

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

**REFUGEE APPEAL NO 76331**

**AT AUCKLAND**

**Before:** B A Dingle (Member)

**Counsel for the Appellant:** D Mansouri-Rad

**Appearing for the Department of Labour:** No Appearance

**Dates of Hearing:** 4, 5 & 6 May 2009

**Date of Decision:** 3 June 2009

---

**DECISION**

---

[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 Nepal.

**INTRODUCTION**

[2] The appellant is a married man with three children and four step-children. His children and wife are living in Nepal. He arrived in New Zealand in March 2008 on a limited purposes visitors' visa and was issued a visitor's permit valid for four months. On expiry of the permit he remained in New Zealand unlawfully. When identified as an unlawful migrant, he lodged a refugee claim. His refugee claim was presented on the basis that he has a well-founded fear of being persecuted by Maoists because he has not paid them a requested donation and he has departed Nepal without their permission.

[3] The determinative issue in this appeal is whether the appellant's account is credible.

[4] The appellant's appeal has been heard consecutively with the appeal of his

nephew, SS, with the consent of them both. The evidence of each of them is considered as evidence in support of the other's appeal. This procedure was proposed by the Authority and consented to by counsel for each of them, Mr Mansouri-Rad, because the arrangements for their travel to New Zealand were made together and there were various aspects of their appeals which were relevant to the other. Both the appellant and SS have had the opportunity to comment on any apparent discrepancies arising out of the evidence of the other.

[5] Furthermore, for the sake of expediency the evidence of the appellant's brother, NN, was heard by the Authority during a single interview but is considered in relation to both the appellant and SS. Again, NN's evidence related to events which pertained to the appeals of the appellant and SS. This was explained to NN, the appellant and SS and consented to by each of them.

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

[6] What follows is a summary of the evidence given by the appellant in the appeal hearing. The credibility of this evidence will be assessed later.

[7] The appellant is a married man in his 50s, of Sherpa ethnicity. He was born in D village, an isolated rural area in the east of Nepal where his family owned a large plot of semi-arable land. His father farmed that land, raising stock and planting crops.

[8] The appellant has four brothers and two sisters. Only one of his brothers remains living in Nepal, while the other three live in the United States, Canada and New Zealand respectively. The appellant's mother also resides in New Zealand, living with the appellant's older brother, NN. The appellant's father is deceased.

[9] The appellant attended school in his local area between 1969 and 1978. On leaving school, he initially worked as a forest ranger and then took up work in the trekking business. He continued for approximately five years, trekking with tourists in the high season and returning to the family farm during the low season.

[10] In 1986, the appellant's brother, NN, who had already been living in New Zealand for more than 10 years, helped the appellant obtain a New Zealand work permit, valid for two years. The appellant travelled to New Zealand and was employed at a manufacturing plant for two years, after which he returned to

Kathmandu, Nepal.

[11] During 1988 and 1989, the appellant was unable to secure employment in Kathmandu because he did not have sufficient qualifications to obtain a professional job and he did not wish to do the other jobs that were available. He was able to live using some of his New Zealand savings because it was comparatively cheap to live there.

[12] In 1990, the appellant met his wife, BB, who had four children from a previous relationship. The appellant and BB moved back to the family farm to live for five years, during which time they had a daughter (born in 1993) and a son (born in 1994). In 1995, the family moved to BB's family village where they rented a house and established a tourist accommodation lodge.

[13] In 1997, the appellant's second son was born.

[14] Although the lodge was relatively busy during the tourist high season, it failed to make much profit each year because of the long periods of vacancy during the low season. In an effort to improve their situation, the appellant and his family moved to Kathmandu in 2000 where they rented a property and established another tourist lodge. Again, although the lodge was busy at times, it failed to produce sufficient income for the family.

[15] In mid-2002, NN arrived in Nepal to collect the appellant's mother who was going to New Zealand to live with him. As a result, there was nobody left living on the family farm. It was agreed by the appellant and his siblings that he would return to operate the farm. However, he preferred the children to remain in Kathmandu to access quality education and so he rented accommodation for his wife and children. They have remained living in Kathmandu (at various addresses) from 2002 until the present time.

