remained in the army camp for two and a half months and then deserted for a job loading logging ships. He later formally demobilised.

[6] In 1989 he rejoined the army for another year-long deployment with UNIFIL. He had two further deployments with UNIFIL: in 1989 and in 1995. He remains a private in the army reserve.

[7] Since 1996 the only time he has had any involvement with the army has been in one weekend camp in 1997 or 1998. Before the 1987 coup the reserve was regularly required to take part in exercises and training every three months but after the last weekend camp in 1997 or 1998 there were no more call-ups before the appellant left Fiji in 2000.

[8] In 1997 in response to the urgings of some Ministers in the Methodist church the appellant joined a political party, the *Veitokani ni Lewenivanua Vakarisito* (VLV). The appellant supported the VLV because it opposed the corrupt practices of the government ministers. The VLV eventually united with other political parties to form the *Soqosoqo Duavata ni Lewenivanua* (SDL) which was headed by Laisenia Qarase who was elected Prime Minister of Fiji in 2001.

[9] In March 1999 the appellant was required to attend the army camp in W and was questioned there for two hours. He had been talking to people in his village and in his paternal grandmother's village about the forming of a new political party. He was asked by his interrogators why he was not supporting the political ambitions of the army and in particular, those of its commander Frank Bainimarama. His interrogators told him to keep quiet and not to criticise the policies of the military. He was warned that if he did not obey the orders of his

military superiors he could be court-martialled (although he was in the reserve only and not the regular army). He was physically mistreated during his two-hour interrogation.

[10] After this detention the appellant decided to leave Fiji. He knew that if the Labour Party succeeded in the upcoming general election and its leader Chaudry (an Indian) was elected as Prime Minister, there would be another coup. He did not want to endure the consequential economic hardship that would inevitably follow brought about by the imposition of sanctions. He also feared that if the army led a coup he would be required to obey his military commanders and he did not agree with their political agenda. Furthermore, he knew that soldiers like himself who did not support Frank Bainimarama, would mount a resistance to the commander (as proved to be the case). He did not want to participate in any armed resistance because he knew this would be unsuccessful given the superior forces which Bainimarama could muster.

[11] In March 2000 the appellant and his wife left Fiji and arrived in New Zealand on a visitor's visa. In May 2000, George Speight with the support of factions of the army including some of the Fiji military's Counter-revolutionary Warfare Unit (CRW) led a coup against Prime Minister Chaudry. After George Speight was taken into custody by forces led by Frank Bainimarama, some members of the CRW were arrested and several of them killed. The appellant believes that they were killed on the orders of Bainimarama who had been pursued and shot at by some CRW soldiers. Among those killed was a relative of the appellant's wife.

[12] In July 2000 some rebel army soldiers took over the military camp at W. Many of these were army colleagues of the appellant with whom he used to socialise. The takeover was short lived and some among them were subsequently convicted and sentenced to terms of imprisonment. Among these were the appellant's nephew and cousin. Prior to their capture they had been injured as a result of beatings by the army. His former commander in UNIFIL and some civilians were beaten by the army for their involvement in the attack on the camp at W.

[13] Later in 2000 the appellant was telephoned by an army major (a relative of his) who told him that the reservists and territorials had been called up and that he should report to the army camp. The appellant said that he was in New Zealand and could not come. In addition he did not support what the military were doing.

He was told he could be charged with disobeying a standing order. This is the last time the appellant has been called up to serve in the army.

[14] At the end of 2006 or early 2007 the appellant learned that four of the high chiefs of his province on X island had been convicted and imprisoned for a few months because of their involvement with the group which took over the camp in W. One of them was his father's first cousin who had stayed at the appellant's house in the village. They have since been released.

[15] Although Qarase, the leader of the party to which the appellant belongs, the *Soqosoqo Duavata ni Lewenivanua* (SDL), was elected Prime Minister in 2001 and again in 2005, the appellant claims it was unsafe for him to return because Bainimarama was head of the army. On 5 December 2006 the Qarase government was overthrown by the armed forces led by Commodore Bainimarama, who remains as acting Prime Minister, the head of the interim military government. The appellant believes that it will be unsafe for him to return at this time because of Bainimarama's position.

