

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76153

REFUGEE APPEAL NO 76154

AT AUCKLAND

Before: C M Treadwell (Member)
Counsel for Appellant: C Curtis
Appearing for the Department of Labour: No Appearance
Date of Hearing: 3 and 4 June 2008
Date of Decision: 16 October 2008

DECISION

INTRODUCTION

[1] These are appeals against decisions of a refugee status officer of the Refugee Status Branch of the Department of Labour, declining the grant of refugee status to each of the appellants (husband and wife), nationals of India of the Chamar sub-caste of the Ad Dharmi (or Dalit) caste.

[2] This is the second time that the appellants have claimed refugee status in New Zealand.

[3] On 12 September 2005, the Authority (differently constituted) delivered its decision in respect of the appellants' first appeals, which had been heard together. See *Refugee Appeal Nos 75319 and 75320* (12 September 2005). It accepted that the appellants were Dalits of the Chamar sub-caste but found the husband's claim to have been twice detained and mistreated by the Punjabi police not to be credible. The Authority considered whether, as members of the Chamar sub-caste, either of the appellants faced a real chance of being persecuted but concluded that neither was at such risk.

[4] On the present appeals, the appellants say that they have converted to Christianity and the risk for Chamar Christians in India is such that their second claims are brought on significantly different grounds. They further say that discrimination against Dalits (of which the Chamar are a sub-caste) has significantly worsened, such that their second claims are brought on significantly different grounds.

[5] The central issues which emerge on this appeal are the credibility of the new claims and whether the facts as found establish that either of the appellants is at risk of serious harm if returned to India.

JURISDICTION OF THE AUTHORITY TO HEAR THE APPEALS

[6] Second or subsequent refugee claims (including appeals to the Authority) are subject to jurisdictional limitations.

[7] Section 129O(1) of the Immigration Act 1987 (which came into force on 1 October 1999) (“the Act”) provides:

“A person whose claim or subsequent claim has been declined by a Refugee Status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that the circumstances in the claimant’s home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer’s decision.”

[8] In the result, it is necessary to consider the appellant's original claim and his further claim, as presented at the second appeal, with a view to determining:

- (a) whether, in terms of s129O(1) of the Act, the Authority has jurisdiction to hear the second appeal and, if so,
- (b) whether he is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

[9] Jurisdiction to hear and determine subsequent refugee claims under s129O(1) of the Act is determined by comparing the previous claim to refugee status against the subsequent one. This involves a comparison of the claims as asserted. In the absence of significant difference in the grounds upon which the claims are based, there is no jurisdiction to consider the subsequent claim – see *Refugee Appeal No 75139* (18 November 2004).

[10] Where jurisdiction is established, the merits of the subsequent claim will be heard by the Authority. This hearing may be restricted by the findings of credibility or fact made by the Authority in relation to the previous claim. Section 129P(9) of the Act prohibits any challenge to a finding of fact or credibility made by the Authority in relation to a previous claim and the Authority has a discretion as to whether to rely on any such finding. Here, having considered the decision on appeal on the appellants' first claims, the reasoning of which is cogent and persuasive, and having seen and heard them on their second claims, the Authority does so rely on the findings of fact and credibility made on the appellants' first appeals.

THE APPELLANTS' FIRST REFUGEE CLAIMS

[11] The grounds of the appellants' first refugee claims are set out at paragraphs [6]-[33] of *Refugee Appeal Nos 75319 and 75320* (12 September 2005), summarised as follows.

[12] The appellants each come from small villages in the Punjab. Their families remain in India, save for the husband's father, who is living here illegally, the husband's sister (also in New Zealand) and a further sister who has gone to Italy.

[13] The appellants were both born into the Chamar sub-caste of the Dalits, one of the scheduled, or 'untouchable', castes.

[14] The appellant's father, who worked for a time as a driver in the Middle East, was a labourer in the Punjab and also owned a number of shops. The husband's family owned their own home but were forced to live in a separate Dalit area of the village comprising basic dwellings. If Dalits ventured into other parts of the village, the villagers would beat them and accuse them of contaminating the water.

[15] The wife's family were similarly treated. When she was young, her family were forced to flee their home by villagers who wanted their land. The wife spent most of her childhood inside the family home as her parents wanted to protect her from the higher caste villagers.

[16] At school, the husband was made to sit apart from the other students and excluded from participating in the classes. If he asked questions, he was beaten

with a stick. Once, in his teens, the husband was beaten with sticks by a number of other students as he made his way to school.

[17] The wife's experiences at school were similar. High caste students would bully and taunt her and she attended segregated classes. She left school in 1992 after matriculating.