[16] On return to D village, the appellant found that most of the other land owners had relocated elsewhere, in most cases to Kathmandu, so that young people could get quality education in the city and because some people had had problems with Maoist groups. Most of the farm plots were being worked by hired labour on behalf of the land owners. The appellant estimates that there were approximately 25 to 30 people living in D village, including the children.

[17] His interaction with others living in the village was limited to work arrangements. The farm workers organised themselves so that when particular

farming tasks required it, they worked together in groups moving from one plot to the next on consecutive days. That way, large tasks such as crop harvests could be managed without having to employ further outside labour. The appellant often employed two or three other workers to help him on his plot, which was the largest in the village. He paid them in produce for their labour. The farm income was sufficient to support the appellant and his wife and children back in Kathmandu.

## **PROBLEMS WITH MAOISTS**

[18] In approximately March 2004, the appellant was first approached by Maoists and asked for money. As he was resting in his house one evening after work, a group of 20 to 30 people arrived and asked for the appellant by name. He was told that he must contribute 500,000 Nepali rupees (NPR) within two months. The group then helped themselves to the appellant's food supplies, prepared a meal and slept the night at his house. The appellant did not recognise any of the group as being from his local area. They departed early the next morning, before the appellant awoke.

[19] Two months later, in approximately May 2004, another group of Maoists arrived at the appellant's house to collect the money. Again, there were approximately 20 to 30 people in the group. The appellant explained to them that he was unable to obtain the requested NPR500,000 as his farm income was limited. The Maoists told him that they knew he had family living overseas and that he should collect money from them. The appellant explained that even if he asked his siblings for money, he would still only be able to raise NPR20 – 30,000. The Maoists were unhappy with this response and demanded that he accompany them to discuss the matter further. The appellant did so and they walked into the forest adjacent to the village. The appellant was familiar with the area because the villagers used it to collect their firewood.

[20] After approximately one hour they stopped and repeated their request for money. When the appellant repeated his assertion that he could only raise NPR30,000, he was blindfolded, had his hands tied behind his back and was beaten by several men in the group. He recalls being hit with sticks, steel rods and belts and was kicked in his legs. He also had nails pushed into his finger causing puncture wounds. At some point, he fell unconscious. When he awoke he was alone with his hands untied and was bleeding from several wounds.

[21] After a time resting, the appellant stood up and walked slowly back home in

the dark. He was able to find his way because he was familiar with the area and he could see by the light of the moon. When he arrived home, he attempted to clean up some of the blood from his wounds and, when daylight broke, he walked to a medical centre in a nearby village. The centre had a nurse and she cleaned the appellant's wounds and applied ointment to them.

[22] The appellant returned home where he rested for some weeks to let his wounds recover. However, some of his wounds, including his injured finger, did not heal sufficiently and so when he was well enough, the appellant made the long trek by foot to Kathmandu. When he arrived, he stayed with his wife and children and received further medical attention for his finger and for internal head wounds.

[23] In November 2004, after approximately two months in Kathmandu, the appellant returned to D village and resumed farming. He did this notwithstanding the potential risks from the Maoists because he needed to make a living for his wife and children and had no alternative source of income.

[24] Soon after his return to the farm, the appellant was again visited by Maoists. He was surprised that they knew of his return because he had thought they would assume him dead after their vicious attack. The Maoists repeated their request for money and when the appellant again said that he could not obtain it, the Maoists demanded that he work for them as an informant instead. They told him that he must report on what people in the village and surrounding villages were saying about Maoists and any activities that were being undertaken which might be adverse to the Maoists. The appellant believed that he had to accept their demand or be killed. He agreed that he would act as an informant and was told that somebody would visit him regularly to hear his report. He was never provided any specific names that were of interest to the Maoists.

[25] As promised, Maoists visited the appellant approximately once every month to receive information. Although he gave the impression he was genuinely collecting information on their behalf, he never told them of anyone expressing anti-Maoist sentiments. He knew that if he identified individuals as being anti-Maoists, they would suffer serious consequences. He was not prepared to expose locals in that way. Usually, he just told the Maoists that although local people sometimes talked about Maoist activity, they never expressed views or opinions which were anti-Maoist and he did not know of any anti-Maoist activities. The Maoists accepted his reports and did not threaten him further.