[16] The appellant succeeded to a chiefly title originating from X island in 2003 but he has never returned to Fiji since his departure in 2000. The appellant's wife returned to Fiji in 2003 and has been living in their home in the village with all their children except one son who is in Suva. His wife tells him that it is still too risky for him to return. People have been asking after him. Some of the people who were in the army with him have been arrested and those who have been released are still being watched by the army. She says that some of his former friends are not seen so often in public as they used to be. His wife has not reported any difficulties for herself or their children.

[17] The appellant's representative filed submissions in support of the appeal on 25 July 2007 together with some additional country information. Further written submissions were filed at the appeal hearing and oral submissions were made by his representative. The appellant filed further submissions and country information on 30 November 2007. All these have been taken into account in this decision.

THE ISSUES

[18] 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."

[19] 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

[20] Before determining the abovementioned issues an assessment must be made of the appellant's credibility. The Authority accepts the general biographical details advanced by the appellant namely that he is from W and is a member of the reserve of the Fijian military forces. It also accepts that he is opposed to the policies of the Fijian military and the leadership of Frank Bainimarama and is a member of the SDL party. The issue which falls to be decided is whether the appellant's claimed fear of persecution is well-founded.

[21] In this regard the following considerations are relevant:

- (a) The appellant's opposition to the current military regime and his claimed profile as a dissident.
- (b) The appellant's relationship to those seen to be opponents to the regime.
- (c) The appellant's refusal to obey the army's standing orders.
- (d) The appellant's position as the holder of a chiefly title on X island.

The appellant's breach of standing orders

[22] The appellant has been a member of the Fijian military forces for over 27 years. However, his time of active service is only approximately 6 years. He first disobeyed standing orders in 1987 when he left the military camp to which he had been called up. He did not return but later succeeded in officially being demobilised. He suffered no adverse consequences as a result of deserting the army on that occasion.

[23] The appellant claims that his subsequent opposition to the military and in particular his support of the SDL party is also a breach of standing orders. The appellant had made known his criticism of the policies being pursued by Commodore Frank Bainimarama in discussions with like-minded friends, some of whom were fellow soldiers. They met frequently and discussed these matters. The appellant was called in for questioning at the local army camp in March 1999 about his political views and detained for two hours. He suffered humiliating physical mistreatment on that occasion. He claims that this was one of the main factors which caused him to leave Fiji. However, he remained in Fiji for another year and did not suffer any further harassment. His family are still all in Fiji; his wife returned voluntarily in 2003 and none of them have been troubled because of the appellant's failure to support the military regime. This suggests that he is not of adverse interest to the military.

[24] In 2000, after the appellant had left Fiji, he was telephoned by a major related to him and told that he should answer the military call-up. He refused because he was in New Zealand and did not support those in command of the army. There was another call-up in 2006. The appellant was not contacted by any army officials in relation to this but claims that he is also in breach of standing orders in regard to this call-up. It is reported in the *Fiji Times* "Poor turn out by reserve soldiers" (28 November 2006) that:

"... more than half of the reserve soldiers who were called to assemble at the army's headquarters did not turn up ... in Labasa, about 135 territorial soldiers marched into the army camp for a one week training programme."

[25] No country information has been available as to the consequences for reservists living overseas who have not answered these two call-ups.

[26] The relevant legislation explicitly excuses soldiers overseas from answering military call-ups. The Royal Fiji Military Forces Act (1 September 1949) Laws of Fiji – ITC Services online provides:

“... every soldier, who not being incapacitated for service by infirmity, absence from Fiji or other good or sufficient cause, refuses or neglects to obey the call shall be liable to imprisonment not exceeding 12 months or to a fine ...”

[27] The appellant’s representative submits that the current military regime disregards legislation which is against its interests and therefore the appellant might not be able to claim exemption from military service under this provision. The Authority is unaware of any information suggesting that those overseas at the time of call-ups are prosecuted on return to Fiji for failing to answer these. There was also no evidence that any soldiers who failed to answer the call-ups in 2000 and 2006 suffered adverse consequences. The Authority concludes that the appellant is not at risk on return in this regard.

