

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76563

AT AUCKLAND

Before: B A Dingle (Member)

Representative for the Appellant: The appellant represented himself

Appearing for the Department of Labour: No Appearance

Date of Hearing: 7 September 2010

Date of Decision: 24 November 2010

DECISION

INTRODUCTION

[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 Pakistan.

[2] The appellant is a single man in his early 20s who is of the Warraich ethnicity and the Islamic faith. He claims to have been abducted by Taliban and detained against his will for approximately 10 days during which he was required to undergo training to become a suicide bomber. He also claims that after he escaped from detention, he was targeted for harm by the Taliban on a number of occasions and in a number of locations over the period of a year. He claims that if he now returns to Pakistan, he would be at risk of serious harm or death at the hands of the Taliban who are angry that he escaped their custody.

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

THE APPELLANT'S CASE

[4] What follows is a summary of the evidence presented by the appellant in support of his claim. Its credibility is assessed later in this decision.

[5] The appellant is the youngest of five children born to his father, a school teacher, and his mother, a housewife. His parents continue to live in Z city where the appellant was born and attended school.

[6] The appellant completed primary and secondary schooling and went on to complete a tertiary level diploma in 2006. For the purposes of this decision, the appellant's life until 2008 was unremarkable.

[7] In late 2007 and early 2008, the appellant worked as a tradesman, being unable to find employment in his chosen profession. In March 2008, he moved from Z city to W city where he continued his trade work. He lived with a friend AA in rented accommodation in V suburb.

Abduction

[8] In mid-June 2008, as the appellant walked home one evening, he was approached by a group of approximately four men who rendered him unconscious by inhalation of fumes on a cloth put over his face. When he awoke, he was lying on the floor of a moving vehicle, with his hands and feet bound and his eyes blindfolded. An hour or so later, he was transferred into a truck, along with what he believed were two or three other young men. The captors were speaking Urdu, although the appellant assessed it to be a second language for them.

[9] The truck journey lasted approximately two days. During that time, the truck stopped five or six times, at which point the captives were permitted to use the bathroom. The appellant's hands and feet would be unbound, but the blindfold was never taken off. The appellant recalls being given water on four occasions and rice on two occasions during stops.

[10] At the end of the journey, the appellant and other captives were removed from the truck and ordered to walk through a hilly area for approximately an hour, still blindfolded. At the end of the walk, the blindfold was removed and the appellant saw that he was in a mountainous area surrounded by bush. They were in a camp area where the appellant saw four huts and approximately 14 security personnel, some of whom were on horseback. The appellant also saw that he was accompanied by three other boys who had also been abducted. For all the

time that he was in the camp, the appellant was not aware that there were any other captives being held there.

[11] The appellant and other captives slept and ate in one of the four huts, guarded by two armed security guards stationed outside the door at all times. The guards stationed outside the hut always wore black cloth masks covering their faces. At an early stage of his captivity, the appellant was told by one of the men that the group were the Taliban.

[12] The appellant arrived at the camp in the evening, was fed and slept in the hut with the three other young men. On the first morning in the camp (day one), the camp leader visited the captives and informed them that they would undergo training as suicide bombers. He told them that should they try to escape the camp or refuse to become suicide bombers, they would be killed. Other camp personnel removed from the appellant his Pakistani identity card, driver's licence, wallet and mobile telephone. They scanned and copied his identity card and driver's licence and then returned the originals to him. His mobile telephone was not returned.

[13] For two days, the captives were kept in the hut. On day three in the camp, the four captives were taken to a training ground where they underwent physical training every day for the next nine days. Within the first few days of training, the four captives had a short discussion, agreeing that they would take any opportunity to escape the camp if it presented itself during their training sessions.

[14] On the ninth day of training, the appellant escaped by running into some trees adjacent to the training ground. Another captive who followed him was shot by the guards. The appellant then spent two nights in the jungle before locating a road and hitch-hiking to a nearby city. After he shared his predicament with the truck driver, the driver gave him some money to buy food and onward travel. The appellant did not want to return to either his home town or W city so he travelled instead to Y city where AA's brother lived. Once in Y city, the appellant called AA to obtain his brother's (BB) contact details. The appellant did not make any contact with his own family for fear that it may expose them to harm from the Taliban.