[26] The appellant continued to report to the Maoists from late 2004 until early 2007. During that time, he spoke intermittently with NN in New Zealand and kept him apprised of what was happening in D village and the activities he was undertaking for the Maoists. NN kept assuring the appellant that he would find a way to assist the appellant to travel to New Zealand and thereby escape Maoist attentions, although he did not say when such plans would eventuate. The appellant and NN communicated by telephone. NN would telephone a communications shop in D village which then alerted the appellant that NN would call back again at an arranged time.

[27] In February 2006, the appellant travelled to New Delhi to meet NN who was trying to obtain a visa for him to travel to New Zealand. However, the application was unsuccessful and the appellant returned to Nepal and the farm in D village.

[28] In December 2006, police from the district headquarters arrested the appellant and took him to the local police station to question him on suspicion of being a Maoist informant. He denied the allegation but was detained for one week. He was not mistreated but was warned that, should he be identified as a Maoist informant, he would suffer very serious consequences. Soon after his release he met with one of the Maoist members and told him about the detention and police allegations because he did not want the Maoists to discover his detention and develop their own suspicions about his relationship with the local police. He was told by the Maoist to be very careful but that he must continue providing them with information. He continued to do so until early 2007, at which time the Maoist interest in him seemed to wane as they prepared for the general election campaign. The appellant had no interaction with the Maoists during the latter half of 2007.

[29] In October 2007, NN contacted the appellant at the communications centre in D village and invited him to New Zealand to attend NN's son's wedding. NN assured the appellant that he would help him get a visa for New Zealand. It was arranged that the appellant would receive financial assistance from his brother who lives in Canada.

[30] In November 2007, the appellant left the farm and D village for the last time. He travelled to Kathmandu to apply for a new passport and make other travel arrangements for coming to New Zealand. For the first month in Kathmandu, he stayed with his wife and children in their rented house. Following that he feared being located by Maoists and so moved into rented lodgings. He did not have any

contact with the Maoists, either directly or indirectly through his family, while staying in Kathmandu between October 2007 and February 2008.

[31] The appellant applied for and was issued with a Nepalese passport. The passport incorrectly listed his profession as a businessman because he thought that this would assist his visa application. The appellant also arranged for false valuation documents of his farm and assets, the purpose of which was also to improve his chances of successfully obtaining a visa. NN had also invited the appellant's brother who lived in Kathmandu, PP, and PP's son, SS, to the wedding. As a result, the visa applications for PP, SS and the appellant were processed together as a family group at the New Zealand Embassy in New Delhi. There were some delays in the issue of the visas so that the timeframe between the visa issuance and the date of the wedding in New Zealand became truncated. As a result, on 24 February 2008, PP travelled from Kathmandu to New Delhi to personally collect the passports (containing the visas) of himself, SS and the appellant. PP flew back to Kathmandu on 25 February, ready for departure on 26 February 2008.

[32] On 25 February 2008, the appellant and SS received a message from PP that they were required to sign a declaration from the New Zealand Embassy that they would abide by the conditions of their limited purpose visas. That same day, the appellant had spontaneously visited PP's house to enquire as to how the visa processing was going. It was while there that he talked to PP (who was in New Delhi) and was told he had to sign the declaration. SS was at the house at the same time and so they went together to a communications centre and sent the required form containing both of their signatures by facsimile.

[33] While PP and SS departed Kathmandu on 26 February 2008 and travelled to New Zealand, the appellant was delayed because he was not sent the money for travel until after he had received the visa. He received NPR140,000 from his brother in early March 2008 and subsequently booked his flight to New Zealand. On 7 March 2008, he departed Kathmandu and he arrived in New Zealand on 9 March 2008 and was issued with a limited purpose permit for four months.

[34] On 16 March 2008, the appellant contacted his wife by telephone. She informed him that Maoists had visited her at home and told her that she must collect NPR1million or suffer consequences. This was the first visit she had ever had from them. The Maoists were aware that the appellant had travelled to New Zealand and asked for his telephone number here. In the 14 months since his

arrival in New Zealand, the appellant's wife has been visited by Maoists on approximately 10 occasions. During those visits, she has had repeated demands for NPR1m and has also been threatened that if she fails to obtain the money, they may abduct the appellant's oldest son.

[35] The appellant's intention had always been to try to remain permanently in New Zealand because of his fear of Maoists in Nepal. Soon after his arrival in New Zealand he and his family (including SS, PP and NN) began planning for that to happen.