The appellant’s relationship to those persecuted by the regime

[28] The appellant claims that he is at risk because of his close relationship to others who have suffered adverse consequences because of their opposition to the military regime. Those he noted are:

- (a) BB, a member of the CRW and supporter of George Speight who was allegedly killed by troops under the command of Bainimarama because CRW troops had pursued and shot at Bainimarama in 2000. When asked about his relationship to BB, the appellant advised that he is his wife’s cousin’s husband. This is not a close relationship and furthermore there is no evidence that the appellant was involved with BB in the attack on Bainimarama or any other anti-regime activities which would arouse the suspicion of the military.
- (b) The arrest and detention for two months in 2007 of his mother’s cousin and his cousin who are respectively an army captain and a sergeant-major. The appellant does not know why they were arrested. He speculates that it is because they might have encouraged other soldiers not to obey standing orders. Again this is mere speculation and even if correct has no connection to the appellant.

- (c) The conviction and imprisonment of his nephew and cousins who were involved in the take-over in 2000 of the army camp at W. This is an event the appellant states he does not approve of, was not involved in and of which he had no prior knowledge.
- (d) The conviction of four high chiefs from the appellant's province at the end of 2006/early 2007 for their involvement in the take-over of the army camp at W. They were released after a few months. Again, the appellant unlike the four convicted was not present in W at the time of the take-over of the camp.
- (e) The appellant socialised with many of those who were subsequently convicted of the attack on the army camp. He had left Fiji several months prior to this incident. However, he claims that because they were his friends he will be suspected of involvement in the planning of this attack. This is pure speculation on his part.

[29] The appellant's representative was granted leave to file country information which supported his claim that people who, like the appellant, were out of the country at the time of the 2000 coup and had no involvement in those events, were being arrested on return. In his submissions in reply dated 30 November 2007 the representative advised that he did not have this information. He provided two articles: "Justice denied: CRW Widows Cry Foul" *Fiji Times* (25 February 2007); Amnesty International *AI Report: Fiji: "Human Rights at Risk"* ASA (18 September 2000) which report the arrest of some individuals who were not at the army barracks but "elsewhere" at the time of the coup and the questioning of one soldier on his return from peace-keeping duties. Neither of these reports (which give no further information about the circumstances of those involved) assists the appellant. No evidence has been provided to show that people overseas at the time, ignorant of and uninvolved in the planned attack in 2000 have been mistreated on return merely because, as fellow soldiers, they used to socialise with those convicted.

[30] When the appellant was asked why he feared being arrested on return given that he was not in Fiji in 2000 when these events arose, he cited the case of a colonel who had recently returned to give evidence in regard to the mistreatment meted out by the military in the 2000 coup. This is quite unrelated to the appellant's circumstances. He has never been and is not likely to be involved in

giving evidence against the military in respect of the 2000 coup in which he did not participate.

[31] The Authority concludes that none of the events which have occurred to those to whom he is related either by kinship or through his social contacts or army associations place the appellant at any risk of being persecuted on return to Fiji.

The appellant's place of origin

[32] The appellant is from W which he claims is an area known for its opposition to the current military regime. His representative in written submissions filed on 25 July 2007 claims that:

“The claimant comes from [W] on another island called [X] and the twelve Counter-revolutionary Warfare (CRW) unit soldiers that have been murdered so far and the others given life sentences and a majority of political dissidents tortured, beaten and killed so far also comes from the [W] area on the island of [X]. Most political dissidents and opposition to the military comes from [W] and other places on [X] which the military administration in Suva regards rightly or wrongly as hot beds for opposition and cessationist aspirations.”

[33] There is no evidence that people originating from W are persecuted merely for reason of their place of origin. Furthermore the appellant has never been a member of CRW. He was not present in Fiji at the time of the 2000 coup in which the CRW was involved.

[34] The appellant's representative was invited to provide country information to support the submission that most political dissidents and opposition to the army comes from W. None has been provided. The Authority concludes that the appellant is not at risk of serious harm on return for reason of his association with W.

The appellant as a political dissident

[35] The appellant's representative states in a written submission filed on 20 November 2007 that the appellant is in danger of persecution because:

“[The appellant's] continued involvement in passive civil disobedience and exposing military propaganda and disinformation in his role as provincial chief.”