[18] When he left school in 1994, the husband found work as an apprentice electrician. He quit after eight or nine months, however, as his employer (a higher caste) gave him difficult, unpleasant tasks and he was poorly paid. Although the husband tried to get another job he was unsuccessful.

[19] In 1996, the husband went to college. There, he met higher caste students who belonged to the All India Sikh Students Federation ("the AISSF"). He was asked to help raise funds for the Dalit community. He did so but, approximately two months later, he learned that the group was using the money for themselves, so he refused to collect any more. As a consequence they accused the husband of stealing money from them and he was arrested by the police.

[20] The husband was detained by the police overnight. He was tied up and beaten and his face was submerged in water. He was released when the village *Panchayat* intervened. As a result of the beatings, the husband suffered injuries to his legs and is now slightly deaf in his left ear.

[21] The husband was detained by the police for the second time one month later. He was not told why, but assumed it because he was a Chamar. It was (he said) common practise for the police to detain and beat Dalit boys. He was again kept overnight and beaten.

[22] On his release, the husband went into hiding for a few months, staying with relatives. The police came looking for him and took his family back to the police station where his father was beaten and his sisters were "slapped around".

[23] The husband's father sold some of his shops and with the help of an agent arranged for the husband to go to Greece in October 1996, where he remained until the end of 2003. While in Greece, the husband returned to India on two separate occasions, encountering no problems with the police on either occasion.

[24] The first occasion was for three weeks in February 1999, when he returned to India to get married. The wife did not accompany him back to Greece because

she could not obtain a visa. A few months after the wedding, she went to stay with her in-laws. While there, the police came to the house looking for the husband. The wife was threatened and pushed.

[25] The husband returned to India for the second time, for six weeks, in October 2000. His in-laws told him that the police had come to their home looking for him on several occasions.

[26] The wife left India for Greece in February 2003. The couple then left Greece for New Zealand on 3 November 2003 and arrived here two days later.

[27] The husband told the Authority that he had had no contact with his family in India since he arrived in New Zealand, as he had no means of contacting them. Although his father was here, he had had very little to do with him.

[28] On 12 September 2005, the Authority declined the appellants' first appeals on the grounds that:

- (a) As to the husband's claim to have been twice detained by the police, the Authority found him not credible. In his application and written statement he had failed to mention the AISSF students, or being accused of theft, or being detained twice by the police and mistreated. Such evidence emerged, for the first time, at his Refugee Status Branch interview. Given its centrality to his claim (he asserted that it was one of the reasons why he left India) his failure to mention it earlier satisfied the Authority that it was a late invention.
- (b) While it accepted that the appellants were Chamar, against whom there was discrimination in much of India, country information established that the Punjab has significantly reduced levels of discrimination, such that "Dalits enjoy relative prosperity, including political representation and there are hardly any Chamar children who do not go to school." The Authority noted one incident, in Talahan village in June 2003, but found that the situation there had calmed and there had been no unrest in the ensuing two years.
- (c) The Authority considered a submission that the wife was at particular risk because of her gender but noted that no evidence to support such a generalised assertion had been put forward and found that the evidence before it simply did not establish this.

[29] Taken cumulatively, these findings led the Authority to conclude that neither of the appellants face a real chance of serious harm if returned to India.

APPEALS TO THE REMOVAL REVIEW AUTHORITY

[30] Following the decline of their refugee appeals in September 2005, the appellants appealed to the Removal Review Authority on 14 October 2005. That body has jurisdiction to cancel a removal order if it is satisfied that there are exceptional circumstances of a humanitarian nature which would make it unjust or unduly harsh to remove the person from New Zealand – see s47(3) of the Act.

[31] The grounds relied upon by the appellants were that they are Dalits and, as such, are at risk of being discriminated against in India. The appellants made no mention of being Christian, or of any interest in Christianity. Nor did they mention the husband's claimed detention and mistreatment by the police on two occasions.

[32] The appeal to the Removal Review Authority was declined on 17 July 2006.

THE APPELLANTS' SECOND REFUGEE CLAIMS

[33] The appellants assert that their first refugee claims were truthful. Further, they say that since their first claims, they have converted to Christianity and that both that and a significant deterioration in conditions for Dalits in India creates changed circumstances.

[34] The husband is not the only member of his immediate family in New Zealand. His father is here illegally, having been declined refugee status. The husband says, however, that he does not have any contact with his father, who is angry with him for bringing the family to the attention of the Punjabi police. The husband says he does not know his father's whereabouts in New Zealand, his health or his means of income. The husband also has a number of members of his extended family living in New Zealand, notably a cousin, AA, with whom he is close.

