

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO AB70765/98

AT AUCKLAND

Before: V J Shaw (Member)
H Ten Feld (UNHCR Member)

Representative for the Appellant: R. Collier

Representative for NZIS: No Appearance

Date of Hearing: 3 April 1998

Date of Decision: 18 June 1998

DECISION

This is an appeal against the decision of the Refugee Status Branch (RSB) of the New Zealand Immigration Service, declining the grant of refugee status to the appellant, a Bihari living in Bangladesh.

THE APPELLANT'S CASE

The appellant is a 28 year old single man. He is a Bihari, that is, his parents were Muslims from the Indian state of Bihar who migrated to what was then East Pakistan at the time of the Indian subcontinent's independence from Britain in 1947. The Bihari community in East Pakistan aligned themselves with the West Pakistanis during the war in 1971 which led to the creation of the independent state of Bangladesh. Many fled to Pakistan after the war, while around a quarter of a million Bihari congregated in various refugee camps throughout Bangladesh in expectation of resettlement in Pakistan. Their hopes of resettlement, although agreed to in principle by the Pakistani government, never eventuated for the

majority living in the camps, who more than 25 years after the war, are still agitating for repatriation to Pakistan. This historical legacy has left the Bihari in the position of a poverty stricken and discriminated against minority. They have as a group, refused to take up Bangladeshi citizenship, although individuals may apply to do so at any time and those who do are granted full citizenship (UNHCR REFWORLD BGD27922.E22/09/97).

As illustration of this history of discrimination, the appellant referred to such early incidents as his family home being set on fire in 1972. His mother received burns from which she subsequently died six months later. Thereafter the appellant, his father and elder brother, moved to one of the Bihari camps in Dhaka.

The appellant recalls his father being insulted in the market and on one occasion being beaten unconscious, merely because of his being Bihari.

In 1985, the Stranded Pakistani General Refugee Council (SPGRC), an organisation formed to promote Bihari demands for resettlement in Pakistan, organised a march in an endeavour to force resolution of the resettlement issue. It was originally intended that the marchers would cross the border and walk to Pakistan as a way of drawing attention to their plight. The appellant, his father and brother congregated with around 1000 other Bihari at the Jessore boarder crossing. When they attempted to cross the border into India, the boarder guards opened fire. A number of Bihari were shot dead, amongst them the appellant's father. Large numbers were arrested, including the appellant and his brother. He was beaten on various occasions with rifle butts and held in a Jessore jail for over two weeks. He only learned of his father's death on his return to the camp in Dhaka.

After his father's death, the appellant and his brother continued to live in the camp but his brother became increasingly depressed and eventually, after about 10 months, he moved out of the camp. The two brothers continued to have intermittent contact as the brother would visit every four to five months. Contact ceased around 1990. In his previous accounts, the appellant has referred to his brother as having "disappeared" while he surmised to the RSB that maybe his brother was dead. On closer questioning, it transpired that little effort had been made by either brother to maintain contact and the appellant admitted that he did not get on with his brother. This would appear to be consistent with the appellant's evidence that he was aware that his brother had married subsequent to leaving

the camp although he had not been invited to attend the wedding, which he had learned of through third parties.

The appellant ceased attending high school in the period following his father's death. He attributed this to the "torture" he received from Bengalis which consisted of being teased, slapped and dusters thrown at his head. He denied that the primary reason for his leaving high school was economic necessity, although in his written statement he specifically stated that it had not been possible for his brother to keep them both on one income so that he had had to start hawking goods to pay for his expenses. In his statement, he also attributed his brother's failure to attend school to the requirement that he help support the family by hawking goods.

Living conditions in the camp were extremely poor. There was gross overcrowding so that the appellant had to share a room eight foot by ten foot with some six or seven others. It had a tin roof and brick wall. Toilets were inadequate and had to be shared with many other residents. Sanitation in general was poor and diseases rife. There was only one tap for up to 50 houses and the water impure. Cooking facilities were shared between up to 50 and 60 houses, resulting in long queues. Security in the camps was poor and the habitants often victims of Bengali thugs who preyed on them with impunity because of the unwillingness of the police to provide protection to Bihari.