[36] In March and April 2008, NN and PP travelled to Wellington to talk with the then Associate Minister of Immigration, the Hon Shane Jones (on behalf of the then Minister, the Hon Clayton Cosgrove), about the situation in Nepal and why the appellant and his family members could not return there. They requested that the appellant, SS and PP be issued with work permits so that they could stay in New Zealand until the situation in Nepal stabilised. There was no final decision made by the Minister by the end of July 2008, at which time the appellant's limited purpose permit expired and he became an unlawful migrant in New Zealand.

[37] While still waiting for the outcome of their request to the Minister, the appellant and SS were stopped at a police checkpoint in September 2008. When police enquiries established that they had both overstayed their permits, they were taken to a police station and detained for three days. On the third day, they were taken to court where it was determined that they would be released on conditions that they reported weekly to a nominated police station in Auckland. They were given a further court date on which to appear.

[38] The appellant lodged his refugee claim with the RSB on 21 October 2008.

[39] The appellant fears that if he returns to Nepal, he will be quickly located by the Maoist group, either at the farm or in Kathmandu and will suffer serious harm as a consequence of leaving Nepal without their permission. He believes that they will repeat their request for NPR1million and that, when he is unable to pay, he will again suffer serious physical mistreatment and possibly be killed. He also fears that his wife and children may suffer serious harm from the Maoists, particularly his son who has been threatened with abduction.

## **NN'S EVIDENCE**



[40] As noted in the introduction, NN appeared before the Authority as a witness in respect of both the appellant's appeal and that of his nephew, SS, on 6 May 2008.

[41] NN is the appellant's brother and has lived permanently in New Zealand since the 1970s. In that time he has sponsored his mother and his sister to travel to New Zealand and attain permanent residence here. NN sponsored the appellant, and the appellant's brother and nephew, on temporary visitor's visas in February 2008 to attend NN's son's wedding.

[42] NN adopted his statement, dated 22 January 2009, which was produced to the RSB after the RSB interview but before the decision was delivered. NN's evidence focused on the process during 2008 through which he and the appellant's brother PP had attempted to secure work permits for the appellant, PP and SS by way of special application to the Minister. Put briefly, NN had requested the Minister to exercise his Ministerial discretion that work permits could be issued for the appellant, PP and SS, despite the fact that they had originally entered New Zealand on a limited purpose visa. NN had done so by petitioning the Minister, both in writing and during a meeting in the Associate Minister's office. After some months of waiting, the Minister declined to allow work permits to be issued. However, NN maintains that while they waited for the Minister's decision they received informal updates from one of the Associate Minister's office staff which gave them some hope that the work permits would be issued. NN explained that it was because the appellant and SS were hopeful of receiving work permits and thereby extending their stay in New Zealand that they did not lodge their claims for refugee status until October 2008.

[43] NN produced photographs of himself and PP during their visit to the Associate Minister's office.

[44] NN also provided evidence as to what he knew of the appellant's refugee claim. He corroborated the appellant's evidence as to the location and approximate size and value of the family farm in D village. As to the problems the appellant had with the Maoists, NN thought that these began in 2003. NN recalled that in 2007 he was told by the appellant that he (the appellant) had been abducted by Maoists and held in captivity for between six months and a year. During that time the appellant had escaped but he had been recaptured and held again, until his final escape. Following that, he had lived in hiding in Kathmandu until he travelled to New Zealand.

[45] NN stated that the family farm was seized in 2005 or 2006 at which time the appellant moved to Kathmandu. He understood that many of the family's belongings had also been seized and that people associated with the Maoists were living in the family house.

[46] He explained that he communicated with the appellant (during his tenure on the farm) by leaving a message with relatives in Kathmandu which would be passed to the appellant who would then go to S village (nearby to D village) to await a phone call from NN. NN said he had never contacted the appellant through the communications centre in D village.

### **ADDITIONAL MATERIAL**

[47] The Authority and the appellant have been provided with the RSB file, including copies of all documents submitted by the appellant at first instance. On 29 April 2009, in advance of the appeal hearing, counsel filed a memorandum of submissions on the appellant's behalf. During the appeal hearing, the appellant produced several copies of photographs of his wife, BB, and various children. Counsel also made oral closing submissions. The Authority has given consideration to all of this material in the determination of this appeal.