[35] The husband's sister BB is also in New Zealand. She and her husband CC also live in the same small North Island town as the appellants and have been sharing accommodation with them for the past one and a half years. They are

also failed refugee claimants and also lodged appeals to the Removal Review Authority (declined in August 2004). They, too, have lodged second refugee claims on the grounds of conversion to Christianity at about the same time as the appellants in the present proceedings. Their second appeals have been heard and considered by a differently constituted panel of the Authority and will be discussed in detail hereafter.

[36] According to the appellants, they first became interested in Christianity at the end of 2004. At that time, two Jehovah's Witnesses, DD and EE, visited their house. They gave the appellants a booklet about Christianity and began calling every Sunday, to discuss their religion. At about the same time, the appellants began to receive Christian instruction from several friends, including FF and GG.

[37] In about December 2006 the husband began attending St Matthew's Anglican Church and the wife joined him in doing so a short time after that. They then made the decision to convert to Christianity and were baptised in August 2007.

[38] In spite of their conversion to the Anglican faith, the appellants have continued to receive weekly visits from DD and EE, the two Jehovah's Witnesses. EE, in particular, comes to the house on Friday evenings to help the wife with Bible studies. Neither the husband nor the wife have told DD or EE that they have, in fact, converted to a different church. Instead, they have allowed them to continue to visit, and to try to convert the appellants to the Jehovah's Witness faith, because they regard them as "friends". The husband concedes that they have made use of the couple to improve their own English and, in fact, disagree with several tenets of the Jehovah's Witness faith, including their prohibition on blood transfusions and their opposition to other Christian Churches.

[39] On 23 May 2007, nearly two years after their first refugee claims had been declined, the appellants lodged second refugee claims. The husband's sister and her husband did the same, on the same day.

[40] In a combined statement dated May 2007, the appellants and the husband's sister and her husband say that, since their first refugee claims were declined, "each of us has freely chosen to become Christians".

[41] The appellants now say that they are at risk of being persecuted not just as Dalits but as Christian Dalits. They submit that there is widespread discrimination

and violence towards Christians in India and the combined nature of their Christianity and their caste puts them, they say, at such a heightened risk that the grounds of claim are significantly different to the grounds advanced in their first refugee claims.

Documents

[42] Throughout the course of their refugee claims, the appellants have provided a substantial quantity of country information. At the time of their first claims, much was put forward to support their submission that they faced a real chance of being persecuted as Dalits. In the course of the second refugee claim, they have submitted a further substantial quantity of country information, to support both the 'Dalit' aspect of their claims and the 'Christian' aspect.

[43] Regrettably, the country information has been filed piece-meal, with no indexing or coherent structure to it. Some of it is simply not on point. Much of it has been sourced from uncredited Internet sites and has been altered by having sections highlighted, italicised, bolded, put in boxes, increased in font size and underlined. Other parts of the material are duplicated. In total, it exceeds two full Eastlight folders.

[44] In fairness to counsel, it is evident that much, if not all, of the country information has been given to her by the appellants, who have wished to have it presented. The Authority gave leave to counsel, at the conclusion of the second appeal hearing, to provide a concise summary of the country information, highlighting the most relevant material. That summary has been provided and is referred to hereafter. Given the substantial quantity of country information presented, it is not intended to record the particulars of every item. That said, every item has been read and considered.

[45] As well as country information, the appellants relevantly provide the following:

- (a) Letter dated 30 May 2007 from FF, commenting on the appellants' conversion to Christianity;
- (b) Undated letter from GG, the appellants' Bible teacher, commenting on their conversion to Christianity;

- (c) Psychologist's report dated 12 October 2005, by Wolfgang Greve, clinical psychologist, as to the appellants' mental health.

[46] Counsel has filed submissions dated 23 June 2008 in writing. Note has also been taken of counsel's submissions by letters dated 6 August 2007 and 10 September 2007 to the Refugee Status Branch in response to the interview report.

[47] Following the second appeal hearing, on 30 June 2008 the Authority forwarded to counsel a copy of the decision on the second appeals of the husband's sister and her husband in *Refugee Appeal Nos 76148 and 76149* (24 June 2008), advising:

"Counsel will already be aware of the decision, having appeared as counsel for the appellants in those proceedings.... In making closing submissions in respect of the present appeals, counsel is asked to address the country information and conclusions reached in *Refugee Appeals Nos 76148 and 76149* (24 June 2008) at [86]-[104] and [110]-[118], which appear to bear directly on the claims made by the appellants in the present appeals.

Given the recent delivery of *Refugee Appeals Nos 76148 and 76149* (24 June 2008), time for lodging submissions on the present appeals is extended to 18 July 2008."

[48] No further submissions have been received.