[15] For two weeks, the appellant stayed in BB's house, feeling too fearful to leave in case the Taliban caught him. He then started leaving the house to go to a nearby hotel where he could buy a meal. In late August 2008, as he was leaving the hotel one night, he heard gunshots on the street outside. He fled back into the hotel and hid under a table. When he looked outside, he saw two people in the

cars from where the firing was coming who he recognised as Taliban from the camp. He therefore believed that the attack was targeted towards him personally and felt very fearful for his safety. Once the shooting had subsided and other patrons began to leave the hotel, the appellant made his way back on foot to BB's house.

[16] Because he was fearful for his safety in Y city, the appellant left for X city the next morning. The appellant had a cousin in X city with whom he intended to stay.

[17] The appellant lived safely in X city for approximately two months. However, in late October 2008, when he was riding his cousin's motorbike, he was stopped by an elderly man who requested a lift. The appellant obliged and the man rode as a pillion passenger on the motorbike. However, after a short distance, the man held a pistol to the back of the appellant's head and said: "What do you think, you will run away from us?" The appellant immediately understood that the elderly man was Taliban and was sent to threaten and possibly kill the appellant. By chance, at that moment, a police vehicle was approaching. The man got off the motorcycle, telling the appellant to remain where he was. The appellant stopped the police vehicle and told them of the incident but they were unwilling to assist.

[18] On return to BB's house, the appellant immediately telephoned AA and asked him to come to X city and take the appellant back to W city. AA arrived in X city the following day, but counselled the appellant to seek government help. With AA's assistance, the appellant sought a meeting with a government minister, but was unsuccessful.

[19] After approximately 10 days of trying to seek government help, the appellant returned to W city with AA. AA encouraged the appellant to make arrangements for leaving Pakistan to escape the Taliban. The appellant travelled for one day to his home city to arrange for a new passport. He then went to W city and stayed with AA in an area approximately 15 kilometres from V suburb where they had previously lived.

[20] In December 2008, AA introduced the appellant to an agent who offered to arrange the appellant's travel to New Zealand for the price of NZ\$15,000. The appellant did not have enough money to cover the cost, but AA offered to liaise with the appellant's uncle, a successful businessman, to obtain the money. The appellant did provide the agent with a deposit which was paid with US\$1,400 that the appellant had saved from his work as a tradesman and US\$600 that AA lent

him. It was agreed that the remaining cost would be paid by the appellant's family once he (the appellant) arrived safely in New Zealand. The appellant provided the agent with two photographs, each of them different from the other. The appellant is not aware what arrangements the agent made or how his travel to New Zealand was organised.

[21] In May 2009, the appellant was given a false Pakistani passport which contained the appellant's photograph but not his name or biographical details. The passport also contained a student visa for Australia and a visitor's visa for New Zealand.

[22] Also in May 2009, the appellant departed Pakistan from Lahore city using his own genuine Pakistani passport. When he arrived in Singapore enroute to New Zealand, he disposed of his genuine Pakistani passport and then boarded his onward flight to New Zealand using the false Pakistani passport in another name.

[23] On 27 May 2009, the appellant arrived in New Zealand at Auckland International Airport. He was interviewed by a Border Operations officer who questioned him about his intended visit to New Zealand and then granted him a visitor's permit in the name of the false passport.

[24] Although the appellant had booked accommodation for two days in Auckland in the name of his false identity, he did not take that accommodation. Instead, immediately after leaving the airport he visited a mosque in Mt Roskill where he met some Pakistani nationals who offered him a place to stay.