### **THE ISSUES**

[48] 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."

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

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

## **ASSESSMENT OF THE APPELLANT'S CASE**

### **CREDIBILITY**

[50] The appellant's evidence was mobile, inconsistent and implausible to such an extent that the Authority finds no part of his account of being approached, harassed or beaten by the Maoists is to be believed. It follows that his account of events concerning Maoists visiting his wife since his departure from Nepal is also rejected.

[51] In making these findings, the Authority notes the appellant's suggestion that his memory of true events is impaired as a result of the assault on him by the Maoists. No medical evidence addressing this specific point has been received by the Authority. This assertion is also undermined by his complete lack of credibility as to his abduction by the Maoists. In any event, the Authority finds that general memory problems could not sensibly explain the extent of mobile and inconsistent evidence such as is outlined below.

[52] The decision now addresses specific credibility concerns in the appellant's account.

#### **Appellant's whereabouts in Kathmandu October 2007 – March 2008**

[53] The appellant's evidence as to his whereabouts in Kathmandu in the months prior to departing Nepal was mobile. To the RSB, he initially said that his entire stay in Kathmandu between October 2007 and March 2008 was spent residing in a lodge. When asked whether he saw his wife and children his answer is recorded as being "I never went to my house, they came outside to meet me". In response to further questions, the appellant then changed his evidence to the RSB and said that he did spend some time staying with his wife and children at their house and then moved into the lodge.

[54] At the appeal hearing his evidence was similarly mobile. He first told the Authority that he never stayed or visited his family in their house in Kathmandu for the entire period of October 2007 to March 2008. He said that he did this for security reasons because he did not want the Maoists to locate him there. However, when reminded that he had told the RSB that he had stayed with his family in Kathmandu the appellant's evidence became mobile. He first denied telling the RSB he had stayed at the house and maintained his claim to have only met them elsewhere because of security fears. When the Authority quoted the

RSB transcript, including the record of his evidence saying he stayed at the house, the appellant took a long pause before conceding that he did stay with his family in Kathmandu. At first he suggested that he had stayed at the lodge immediately on arrival in Kathmandu and then moved to his family's house after that. Some minutes later, when asked to clarify his whereabouts, he changed his evidence yet again and said that he had stayed with his family first and then, after "a month and a few days" he had moved into a lodge. He did not provide an explanation for the mobility in his evidence.

#### The appellant's problems with Maoists

[55] It will be recalled from above that the appellant's claim was that he was approached by Maoists for a donation; when he refused to pay he was severely beaten and, on further approaches from the Maoists, he undertook to act as an informer. He claimed that he was never detained by the Maoists and he continued to inform for them and live on the family farm until 2007. He also said (in oral evidence, in his statement and RSB interview) that he had told NN of his problems during telephone conversations while he was still at the farm, including his work as an informant.

[56] However, when asked to summarise what he knew of the appellant's problems, NN gave an account which was markedly different from the appellant's own account. NN said that the appellant had been abducted by Maoists in approximately 2006 and held in captivity by them for between six months to a year. NN confirmed that he heard about this event directly from the appellant who rang him in 2007 from Kathmandu, after he had escaped from the Maoists and was living in hiding in Kathmandu.

[57] When NN was asked to explain why his account was so different from the appellant's account, he became equivocal and gave various reasons why he might be mistaken, including: that he was here in New Zealand looking after his own family; that he could not recall the details of what happened; that he could not afford to ring the appellant all the time (impliedly asserting that he did not therefore hear all the news) and, finally, that he "can't explain about [the appellant's] life". When asked whether the appellant told him that he (the appellant) was detained by Maoists, NN replied "Yes, but he's not a child, I don't need to tell his evidence, he can do that."

[58] The Authority rejects NN's explanation of the inconsistency between his and

the appellant's account because it was so significantly different and no sensible explanation for the divergence has been given. While the Authority acknowledges that genuine accounts can be recalled and retold in different ways by different witnesses, there is almost no similarity in the two accounts except that they involve Maoists. In light of the appellant's evidence that he and NN had ongoing telephone contact during which the appellant revealed the details of his problems and that NN had promised to help the appellant travel to New Zealand to escape the Maoists, it is reasonable to expect that NN would be able to give a generally corroborative account of those events. NN's sudden vagueness about the events when confronted with discrepancies was clearly a spontaneous attempt to mend the flaws in his evidence and not a genuine inability to recall the correct details.