CONCLUSION ON JURISDICTION

[49] As noted in *Refugee Appeal No 75139* (18 November 2004):

"[51] Jurisdiction under s129J(1) is determined by comparing the previous claim to refugee status against the subsequent claim. It is clear from the definitions in s129B(1) that the exercise requires the refugee status officer and the Authority to compare the claims **as asserted by the refugee claimant**, not the facts subsequently found by [the Refugee Status Branch] officer or the Authority."

[50] It must be borne in mind that the obligation is to compare the claims as *asserted*, and before the veracity of the second claims is tested. Here, the second claims are based on the appellants' claimed conversion to Christianity in late 2006/early 2007 and upon claimed increases in communal violence against Dalits and against Christians in India since the determination of their previous appeals.

[51] On this analysis, the Authority is satisfied that, in the present case, the jurisdictional threshold is met.

THE ISSUES

[52] 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."

[53] 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

[54] Before addressing the issues raised by the Convention, it is necessary to consider the credibility of the appellants' account.

[55] It will be recalled that the panel which heard the appellants' first appeals accepted that they were Dalits of the Chamar sub-caste, from the Punjab, but found that the account of the husband's involvement with AISSF students, his detentions and mistreatment by the police and the consequent harassment of his family were untrue. Those findings are relied upon herein, pursuant to s129P(9) of the Act.

[56] For the avoidance of doubt, the submission made by counsel at paragraph 40 of her submissions of 23 June 2008, that the panel of the Authority hearing the first appeal found the couple to be credible is rejected as incorrect. See the decision of the Authority at [38]-[43].

[57] As to the evidence presented by the appellants on their second claims, there are further aspects which are not credible.

Conversion to Christianity

[58] The Authority does not accept the sincerity of the appellants' professed conversions to Christianity. While they have attended an Anglican church reasonably regularly since early 2007, have participated in a small number of other church activities and have taken Bible instruction through their various friends, they are, in the Authority's view, strongly motivated to be seen as Christian because they hope it will enable them to remain in this country. The conversions have not been pursued by either of them for spiritual reasons. Put simply, if they return to India, they will not continue to profess the Christian faith because their motivation to do so will have disappeared.

[59] In reaching this view, the Authority has regard to the following.

[60] First, the timing of the appellants' conversion to Christianity is suspicious in the extreme. Both couples – the appellants and the husband's sister and her husband came to New Zealand and sought refugee status. Both couples were found, by different panels of the Authority, not to be refugees (and to have presented false evidence). Both couples then appealed to the Removal Review Authority. Having both been declined, both couples (living together by this stage) then happened to discover Christianity *and* then relied upon their conversion as grounds for a further refugee claim. It is implausible that four discrete persons should individually elect to change from the faith in which they were raised, all at essentially the same moment, and just in time to found further refugee claims, without close and cynical collusion.

[61] The Authority does not overlook the fact that the panel of the Authority hearing the second appeal of BB and CC accepted that they had converted to Christianity. A number of factors must be borne in mind, however. First, the second appeal of BB and CC was heard before the present appeal and the panel hearing it did not have the benefit of the decision in respect of this couple with which to compare accounts. Second, the panel did not give reasons for accepting that the couple had converted to Christianity – simply noting that it was accepted. The degree of scrutiny which it found it needed to bring to bear when it was, in any event, declining the appeals for lack of well-foundedness, was undoubtedly modest.

[62] Returning to the reasons for concluding that the appellants' claimed conversion to Christianity is not genuine, the Authority also has regard to the

contradiction in their acknowledgement that one precept of Christianity is “not to tell lies” and their willingness to engage in two years of deception of the Jehovah’s Witnesses, DD and EE. The appellants concede that they have used DD and EE to improve their English and, the wife says, to further her Bible studies, without telling them that they have converted to a different church and have no intention of joining the Jehovah’s Witnesses. Tellingly, the husband sought to distinguish this conduct from “telling lies” by suggesting that it was, rather, simply not giving information. On any interpretation, it is difficult to reconcile with basic Christian tenets.

[63] Also of concern is the admission by the appellants that they have not had any of their three children christened. Asked to explain why it was so important for the appellants themselves to be baptised, but not the children, the appellants claimed that it is not something they wish the children to do while they are young and they want them to be old enough to make an informed choice themselves. That contrasts however, with the reality that the children will never be in a position to make an informed choice given that the appellants do not take them to church, do not take them to Sunday School and do not provide them with any other Christian instruction. It beggars belief that the appellants have consciously elected to wait until the children are old enough to understand the baptismal process yet have failed to provide any Christian foundation for them.

[64] As to the children, the husband stated that he did not want them to attend church services because they might be disruptive. He conceded, however, that the other members of the congregation brought their children to services. Nor could either appellant explain why they had not explored with the church the availability of Sunday School, opting instead for the wife to miss services so that she could mind the children. It was difficult to detect any real note of enthusiasm in the appellants for introducing their own children to Christianity.