[25] On 27 June 2009, the appellant's visitor's permit expired but he took no action to renew it. Some time later, in approximately late August 2009, the appellant was encouraged by a friend in New Zealand to apply for refugee status and on that basis he consulted a lawyer. He was told that he would need to reveal his true identity and corroborate that with documents from Pakistan. For that reason, the appellant contacted AA and asked him to obtain identity documents from the appellant's family.

[26] Since he has been in New Zealand, the appellant has maintained some telephone contact with AA. Through that contact, the appellant has heard that his family continue to live in the family home and he is not aware that they have been approached by the Taliban or that they have experienced any other circumstances relevant to the appellant's claimed predicament in Pakistan.

[27] The appellant claims that if he were to return now to Pakistan, he would be

at risk of a second abduction or being killed by the Taliban. He claims that this risk exists throughout Pakistan and he gives the attacks against him in Y city and X city as evidence that he would be pursued wherever he settled in Pakistan.

Documents

[28] The appellant lodged his Notice of Appeal on 1 July 2010 and did not name a representative. On 26 July 2010, Ms Carole Curtis wrote to the Authority advising that she had been instructed as counsel and attaching an Authority to Act signed by the appellant. On 4 August 2010, by which time an appeal hearing had been scheduled, Ms Curtis wrote to the Authority to advise that she no longer acted for the appellant and that he had been notified of the hearing date and that the RSB file was available at her office.

[29] The appellant appeared at the appeal hearing without representation.

[30] During the appeal hearing, an issue arose as to the correct translation of one part of the appellant's Urdu statement which he had provided to the RSB. The English translation of the statement (also provided by the appellant) appeared to be inconsistent with the appellant's oral evidence at the appeal hearing. The interpreter retained for the hearing was unable to read Urdu and so could not assist in the matter. The appellant stated that he could not afford to pay for a further formal translation of the Urdu statement. In an abundance of fairness, the Authority agreed to have an Urdu interpreter examine a copy of the original Urdu statement and translate it again. On 5 November 2010 the Authority wrote to the appellant providing a copy of the relevant excerpt of the Urdu statement, and a signed statement from an interpreter, providing a translation of the excerpt. The Authority invited the appellant's comments on the issue of apparent inconsistency with his oral evidence, a matter not resolved by the new translation, by 12 November 2010.

[31] No response from the appellant has been received by the Authority.

THE ISSUES

[32] 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.

[33] 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

[34] Prior to determining the framed issues, it is necessary to make an assessment of the appellant's credibility. The Authority finds that the appellant has given a false account of his abduction and detention by the Taliban and the subsequent attempts by the Taliban to threaten and harm him. The specific reasons and findings follow.

Basis of claim

[35] It will be recalled from above that the appellant bases his claim upon his experience of being abducted and held captive by armed men who explicitly identified themselves as Taliban. The appellant also claims that on two subsequent occasions, one in Y city and one in Z city, he was identified by Taliban members and targeted for specific harm. Surprisingly, his confirmation of claim form ("claim form"), completed on 15 October 2009, makes no reference whatever to his specific experiences with the Taliban. For example, the following questions and answers are excerpts from the appellant's claim form in Section I:

Question: What do you fear would happen to you if you returned to your home country?

Answer: Fear of death.

Question: Why would this happen to you?

Answer: In Pakistan last few years are very hard for everybody due to terrorist attacks in public places, markets, hotels and public transport. The victims of these attacks are innocent people like me and numbers of these attacks are growing day by day. In these kind of circumstances people feel unsafe.

Question: What happened to cause this fear? (Please provide the key events in chronological order.)

- Answer: In Pakistan police and army are responsible for the safety of people but they are fail to do so. Many times police are army officers have been targeted by the terrorist attacks. If the law and order institutions are unsafe what will be the plight of innocent unarmed people.
- Question: When did you first fear this would happen to you?
- Answer: From last few years in Pakistan terrorist attacks and bomb blasts are increasing in numbers. And it killed many innocent people. I do not want the victim of it.
- Question: Who do you fear in your home country?
- Answer: Unknown terrorist.