[36] When asked to explain this submission the appellant stated that he used to telephone his brother (who is acting as chief in the appellant's absence) and advise him to tell the villagers that what Bainimarama is doing is wrong. The

appellant acceded to the chiefly title in 2003. He has never been in Fiji since he has held that title. He does not know whether his brother has ever passed on his message. This does not support the submission that the appellant has used his role as a traditional chief (a position he has held only in absentia) to effectively disseminate the criticism of the military or that any such efforts on his behalf have been effected let alone give rise to a fear of being persecuted.

[37] The appellant was asked what, if anything, he had done since leaving Fiji which would place him at risk from the current regime. He cited the following examples:

- (a) The appellant claims that while in New Zealand he has telephoned friends in the army and discussed events in Fiji. He has voiced his criticism of the military regime to them. He speculates that they may have passed on his comments to their commanding officer and thus placed him at risk on return. He admitted that there is no evidence that they have done so and, when asked, could not explain why his friends would want to cause such difficulties for him beyond suggesting that they may have done so in a casual social situation.
- (b) He also claims to have warned some people staying in his village that he would chase them out if they carried out any orders from the military against those who had been involved in the attack on the army camp in 2000. He speculates that this might be reported to their commanding officers. There is also no evidence of any such reports having been made.

[38] In response to this enquiry from the Authority the appellant provided no further examples of conduct he had engaged in which might place him at risk on return. However in written submissions filed on 30 November 2007 subsequent to the hearing, his representative claims that the appellant:

“... continued his criticism from such forums as the local Fijian church meetings and Fijian radio talkbacks in New Zealand which he actively participates in and in circumstances where he is easily identified and reported back to Fiji by local FMF sympathisers and ‘spies’.” [sic]

[39] It is significant that his church-related activities and participation on radio talkback were not raised by the appellant when specifically asked about his activities since leaving Fiji. The Authority concludes that the appellant himself is not concerned about any remarks he may have made in these contexts. The

submission in this regard is an unjustified embellishment on the appellant's evidence. Further, at the conclusion of the hearing, the appellant's representative was asked to provide any information concerning the presence of spies in New Zealand relaying prejudicial reports on the activities of Fijian citizens in New Zealand to the Fijian authorities and the consequences of such reports. The appellant's representative requested a week in which to provide that information. Further submissions and country information were filed a week after the conclusion of the hearing but none addressed the issue of spies relaying reports to the Fijian authorities. The Authority is not aware of any evidence that espionage operations are being carried out in this way.

[40] The Authority is unaware of any evidence to suggest that those who have criticised the current regime while overseas are reported to the authorities and mistreated on return to Fiji. The Authority finds that the appellant is not at risk on return to Fiji because of comments which he has made in New Zealand concerning the regime.

Delay in applying for refugee status

[41] The appellant waited seven years before applying for refugee status. The time at which he appears to have been most at risk of being persecuted was in 2000 during the coup and the attack on the army military base in July 2000, both incidents in which he claims the military suspect him or his associates of being involved and which occurred after his arrival in New Zealand. However, he did not apply for refugee status then.

[42] He remained in New Zealand on a series of temporary work permits which finally expired in 2003. Although Qarase, the leader of the SDL party to which the appellant belonged, was elected Prime Minister in 2001 and 2005 he still did not return. He explained to the Authority that he remained at risk because Bainimarama was still in control of the Army

[43] During this time, the appellant had an Indian-Fijian acting for him as an immigration consultant. The appellant told the Authority that he did not tell his consultant the true reasons he had left Fiji (his fear of being persecuted by the military) because of his consultant's ethnicity. However he did not attempt to gain any help from any other source or seek any other advice in order to safeguard his stay in New Zealand and ensure that he was not returned to persecution until 2007

when he met his current representative. He claims that it was not until then that he became aware that he could apply for refugee status.

[44] The Authority does not accept that the appellant, who speaks good English, and is a member of the well-established Fijian community in New Zealand, would have been unable to gain information about applying for refugee status had he wished to do so. He delayed making such an application because he did not fear returning to Fiji and he finally did so only when all his permits had expired and he was looking for a way of remaining in New Zealand.

[45] The Authority concludes that the appellant does not have and has never had a well-founded fear of being persecuted in Fiji for an adverse political opinion or any other reason.

CONCLUSION

[46] 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.

"J Baddeley"

J Baddeley

Member