[65] The couple’s knowledge of Christianity is shallow. While the Authority is alert to the reality that religious belief is a personal journey and different people find different succour in their worship, it is significant that, asked to explain what attracts them to Christianity, the appellants could speak only in generalised terms of “equality”, “non-discrimination” and “not telling lies”. In spite of one and a half years of church attendance and weekly Bible studies from both GG and DD and EE, the only difference they could identify between the Jehovah’s Witness faith and the Anglican Church is that the former do not believe in blood transfusions

and hate the regular churches. On its own, a superficial knowledge of a religion would not suffice to establish a lack of bona fides. Here, however, it is but one among a number of concerns.

[66] The husband claimed that, if he returned to India, he would feel duty-bound to spread the message of Christianity among non-believers which, he said, would increase the risk of harm to him. That assertion is rejected. The husband has shown no interest in proselytising in New Zealand, in any form, and does not even make any effort to introduce his own children to Christianity. Even if his conversion were genuine (which it is not) there is no prospect whatsoever that he would seek to convert strangers in India.

[67] It is not overlooked that the appellants' friends FF and GG have written letters of support, attesting to the sincerity of the appellants' conversion. That each author believes that to be so is not doubted. However, neither woman is an impartial observer and neither has ever been called upon to examine the appellants' actions and motives critically. The appellants' real proximity to the two women can be gauged by the fact that the husband, when asked, was unable to state to which Christian faith FF adhered.

Other credibility concerns

[68] The facility of the appellants to present favourable accounts of themselves is illustrated by the wife's efforts to appear oppressed as a Dalit. In her second refugee claim, lodged some three and a half years after their arrival in New Zealand, the wife recorded herself as speaking, reading and writing Punjabi, a little Hindi and a little English. When the contradiction between this and her claim at interview to speak only Punjabi was pointed out to her, the wife responded that she made an error in her claim form because "she has been poorly educated with very little or no education when she was in India" (see counsel's letter of 10 September 2007 to the Refugee Status Branch). In reality, the wife was educated to secondary level, matriculating with A Levels.

[69] The appellants claim to have no contact in New Zealand with the husband's father. The wife asserts that she has not seen him here at all and the husband to have seen him only once or twice, in the early days. Their evidence on this is disbelieved. Not only is it predicated upon the claim that the husband's father is hostile to him for having brought the family to the attention of the Punjabi police (an assertion already rejected by the Authority as itself false), there are other

aspects of the evidence which suggest that the appellants are in close contact with him. At the time of their appeals to the Removal Review Authority in mid 2005, the appellants gave the same address for themselves and for the husband's father. The husband now claims that this was a misunderstanding arising from the fact that his father would sometimes give their address as his own. It is difficult to see how the appellants could suffer any such misunderstanding. They would have well-known (if their account were truthful) that the husband's father did not live there.

[70] Similarly, the appellants claim to have no contact with the husband's mother or siblings in India because they are hostile to him because the "police case is going on". Again, that could only be true if the appellants' first refugee claims had been the truth. It has already been established by the Authority that the husband's account of his difficulties with the Punjabi police are false.

[71] It is significant that the appellants failed to make any mention to the Removal Review Authority of the husband's claimed difficulties with the Punjabi police. Their application forms and joint statement to the Removal Review Authority gave a reasonably fulsome account of difficulties faced by Dalits generally but there was no mention whatsoever of the husband's claim to have been detained twice by the police and mistreated. The Removal Review Authority is not bound by the findings of this Authority and it is unthinkable that, if such detentions had really occurred, the appellants would have failed to mention them.

[72] Finally, the wife let slip in her evidence that, at the time of her engagement to the husband in 1995, he was already planning to go overseas. It had been a factor, she said, in her parents' view that he was a good match for her. It conflicts, however, with the husband's evidence that he only developed the need to leave India in 1996, because of the police interest in him. Invited to explain this, the wife could not.

Conclusion on credibility

[73] For the foregoing reasons, it is concluded that the appellants are not genuine converts to Christianity and that their actions in creating the appearance of having done so have simply been a device to ground their second refugee claims. While the Authority accepts, as it did at the time of their first refugee claims, that they are Dalits of the Chamar subcaste, from the Punjab, it rejects the new, added, ground of their second refugee claim, that they are also now

Christians, as untruthful. Their claims fall only to be assessed on the assertion that the situation has significantly worsened for Dalits in India.

Objectively, on the facts as found, is there a real chance of either of the appellants being persecuted if returned to India?