The appellant survived by selling papers, magazines and other goods in central Dhaka districts, some three to four kilometres away from the camp. He says that he was a regular target for Bengali hostility and intimidation. He was verbally insulted including being accused of being a "bloody Pakistani" or a "rajunger", that is a supporter of Pakistan or a traitor. Sometimes Bengali customers, on realising he was Bihari, would refuse to pay for goods. On other occasions, he would be slapped, kicked and burnt with cigarettes. He estimates such assaults to here occurred once or twice a week.

Once during 1992, the appellant was selling newspapers outside Jagnath university when he was assaulted by a group of Bengalis, presumed to be students, who set upon him once they realised from his speech that he was a Bihari. A police jeep happened to arrive on the scene but rather than offering him protection against his assailants, he was arrested on false allegations of being a

pickpocket. At the police station, he was hit with batons and then held in a cell with at least six others for one week. He was released without being charged.

Meetings of the SPGRC held in the camp were regularly disrupted by Bengali thugs. Two particular nasty attacks occurred in 1986 and 1993. On the earlier occasion, a group of around 15 Bengalis armed with sticks attacked the Council supporters who numbered around 25 persons. The appellant said that he and his fellow Biharis did not fight back as they feared retaliation, nor did they complain to the police as they knew their complaint would be ignored. On the latter occasion during 1993, the appellant and about 55 to 60 others attending a Council meeting were attacked by a group of Bengali thugs armed with hockey sticks. This time, fed up with the constant harassment, the Bihari fought back. Arming himself with a broken chair leg, the appellant managed to inflict injuries on several of the attackers. Fearing reprisals, he stayed away from the camp. On learning from a friend that the police had arrested a number of the Bihari who had fought off the Bengali attack and that his name had been amongst those given to the police he decided to stay permanently away from the camp.

For the next nine months, the appellant slept in a bus shelter in a market area. In June 1994, he was selling clothes when he was set upon by a group of Bengali, one of whom he recognised as being amongst those who had participated in the attack on the Council meeting the previous year. The beating that he received was so severe that it rendered him unconscious. He regained consciousness to find that he had been rescued and taken into the home of a Christian Bengali. This man C, and his wife, befriended the appellant and allowed him to live in their home. It took him some time to recover from his injuries. After about four months, some neighbours came to know that he was Bihari and started to threaten C. As a result, C arranged for the appellant to live with his relatives not too far away. He remained living with members of C's family until his departure from Bangladesh in November 1995. Not only was he allowed to live with C's family but he was entirely supported by them as well so it was unnecessary for him to have to hawk goods.

The appellant's travel to New Zealand was entirely organised by C, who made the decision, it seems without consulting the appellant, that he should leave Bangladesh. He took the appellant to the airport where they met up with another man who presented the appellant with a fraudulent Bangladeshi passport containing his photo of but in a different name. He was told to tell the New

Zealand authorities about the problems that he had encountered because of being Bihari in his home country. C's generosity towards the appellant had been motivated by the fact that the appellant reminded him of his son who, while attending university, had been killed by Islamic fundamentalists angered by his promotion of Christianity. C wanted to ensure that the appellant's life was safe.

The appellant arrived in New Zealand on 16 November 1995. Since being in this country, he has written to C but has not received any reply.

The appellant stated that he did not wish to return to Bangladesh because as a Bihari there would be no security of life for him. The police would arrest him because of the 1993 incident at the SPGRC meeting. He would be tortured by the Bengali people as in the past and there would be no protection from the police, who would not believe or care to know a Bihari.

In support of his appeal, the appellant provided a letter on the letterhead of the Non Local Relief Committee, dated 12 December 1996, which had been sent to him in response to a written request he had made and which confirmed his identity.

THE ISSUES

The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly 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, is unable or, owing to such fear, is unwilling to return to it."