[59] Moreover, the difficulties that NN has ascribed to the appellant are very similar to the events claimed by SS as the basis for his refugee claim; that is, that he (SS) was abducted by Maoists and held by them for a period of about six months during which time he escaped once and was recaptured. SS's claim has separately been found to be a fabricated claim and has been wholly rejected by the Authority (see *Refugee Appeal No 76329* (3 June 2009)). In his attempt to recall a fabricated story for the appellant, NN has become confused and substituted the events which were claimed by SS. The fact that he presented an entirely inconsistent account, and one which closely matched the claim of his nephew SS, supports the view that both narratives (of the appellant and SS) are false and have been created simply for the purpose of supporting fictitious refugee claims. The Authority finds that NN has knowingly adopted those fictitious claims. His evidence as to the appellant's problems in Nepal is rejected.

#### Maoist takeover of family farm

[60] The appellant and NN gave inconsistent evidence about when the family farm was seized by Maoists. The appellant also gave inconsistent and mobile evidence as to when he first heard of the seizure.

[61] The appellant contends that the farm was seized some time between his departure from D village in October 2007, and May 2008. The farm had not previously been seized at any time.

[62] As to when he first heard about the farm seizure, the appellant told the RSB that he knew when he was living in Kathmandu prior to his departure for New Zealand. He said he got a message from the Maoists saying that he must donate

money and that he could not stay at his house. In contrast he told the Authority that he first heard about the seizure in May 2008, after he arrived in New Zealand, during his second phone call with his wife. When asked to explain the discrepancy he could not provide an explanation except that he did not remember what the Maoists had told his wife. The Authority finds that the evidence can not be reconciled and the appellant's explanation does not address the issue of when he discovered the seizure. When considered cumulatively with further discrepancies (outlined below) about when and if his wife was visited by Maoists prior to his departure from Nepal, the Authority is in no doubt that all of the evidence is untrue.

[63] NN first told the Authority that he found out about the seizure of the family farm in approximately 2003. He said that in 2003 the appellant was "restrained" by the Maoists and that they communicated less during that time because of it. NN then said that the last time the appellant was on the farm was in 2003 after which time he moved to Kathmandu. NN also said that the appellant stayed on the farm for about one year after NN's mother came to New Zealand (which was in 2002). NN's evidence then became mobile and he suggested that the appellant was living on the farm prior to their joint visit to India in 2006. When asked if the appellant returned to the family farm after the 2006 India visit, NN's evidence became vague. He first said that the appellant returned to live in Kathmandu. Soon after he suggested the appellant went "in and out" of the farm because of his problems with the Maoists. NN then twice confirmed that the land was seized by Maoists in 2006 at which time they took family belongings from the house and other people started living in the house. He also said that after 2006 the appellant began living in Kathmandu.

[64] When asked why his account contradicted that of the appellant, he asserted that his remove in New Zealand accounted for any differences. The Authority does not accept that explanation. NN agreed that it was a significant event to have had the ancestral land seized by Maoists. He also confirmed that he had been informed of the event by the appellant (while still in Kathmandu) and another brother living in Canada. It is reasonable to expect therefore that NN would be able to pinpoint the event with some accuracy, certainly within a year. That he first suggested that it occurred in 2003 and then changed his evidence to 2006 – neither of which dates align with the appellant's evidence (which is also mobile) leads the Authority to conclude the evidence is not true.

[65] Further underlining this view, the appellant did not mention that the farm

had been seized by Maoists either in his Confirmation of Claim form or in his statement. His statement (the English translation thereof) ran to seven pages of type-written material and contained considerable detail about his claimed predicament and the series of events he claimed had occurred, including incidents which had occurred after his departure from Nepal. It does not mention the family farm being seized. Similarly, his claim form contained significant detail but omitted any reference to the farm seizure. While the Authority would not necessarily consider these omissions determinative in themselves, when considered in light of the inconsistencies and mobility as to the same event noted above, the Authority finds that the omissions strengthen the view that the claimed farm seizure is false.