[74] “Being persecuted” comprises two elements – serious harm and the failure of state protection; see *Refugee Appeal No 71427/99* (16 August 2000) at [67]. Further, the appropriate standard for persecution is a sustained or systemic violation of core human rights. See in this regard J C Hathaway *The Law of Refugee Status* (Butterworths, Toronto, 1993) at p108 and *Refugee Appeal No 2039/93* (12 February 1996).

[75] The facts as established do not indicate any change to the appellants themselves from their characteristics at the time of their first refugee claims, save that they have been in New Zealand longer and have three children instead of one.

[76] The appellants’ claim to have a well-founded fear of being persecuted on the ground of their Dalit caste was considered and dismissed by the Authority in their first appeals. See *Refugee Appeals No 75319 and 75320* (12 September 2005).

[77] For the appellants, it is argued that since their first refugee claim there has been a worsening of conditions for Dalits in India. The facts as established and the country information, however, do not support that conclusion.

[78] While the refugee enquiry is prospective, past experience will often provide an excellent indication of what may be expected to occur in the future – see *Refugee Appeal No 70366* (22 September 1997). On the evidence, the appellants have not, in the past, been subjected to incidents of caste-based violence or sustained discrimination which would rise to the level of “being persecuted”. The impression that they have sought to give of their past, of abject poverty and discrimination in the Punjab, is patently exaggerated. They have both been educated to secondary level, have been able to afford international travel between India, Greece and New Zealand and have withheld any updated information on the husband’s family’s current circumstances by the pretence of lack of contact. The Authority is satisfied that the true picture for their families is far from that painted by the appellants.

[79] As to the country information, the current situation for Dalits in the Punjab was considered by the Authority in depth in its recent decision in respect of the husband's sister and her husband – see *Refugee Appeal Nos 76148 and 76149* (24 June 2008), a copy of which was provided to counsel (who had appeared for those appellants as well) with an invitation to comment. There, the Authority held:

“[91] Counsel filed a considerable volume (over thirteen hundred pages) of country information concerning conditions in India for Dalits and Christians. This country information, which includes a large amount of material downloaded from the internet, was not indexed or analysed in any way. At the commencement of the hearing counsel was asked to identify what in particular she sought to rely on in the country information filed. In response, she identified the Human Rights Watch report *Hidden Apartheid* in respect of the Dalit issue and a United Kingdom Immigration Appeal Tribunal case, *Secretary of State v Farrer UKIAT 04874* (15 October 2002) in respect of the Christian issue. (As noted earlier, additional country information was filed by counsel on 19 June 2008).

[92] *Hidden Apartheid* was produced as a “shadow report” to the United Nations Committee on the Elimination of Racial Discrimination (CERD), in advance of its February 2007 consideration of a report by the government of India. It is a lengthy report that reviews the treatment of Dalits in India and reports on their segregation, discrimination against them, and instances of caste-based violence. In an appendix to the report is a table illustrating the forms in which untouchability is practiced in rural India and the degree of prevalence. Information from the table was gathered from 565 villages in 13 major states in India including Punjab.

[93] Many of the instances of caste-based violence detailed in the *Hidden Apartheid* report are horrific and include the rape and murder of Dalit villagers committed by upper caste community members in order to enforce caste based norms. In addition to instances of extreme violence, the report details instances of harassment and discrimination carried out against Dalits.

[94] The difficulty for the appellants in relying on the report is that it refers to the plight of Dalits in India in a general way and makes little if any allowance for local conditions. In addition, the locations of the violent incidents detailed in the report are often not recorded. None are recorded as having occurred in the Punjab although some may have occurred there.

[95] Caste practice throughout India varies as each region has specific and unique characteristics that closely impact its socio-political and economic structures. ‘Thus, for a correct understanding of the phenomenon of caste and untouchability, specificities of a region hold critical importance’: Dr Ronki Ram *Burden of Past and Vision of Equality: Political Sociology of Social Exclusion and Jat-Dalit Conflicts in Punjab* (2003) ambedkartimes.com/ronkiran.htm (accessed 19 June 2008) (“the *Burden of Past* report”).

[96] The majority of the population of the Punjab is Sikh: India, Office of the Registrar General, *Census of India 2001: Punjab: data highlights* (7 March 2007). The 2001 census recorded the Dalit population in the Punjab as numbering just over 7 million. This is approximately 29% of the Punjab population which is the highest proportion of Dalits in India. The literacy rate of Dalits in the Punjab is above the national average for females (48.3% compared to 41.9% nationally) and slightly below the national average for males (63.4% compared to 66.6% nationally). The appellants' Chamar caste has a literacy rate of 63.7% while 23.1% of Chamars attain education up to Matriculation, secondary or higher secondary level: India, Office of the Registrar General, *Census of India 2001: Punjab: data highlights: the scheduled castes* (7 March 2007).