In terms of Refugee Appeal No. 70074/96 (17 September 1996), the principal issues are:

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
2. If the answer is yes, is there a Convention reason for that persecution?

Decision

Before proceeding to determine the above two issues, it is necessary to make an assessment of the appellant's credibility. We have no reason to doubt the appellant's claims that he is from a Bihari family and that up until 1993, he lived in a Bihari camp in Dhaka. We also accept his general account of significant events in his life.

We have two areas of concern. First, we considered there has been a tendency on the part of the appellant to exaggerate the frequency and seriousness of the "torture" he suffered at the hands of ordinary Bengali in day to day life. Second, we reject his account of how he came to leave Bangladesh. It may well be that the appellant was rescued by C in the manner described and that he derived some assistance from him. However, we find it quite unbelievable that he was able to live with C and his family for a period of some 17 months, being completely financially supported, and that one day his benefactor announced that he was to leave Bangladesh and come to New Zealand in order to save his life and presented him with the means of doing so. The appellant could tell us little about C apart from his age of around 60 to 65. Nor, despite his great generosity to the appellant, did C bother to reply to letters written to him or ensure some way of maintaining contact. (The appellant said C had a telephone but neither he nor C thought to ensure the appellant had the number before leaving Bangladesh). We consider that the appellant has embellished this aspect of his account in order to conceal the true circumstances of how he came to leave Bangladesh. Undoubtedly this is because it would have revealed a greater capacity for initiative at odds with the down trodden victim presented in his account.

In comprehensive submissions filed by the appellant's counsel, it has been submitted that the hardships experienced by the appellant were "in excess of the hardships faced by the general population of Bangladesh" and reflect a level of discrimination that "keeps the Bihari in a vulnerable and socially inferior position". Further the "inhuman living conditions" endured by the appellant in the camp, coupled with the constant harassment, insults and beatings received from Bengalis, amounted to cruel, inhuman or degrading treatment contrary to Article 5 Universal Declaration of Human Rights and Article 7 International Covenant on Civil and Political Rights and can therefore properly be described as persecution. Reference was also made to breaches of the social and economic rights set out in the International Covenant on Economic, Social and Cultural Rights.

There can be no dispute that living conditions in the Bihari camps are abysmal with overcrowding, poor sanitation and inadequate facilities generally. The establishment of these camps reflects historical events in the wake of the 1971 civil war. The Bihari community generally allied itself with the Pakistanis and chose not to be part of the new state of Bangladesh. Those who were unable to make their way to Pakistan have constantly rejected the possibility of integration. They have continued to agitate for resettlement, yet their hopes remain cruelly unrealised.

The poverty of the camps reflects not only their origins in the displacement of the Bihari community because of war, in itself usually economically disastrous, but also the fact that many of the inhabitants are illiterate artisans, and therefore amongst the poorest and more vulnerable sections of the Bangladeshi population. (Weekly Purrima Magazine, 12 June 1996, "Pathetic Cry of the Detained Pakistanis"). Article supplied by counsel for the appellant).

In Bangladesh extreme poverty is endemic. The United States Department of State Reports on Human Right Practices 1997 (March 1998) page 16 72 states:

"Bangladesh is a poor country. Annual per capital income is approximately \$260.00; about 45% of the country's 124 million people exist on incomes insufficient to meet minimum daily needs."

The section on Bangladesh in Human Rights in Developing Countries Year Book 1995 (by Steinar Askvik, Peter Baehr *et al* eds. at pp111-112 details the miserable conditions that confront so many living in Bangladesh:

"Bangladesh is often referred to as the 'basket case' among the developing countries. This term was first used by Henry Kissinger in 1974, to signify 'a deeply impoverished country with a rapidly growing population living in a river delta subjected to frequent floods and deadly cyclones.' Statistical indicators reflecting socio-economic development provide evidence that the country is one of the poorest in the world. According to the United Nations Development Programme (UNDP) human development index, in 1994 Bangladesh was ranked as 146 out of 173 countries..."