#### Maoist visits to appellant's wife (BB)

[66] The appellant's evidence as to whether BB was visited by Maoists before he left Nepal (in March 2008) was similarly mobile. He told the RSB that the Maoists only visited his wife in Kathmandu after he had left for New Zealand and that at that point they requested she obtain NPR1million from the appellant and provide his telephone number in New Zealand. At another point in the RSB interview he suggested she had moved addresses in Kathmandu prior to October 2007 because of problems with the Maoists. The apparent contradiction in his evidence was not explored further during the RSB interview.

[67] To the Authority, the appellant initially stated that his wife had moved four or five times before October 2007 because of repeated Maoist visits to her at home. However, he contradicted this later in the hearing when he said that he was not aware of any Maoist visits to her before his departure in March 2008, an assertion which he repeated thrice during a series of questions. At that point he also changed his evidence about her moving address and said that she had stayed at the same address in Kathmandu from 2003 until March 2008. He then suggested that she may have moved once in that time. Given that he was in regular contact with his wife and returned to Kathmandu on occasions to visit her, it is not accepted that he would forget her having to move four or five times because of Maoists.

#### Other credibility issues

[68] A number of other credibility concerns arose in the appellant's case, including the following:

- (i) He claimed to have communicated with NN between 2003-2007 by receiving messages from the communications centre in D village and then going to the centre at a pre-arranged time to receive NN's call. NN said that he had never called the centre in D village. NN said that he passed messages on to the appellant through relatives in Kathmandu and then the appellant travelled to a nearby town to receive the calls. When asked to explain the discrepancy, NN changed his evidence and said sometimes he sent a message through relatives in Kathmandu and he would call D village. However, this change in evidence still does not align with the appellant's account of the message being passed via the communications shop.
- (ii) More specifically, the appellant said that NN rang him in D village in 2007 to invite him to the wedding in New Zealand. NN, in contrast, said that he rang the appellant in Kathmandu because that was where he was living in hiding.
- (iii) In his Confirmation of Claim form and statement the appellant stated that the Maoists asked him for information both as to what people said about Maoists and also as to the villagers' movements and activities. He also told the RSB (both orally and in his response to the interview report) that he went to meetings and collected information about the movements of villagers. He told the Authority, however, that he did not pass on information about villagers' movements and did not attend meetings. The discrepancy is irreconcilable.

#### Medical evidence

[69] Finally, it is necessary to refer to the medical evidence. The findings of Dr Wansborough as to the appellant's various scars are not controversial and the Authority has no doubt that the appellant bears such scars. Dr Wansborough's report, however, does not presume to do more than note the presence of such scars and suggest that they are not inconsistent with the appellant's claims as to how they were acquired. It is not, and could not be, determinative of the manner in which such scars were acquired. Given the credibility findings noted above, no weight is placed on the medical evidence.

#### **CONCLUSION ON CREDIBILITY**



[70] The Authority finds that the appellant's account of his difficulties with Maoists in Nepal is entirely fabricated. Likewise, his account of being arrested and detained by police is not believed. The evidence is wholly rejected. The Authority also finds the evidence of NN to be untrue in all matters that touch on the appellant's claimed predicament in Nepal.

[71] As to the evidence presented by NN concerning his efforts to persuade the Associate Minister of Immigration to exercise his discretion in the issue of work permits, the Authority accepts that various approaches were made to the Associate Minister throughout the early part of 2008. However, this matter has no bearing on the outcome of this decision. The Authority has made no adverse credibility finding in relation to the timing of the refugee claim. Nor do the efforts to obtain a work permit in New Zealand corroborate the appellant's account of being persecuted in Nepal – they simply indicate a desire to stay in New Zealand. The Authority's credibility finding is based entirely on concerns with regard to the account of the appellant's predicament in Nepal, concerns which would be equally compelling had the refugee claim been made on arrival in New Zealand.

[72] Accordingly, the Authority finds that the appellant would return to Nepal as a national with a valid passport, having departed the country lawfully. The Authority is not aware of any reason why an individual having those characteristics would be at risk of harm on return to Nepal. It follows that there is no credible basis on which to find that the appellant has a well-founded fear of being persecuted should he now return to Nepal.

[73] Therefore, the first principal issue having been answered in the negative, the second issue does not arise for consideration.

**CONCLUSION**

[74] For the reasons listed above, 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