[36] Later in the claim form, when the appellant was asked to set out in chronological order any other key events that caused him to leave Pakistan and claim refugee status, and to describe any measures taken against him, he again failed to mention any specific events which he now claims happened to him. Instead, he referred again to general terrorist activities which affect civilians generally.

[37] Asked to explain why his claim form omits all references to his particular circumstances and his claim of being abducted and pursued by the Taliban, he told the Authority that the person assisting him complete the form told him that he would have an opportunity to tell the full story at a later date. The person assisting him also said that because he (the appellant) did not have a lawyer at that time, he should not include the details of the claim.

[38] The Authority does not accept this explanation. While the Authority acknowledges that claim forms are necessarily a summary of a claim, and that details of events will necessarily be elaborated upon later in claims proceedings, in the present case the appellant completely failed to refer to any of the circumstances relevant to his claim. Despite being asked in a number of questions in the claim form to give specific information about the events which he experienced and the reasons why he fears persecution in Pakistan, the appellant's answers all simply referred to a general state of danger in Pakistan.

[39] The Authority finds that the complete omission of any information relating to the appellant's refugee claim indicates that the specific events he now claims occurred are part of a fabricated account created after the claim form was completed. Had he genuinely been abducted by the Taliban and subsequently pursued, the Authority is in no doubt that he would have referred to these events in answering the series of questions which are excerpted above.

[40] Further underlining this view is the fact that in answer I5 "Who do you fear

in your home country?”, the appellant answered: “Unknown terrorist.” When asked by the Authority who he feared, the appellant immediately named the abductors as being the Taliban. Given his later certainty about being targeted by the Taliban and his assertion at the appeal hearing that while at the camp, his captors identified themselves as Taliban, the appellant’s inability to name the Taliban in his claim form as being the cause of his fear is incomprehensible.

Time in captivity

[41] The appellant’s evidence about his time in captivity is undermined by inconsistencies.

[42] The appellant told the RSB that during his transportation in a truck from W city to the Taliban camp, the truck stopped twice, at which time he was given a drink of water only. In contrast, he told the Authority that the truck stopped six times and he was provided with a meal of rice on two occasions and with water on four occasions. When asked to explain the apparent discrepancy, the appellant maintained his evidence to the Authority and suggested that he may have given incorrect evidence to the RSB because of the pressure of the interview. The Authority then asked him to explain his written statement which stated:

... we walk for a very long distance [to get to the training camp from the truck] and my feet started to kill me and I did not eat or drink God know for how many days.

[43] The Authority pointed out that the statement suggested that the appellant had not eaten for a very long time, whereas his evidence to the Authority was that he ate twice during the truck trip and then was fed soon after his arrival at the camp. When asked to explain that apparent inconsistency, the appellant said he made the written statement because what he was provided to eat was not sufficient for his needs.

Subsequent Taliban pursuit of the appellant

[44] To the Authority, the appellant stated that once he got to Y city, he rang AA who reported that nobody had been looking for him (the appellant) in W city or asking about his whereabouts. The appellant confirmed to the Authority that while in Y city he only spoke to AA once and that AA was the only person living in W city that he spoke to. Contradicting his Authority evidence, the appellant’s written statement asserts the following:

I called one of my friends in [W city] to tell him [about my abduction]. He was worried about me and told me that some people were looking for me.

[45] When asked to explain the contradictory evidence, the appellant said that the written statement was incorrect but that it was the first time that he had noticed the mistake. Challenged by the Authority, the appellant acknowledged that (as the record of the RSB interview plainly shows) at the RSB interview he confirmed the English version of his written statement had been read back to him in Urdu and that the contents were true and correct.

[46] The Authority also finds the appellant's evidence to have been pursued and targeted by the Taliban over a period of nearly a year in different cities, and yet to have escaped harm, to be fanciful. Asked to explain why the Taliban would go to such lengths to locate him, the appellant could only say that they were angry with him for having escaped. As to how he was able to escape their attacks his evidence had an air of unreality and was replete with incidents of such coincidental good fortune that, considered cumulatively with the other credibility concerns, it is found not to be credible.