The country is now almost self-sufficient in food, although this was not the case in 1994 due to drought. There is still widespread hunger, but there is currently little overt starvation... Although overall poverty has declined somewhat and sever socio-economic indicators show positive development, there is an ongoing process of marginalisation of a growing part of the population living in extreme poverty..."

The 1990 report on human rights in Bangladesh noted that the most important category under the right to an adequate standard of living, is access to adequate food. Data on daily calorie intake of the average adult provide an estimate of the

access to food. The Household Expenditure Survey (HES) of the Bangladesh Bureau of Statistics shows that a large part of the rural population has a very low level of calorie intake. During 1988 - 1989, the average daily intake was 2,215 calories per person, while the poverty line was defined at 2,122 calories *i.e.* the amount of calorie intake defined as necessary to avoid malnutrition. Hence, 48 percent of the population were living below the poverty line in 'absolute poverty'. A hard-core poverty line is defined at a calorie intake of 1,805 calories, signifying the proportion of the rural population living under 'extreme poverty' to be 30 percent. Corresponding proportions of absolute and extreme poverty for urban areas are estimated to be 44 percent and 21 percent respectively."

In respect of employment, health and education, it is noted: (*ibid.* pp114-117):

"According to official figures, only about two percent of the workforce is unemployed. This number is based on those who are registered as unemployed. In practice, the basic problem is to find employment which provides sufficient income to yield an adequate standard of living. Furthermore, 18 percent of the workforce is underemployed in so far as they work less than 40 hours per week. They cannot survive without an income, and will seek any kind of employment however fleeting or poorly paid..."

The demand for labour has somewhat gone up during recent years, and the number of job opportunities has increased. The problem is that at the same time the supply of labour has also been increasing due to the growth of the population. As a result, the employment situation has not generally improved, and the future prospects are that only 35 percent of the new entrants into the rural labour force will be absorbed through an increased labour demand...

Two thirds of the labour force in the urban areas works in the informal sector, *i.e.* they are not employed on a regular basis by a formal organisation. Either they are self employed (e.g. rickshaw pulling, petty trading), or they are wage employed (e.g. domestic servants, day labourers). The working conditions of those employed in the informal sector are poor. Wages are low, and no contracts regulate the relationship between employers and employees. In the formal sector, the most significant development has been the growth of the garment industry, which currently employs more than 900,000 people, 85 percent of which are women. In general, the proportion of women workers in the formal sector has doubled during the last decade and about 30 percent of the workers are now women. This increase is partly a result of increasing poverty, which forces more family members to work outside the home. In the formal sector, working conditions are also substandard. There is no legal provision for ensuring a minimum wage to 90 percent of the industrial workers, and, for instance 99 percent of the workers in the garment industry do not have 'appointment letters'. Owners can dismiss them at any time, at their own discretion, without facing any legal complexity...

Poverty, poor sanitation and widespread malnutrition significantly contribute to the low life expectancy of Bangladeshis. Life expectancy at birth is 56 years, which is among the lowest in the developing world.

The infrastructure of the health care system comprises 64 district hospitals, 400 *thana* health complexes (in and out-patient treatment), and about 3,000 health and family welfare centres and subcentres at the union level. At the community level, there are 100,000 outreach posts for immunisation, as well as 30,000 satellite clinics for prenatal and postnatal care and family planning. The number of inhabitants per health care worker is 4,000, which is far lower than that of other comparable countries. Nevertheless, according to observers, "the health system is seriously flawed in management and operation, and most patients get very unsatisfactory treatment. There is no system for quality control and accountability, and there is a tremendous wastage of resources.' For instance, at *thana* health

complexes the bed occupancy rate is below 50 percent. 'The proportion of child deliveries receiving skilled care is only 25 percent. Only about 30 percent of the population has access to the health care system, many rural people are totally unaware of the Government health services (...). Some NGOs have made commendable efforts to deliver more efficient health services, but they still only reach a small fraction of the population.