[97] An Indian Professor of Sociology, Surinder Jodhka, has addressed the practice of caste in the Punjab. He states that Sikhism does not doctrinally support the practice of caste and the Sikh holy scripture, the *Adi Granth*, includes the writings of Dalit gurus. He also states that the caste based concept of "pollution" (the idea that Dalits pollute what they touch) is not as strong in the Punjab as in other parts of India. Jodhka also asserts that caste and untouchability are viewed as core Hindu values and the struggle against them has been associated with the movement for a separate religious identity for Sikhs. There is therefore a major difference in the caste structure of a Sikh and a Hindu village. In a Hindu village, caste hierarchy and differences have religious sanctions behind them while there are no such sanctions in the Sikh religion.

[98] Like Jodhka, other academic commentators have noted that the marginalisation of Dalits in the Punjab, rather than arising from concepts of purity and pollution (which are doctrinally Hindu concepts), in fact arises from the widespread landlessness of Dalits and the monopoly of the Jats (the dominant caste) of agricultural land. Dr Ronki Ram notes in the *Burden of Past* report that until recently, landlessness confined a large majority of Dalits to agricultural labouring and made them subservient to landowners.

[99] Caste-based violence certainly occurs in the Punjab. However, the information before the Authority establishes that it is less frequent and different in origin and character than in many other Indian states. A Canadian report describes caste-based violence in the Punjab as rare: Immigration and Refugee Board of Canada, IND43499.E. *India: the current situation of the Scheduled Castes, especially in Punjab* (18 April 2005). Another article states that while violence does occur, 'Bihar style anti-Dalit carnage is unknown': Praveen Swami "Dalits' Battle in a Punjab village" *Frontline* (26 April 2003). Many of the incidents described in the *Hidden Apartheid* report occurred in Bihar state.

[100] Incidents of violence against Dalits in the Punjab appears to originate from changing power relations between Dalits and Jats. In the *Burden of Past* report Dr Ronki Ram notes the recent participation of Dalits in other occupations has reduced their dependence on landowners and that:

'the social mobility of the new middle class of Dalits coupled with their emancipation from the economic dependence on the landowners led to the emergence of Dalit assertion in Punjab...the Jats interpreted this assertion as a challenge to their long established supremacy in the state'.

[101] This assertion has resulted in Dalit-Jat clashes such as the widely reported Talhan caste riots which occurred in 2003. The Talhan riots occurred as a result of the exclusion of Dalits from the village Gurdwara management committee. The dispute was eventually resolved when Dalit representation was secured on the committee. Dr Ram predicts that such clashes will escalate in the future as Dalits continue to struggle for social status commensurate with their improved economic status.

[102] An article filed by counsel notes that this month there has been another instance of caste tension arising from the political success of Dalits. In the village of Lachru Khurd, a Dalit member of the Congress party, Sardara Singh, was elected to the village Panchayat (council) and had the casting vote for the selection of the Sarpanch (village leader). His refusal to vote for another party's candidate resulted in the social boycott of Dalits in the village including refusal to allow them access to the fields which, for many, blocked passages to their homes. Also reported were police raids on the homes of Dalits and on those of Congress party members: "Dalits Face Boycotts in Punjab Village" *The Times of India* (7 June 2008).

[103] The circumstances of Dalits may vary greatly. As noted earlier, the exaggerated and untrue evidence given to the Authority by the appellants makes it difficult to assess their true circumstances in India or the treatment they may expect to receive there should they return. However, on their own evidence, both are of the Chamar sub-caste which is the most successful of the Dalit castes in the Punjab. The *Burden of Past* report notes that Chamars are considered to be the highest caste among the scheduled castes in the Punjab and that they are ahead of other Dalit castes in almost all spheres, “Ad Dharmi Chamars are on top of virtually every parameter – education, urbanisation, jobs, occupational change, cultural advancement, political mobilization, etc.”

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[106] The appellants have not provided any credible evidence that in the past they have been subjected to incidents of caste-based violence. While the refugee enquiry is forward looking, past experience often provides an indication of what may be expected to occur in the future: *Refugee Appeal No 70366* (22 September 1997). While political struggle between the Dalit and Jat castes in the Punjab is likely to continue, the chance of the appellants being caught up in a violent clash resulting from such struggle is remote and does not, on the evidence before the Authority, rise to the level of a real chance. Incidents such as the Talhan riots and the boycott in Lachru Khurd arise as a result of local conditions and personalities.”