[47] It will be recalled, for example, that he says that he was personally attacked as he left a hotel restaurant by Taliban who were shooting from moving cars. He also claims to have been specifically targeted by an elderly Taliban man who asked him for a lift on his motorcycle. In both cases, the appellant asserts that the Taliban had had him under surveillance so that they could target him at locations he regularly visited. He also claims that their intention was to kill him.

[48] As to his avoidance of harm, the appellant asserts, that in the restaurant incident he was able to escape back into the restaurant and take shelter before making his way home on foot. By chance, he was missed in the initial shooting (although several other individuals were killed) and was subsequently able to walk home unharmed. As to the motorcycle incident in X city, by good fortune, just as the man had threatened the appellant a police car approached them and this scared the attacker off. The appellant could not explain why, if the Taliban had him under surveillance at that time, they did not make another attempt against him while he remained in X city for a further ten days. The Authority finds it inherently unlikely, if not implausible, that the Taliban had the appellant under such surveillance that they knew where he ate in Y city and which route he travelled by motorcycle in X city, and yet they were unsuccessful in their alleged bid to harm him. The evidence is rejected.

Last address in Pakistan

[49] To the Authority, the appellant claimed that when he returned to W city for

the six months prior to his departure for New Zealand, he lived with AA but in a different area some 15 kilometres from V suburb where he had lived in early 2008. In contrast, the appellant told the RSB that he was living in V suburb, the same suburb in which he had lived in early 2008, for the six months before he departed Pakistan. His evidence to the RSB was clear and unequivocal. When the Authority noted the inconsistency, he stated that he was surprised that his final address in Pakistan was recorded in the RSB interview as V suburb. The Authority observes that his assertion to have changed suburbs was made in the context of challenges to his evidence that he was under surveillance and pursued by the Taliban and yet they did not succeed in capturing or harming him.

[50] The discrepancy between his RSB evidence and his Authority evidence on this point has not been resolved. The Authority finds that his Authority evidence was an attempt to pre-empt any suggestions by the Authority that the Taliban would have found him if he was living at the same address in V suburb. The inconsistency further undermines the appellant's account.

Arrangements to travel to New Zealand

[51] The Authority has several concerns about the appellant's evidence regarding his arrangements and travel to New Zealand which remain unresolved.

[52] As to the money paid to the agent to make his travel arrangements, the appellant has given inconsistent evidence. He told the RSB that no money at all was paid to the agent prior to his departure from Pakistan. He said that it was agreed with the agent that if he reached New Zealand safely, then the money would be paid by the appellant's family to the agent. In contrast, he told the Authority that he made a payment equivalent to NZ\$4,000 to the agent so that the necessary documents could be obtained and the airline tickets purchased. When asked to explain the apparent inconsistency, he did not address the question but simply asserted that the money was for the documents and the ticket. The inconsistency between his evidence to the Authority and his statements to the RSB remain unresolved.

[53] Further undermining his claim to have only begun making arrangements to travel to New Zealand in late 2008, is the student visa in the false Pakistani passport. The passport in which the visa appears contains the appellant's photograph which was provided to the agent in December 2008. However, the Australian visa in the passport was issued in February 2008, indicating that the passport had been created at some stage prior to February 2008. When asked to

explain this, the appellant simply stated that he knew nothing of the agent's efforts to arrange his travel and could not explain how the visa was issued before he provided the photographs in the passport to the agent.

Conclusion on credibility

[54] For all the reasons outlined above, the Authority finds that the appellant's account of his difficulties with the Taliban in Pakistan is wholly untrue. It is rejected in its entirety.

[55] There is therefore no credible basis which establishes that the appellant is at risk of serious harm from the Taliban or any other person or group should he now return to Pakistan. The first principal issue as outlined in paragraph [33] above is answered in the negative. The second issue does not arise for consideration.

CONCLUSION

[56] 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. Refugee status is declined. The appeal is dismissed.

"B A Dingle"

B A Dingle
Member