The Constitution of Bangladesh holds the State responsible for providing education and removing illiteracy. Primary education has been compulsory since 1993. Nevertheless, the illiteracy rate and the lack of primary education continue to be among the highest in the world. In 1990, the literacy rate among the adult population was estimated at 35 percent. The official primary school enrolment rate was 78 percent, and the completion rate was 39 percent, which means that only about 30 percent of children complete primary school. However, estimates differ and some observers claim that only 15 to 20 percent of an age group complete primary school.

Formation education in Bangladesh is offered at the following levels: primary school (age 6-10), secondary school (age 11-15), and higher secondary school (age 16 - 17). There are approximately 50,000 primary schools, 13 million students, and 190,000 teachers. The educational system at the primary level, however, is in a particularly poor state and staffing is inadequate. During the 1980's, the quality of education declined as a consequence of an increasing student per teacher ratio. Educational materials are scarce and classrooms are crowded."

The fact that there is discrimination against Bihari, may result in additional burdens for many, though not all, in that community. Country information suggests that many Bihari have left the camps for economic reasons and have done well while some Bihari hold high positions in governments. Ref. World BGD 23489.E4/2/96

Apart from the fact that the appellant lived in a Bihari camp, we find that his situation is unremarkable in comparison with many other urban Bangladeshi. He was able to obtain an education completing primary school and one year of high school. He attended a school outside of the camp, suggesting that no discrimination was experienced, at least in terms of access to education. We reject his claim to have being forced to leave high school because of ill treatment from other students and teachers. Curiously, he said this ill treatment did not occur when attending primary school. The decision to leave high school, we find, was prompted by economic necessity in the wake of his father's death.

The appellant has always worked hawking newspapers and other goods. His income is modest, he says averaging around 500 taka a month, which was inadequate for his needs. However, this is not an anomaly in Bangladesh.

It must also be remembered that there is no compulsion about living or working in the Bihari camps. The appellant attended school outside of the camp, has always

worked outside of the camp and ceased to live there after June 1993. His brother ceased living in the camp in the mid 1980's.

The appellant further says that he suffered constant indignity through being insulted by Bengalis and at times slapped, punched and beaten. A particularly nasty episode occurred in 1992 when he was beaten and accused of being a pickpocket by students, which resulted in his being arrested and unlawfully detained for seven days. He also says that he was beaten unconscious by thugs in 1994. This latter incident most likely related to the fracas at the SPGRC meeting during 1993. In the ensuing fight, the appellant admits that he inflicted serious injuries on some of the Bengali thugs who tried to break up the meeting. It was one of these thugs who was amongst the group that assaulted the appellant in 1994, suggesting an element of revenge. The appellant left the camp after the incident of the meeting so as to avoid any police repercussions. None had eventuated by the time he left Bangladesh over two years later and given the further lapse of time, there is no real chance that the police would have any real interest in pursuing the appellant.

We do not doubt that the appellant has suffered racial insults and even occasional assaults. However we doubt very much that the appellant, after his years of working on the streets of Central Dhaka, where crime and thuggery are commonplace, did not possess the acumen to generally avoid being slapped, punched or burnt with cigarettes. The serious assaults while working on the streets in 1992 and 1994 appear to be the exception, rather than the rule. Overall, even though the harassment and the assaults experienced by the appellant may have been racially motivated, they are not sufficiently serious to amount to persecution.

We conclude that it has not been demonstrated, that the hardships experienced by the appellant are in excess of the hardships faced by the general population of Bangladesh. Being a Bihari may explain much that is peculiar to the appellant, but his impoverished state, in general, reflects more the fact of living in Bangladesh, one of world's poorest countries, than the consequences of discrimination so as to disadvantage him beyond the norm. In the absence of such discrimination poverty and hardship does not amount to a violation of the Convention. Hathaway; The Law of Refugee Status, Butterworths, 1991 pages 116-117. He does not have a well-founded fear of persecution for a Convention reason.

CONCLUSION

For the above reasons we find that the appellant is not a refugee within the meaning of Article 1A(2) of the Convention. Refugee status is declined. The appeal is dismissed.

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Member