[80] The submissions made by counsel in the present appeal largely mirror those made for the appellants in *Refugee Appeals Nos 76148 and 76149* (24 June 2008). Relevant to the Dalit issue, counsel again relies upon the Human Rights Watch report *Hidden Apartheid* and on 30 pages of an unnamed 92 page document from the website www.ambedkartimes.com, which includes “Message on Human Rights of Dalits in India”, “Guru Ravidass: Prophet of Dalit Consciousness”, Dr Ronki Ram’s article “Burden of Past and Vision of Equality: Political Sociology of Social Exclusion and Jat-Dalit Conflicts in Punjab”, “Babu Mangoo Ram and the Emancipation of the Dalits”, Dalit Assertion and Caste Conflicts in Punjab...” and “Social Catastrophe in the Making: Religion, Dears and Dalits in Punjab” (2003).

[81] Counsel also cites an article dated 19 June 2006 from the *Sikh Times* “Casteist assault in Punjab”. That article, by Annie Zaidi, comprehensively reviews the efforts by a Dalit man to seek justice for his raped daughter. After securing convictions against three men, the Dalit was badly beaten by associates of the culprits and lost three limbs to gangrene. But the incident was so atypical that Ms Zaidi notes:

“Most residents of Jhabbar agree that the attack had a special intent: to terrorise, not kill. One shocked villager Sukhdev Singh, said, “This is the first time we have heard of a Dalit beaten up in this way. When people in Punjab get angry, or are seeking revenge, they sometimes do kill. But this assault was meant to be a warning to everyone else too.”

[82] The article also agrees that incidents such as this and the 2003 Talahan unrest are “representative of a long-term, subtle social change – the resurgence and gradual organisation of Dalits in Punjab”, rather than simply being the product of caste oppression. The perpetuation of a stratified system in the Punjab is linked less to the Hindu notion of caste and more to issues of land ownership and power as between the Jat Sikhs and the Dalits, who comprise one third of the population there and who are beginning to assert themselves as a political and economic force. As for the Chamars, they are among the most wealthy, literate and prosperous of the Dalits.

[83] In summary, it is accepted that there are incidents of caste-based violence and discrimination in the Punjab, from time to time. Even so, violence and discrimination does not occur in the Punjab at the levels of frequency or intensity which is found elsewhere in India.

[84] Such incidents of violence as do occur are abhorrent and to be condemned. While the socio-political struggle between Dalits and Jats in the Punjab is likely to continue, incidents such as the Talhan and Lachru Khurd unrest stem from local conditions and personalities. They do not occur everywhere in the Punjab and where they do occur, it is spasmodic, not regular. Nor do they occur with such frequency that it could be said that there is a real chance of a particular person being persecuted in the Punjab, simply for being a Dalit. In short, the chance of either of the appellants being caught up in violence resulting from such struggle is remote and does not, on the evidence before the Authority, rise to the level of a real chance. The risk is no more than a remote or speculative one.

[85] Counsel draws the Authority’s attention to an article by Ruth Manorama, “The Situation of Dalit Women – Formerly Known as Untouchables/Scheduled Castes” presented to the Committee on Development of the European Parliament on 18 December 2006 and asserts that the wife is at particular risk as a Dalit because of her gender. Again the difficulty with the Manorama article is that it does not specifically address the situation for Dalit women in the Punjab. Rather, it is a generalised account. The only references to locations are to Gujarat and Maharashtra. This is not to presume that caste-based violence against women does not occur from time to time in the Punjab – it undoubtedly does, but the Manorama article does not shed light on it.

[86] Counsel also submits that the appellants are at risk because they now have “a very good command of English”, which is not commensurate with their class. It

is, with respect, difficult to see that a factor which would not be apparent to others and which would, in any event, enhance their employment prospects, would create or aggravate any risk to them.

[87] Counsel submits that the fact that the appellants' children have been born and raised in New Zealand means that they "are aware that they are as good as anyone else in this country and are determined to make their views felt and known". First, the children are not yet of school age and a degree of reality needs to be brought to bear as to their ability to make their views felt and known. Second, they are not parties to the present proceedings.

[88] Finally, counsel also suggests that the children might somehow put the appellants at risk "by their behaviour" but there is no evidence to support that. Children quickly adapt to the societal expectations of whichever culture they are in and the appellants can be presumed to have their children's interests at heart and to be willing and able to provide them with guidance. The appellants confirm that the children speak Punjabi.

Convention Reason

[89] Because it is concluded that neither appellant has a well-founded fear of being persecuted, it follows that the second issue raised by the Convention – that of the reason therefor – does not arise.

CONCLUSION

[90] For the reasons given above, it is concluded that neither of the appellants is a refugee within the meaning of Article 1A(2) of the Convention.

[91] Refugee status is not recognised in respect of either appellant. The appeals are declined.

"C M Treadwell"

C M Treadwell
Member