

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76082

AT AUCKLAND

Before: B A Dingle (Member)
Representative for the Appellant: Salim Singh
Appearing for the Department of Labour: No Appearance
Date of Decision: 31 October 2007

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 Fiji.

INTRODUCTION

[2] The appellant arrived in New Zealand on 3 December 2006 and applied for refugee status on 13 February 2007. She was interviewed by a refugee status officer on 3 May 2007. A decision declining her application was published by the RSB on 11 June 2007.

[3] A notice of appeal against that decision was lodged on 26 June 2007. It was lodged on the appellant's behalf by Salim Singh, an immigration consultant. His postal address was given as the address to which postal communications relating to the appeal should be sent.

JURISDICTION OF THE AUTHORITY TO DISPENSE WITH AN INTERVIEW

[4] In certain circumstances the Authority is permitted to determine an appeal on the papers without giving an appellant an interview. This arises under s129P(5)(a) and (b) of the Immigration Act 1987 (“the Act”), where an appellant was interviewed by the RSB (or given an opportunity to be interviewed but failed to take that opportunity) and where the Authority considers the appeal to be *prima facie* ‘manifestly unfounded or clearly abusive’. The Authority’s general jurisdiction in this regard was examined in Refugee Appeal No 70951/98 (5 August 1998).

[5] The Authority, through its Secretariat, wrote to the appellant’s representative on 12 October 2007. The letter advised that, in the Authority’s preliminary view, the appeal was *prima facie* ‘manifestly unfounded or clearly abusive’, for reasons which were then set out. It was noted that the appellant had not provided any evidence in support of her claim that she had a well-founded fear of being persecuted in Fiji.

[6] In summary, the Secretariat’s letter stated:

“The basis of your client’s claim for refugee status appears to be that she is a Fijian of Indian ethnicity. In the past, she has experienced harassment from ethnic Fijians. She now fears what she states is a “climate of violence” against Fijian Indians. Following the coup in 2000, the appellant’s family were subjected to demands for food by ethnic Fijians and had stones thrown on their roof. Since 1990, the family have suffered five burglaries. After the coup in 2000, the appellant saw fights between ethnic Fijians and Fijian Indians, and witnessed an attack on a Fijian Indian girl by indigenous Fijians during which they beat her and stole her jewellery. The appellant has also had her purse snatched by indigenous Fijians on one occasion.

[The appellant] came to New Zealand in December 2006, [...] before the Commander of the Fijian Armed Forces, Commodore Bainimarama, overthrew the government of Prime Minister Qarase in a further coup. The appellant’s mother and sister are still living in Fiji.”

[7] The Secretariat’s letter pointed out that the Authority recently examined the situation in Fiji in some detail and summarised the analysis of available country information in *Refugee Appeal No 75780* (19 April 2007). In that decision, the Authority made the following points:

- i. The United States Department of State *Country Reports on Human Rights Practices 2007: Fiji* (March 6 2007) (“the DOS report”) suggested that the motivation for the 2006 coup was different from past coups in that Commodore Bainimarama asserted that the ousted government had been both corrupt and had “unfairly favoured indigenous Fijian interests” (DOS

Report introduction).

- ii. The military also demanded the withdrawal of three government initiated Bills which it considered to be racially divisive; the Racial Tolerance and Unity Bill (which provided amnesty for those behind the 2000 coup) and the Qoliqoli Bill and the Land Claims Tribunal Bill, which sought to return traditional fishing grounds to indigenous owners and establish a commission to control and regulate fishing rights.
- iii. In contrast to previous coups in Fiji, the December 2006 coup was not ethnically-based or targeted, and could be construed as a military “counter-coup” against the entrenchment of the political success of the 2000 coup. Unlike its predecessors the December 2006 coup was also notable for the absence of violence against Indo-Fijians.
- iv. To date the December 2006 coup has not led to deterioration in the security of the Indo-Fijian community, or to violence by indigenous Fijians against Indo-Fijians.
- v. Public order is maintained by joint military and police operatives (DOS report, section 1.d), and it appears that there is still a police force capable of maintaining law and order.

[8] The Secretariat’s letter then continued:

“The Authority accepts that Indo-Fijians have experienced harassment and intimidation in the past because of their ethnicity. However, in the case of this appellant this did not appear to rise to the level of harm tantamount to being persecuted. In addition, there is no evidence that the appellant would face discrimination in Fiji in the future at such a level that it would amount to being persecuted.

Further, the country information available to the Authority is that the motivation for and the aftermath of the 2006 coup are fundamentally different to the events of 1987 and 2000. The Authority is not aware of any credible information which indicates that Indo-Fijians are currently at risk of being persecuted in Fiji, or that the Fijian state is unwilling or unable to provide protection to its Indo-Fijian citizens.”

[9] The Secretariat’s letter advised the appellant that the Authority has the jurisdiction to determine an appeal on the papers without offering an interview, pursuant to s129P(5) of the Act, in circumstances which, on a preliminary view, applied in the appellant’s case. It also explained that the responsibility for establishing an appellant’s refugee claim lay with the appellant, pursuant to ss129P(1) and 129P(2) of the Act (as referred to in *Refugee Appeal No 72668*

(Minute No 2) (5 April 2002) and in *Anguo Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA).

[10] The appellant was provided with an opportunity to present submissions and/or evidence to support her claim by 26 October 2007. The appellant was notified that, unless the Authority was persuaded otherwise, it could consider and determine the appeal without giving the appellant an opportunity of attending a further interview.

[11] The Authority received no response to its letter.

CONCLUSION AS TO WHETHER TO DISPENSE WITH AN INTERVIEW

[12] The appellant was interviewed by a refugee status officer on 3 May 2007. Having considered all relevant matters, the Authority is satisfied that the appellant's appeal is *prima facie* manifestly unfounded or clearly abusive, for reasons which are set out below.

[13] The appeal will therefore be determined on the papers, pursuant to ss129P(5)(a) and 129P(5)(b) of the Act, without giving the appellant an opportunity to attend a further interview.

THE APPELLANT'S CASE

[14] The following is a summary of the appellant's case as it is set out in the DOL file.

[15] The appellant is a single female, in her early 20s. She is a Fijian citizen of Indian ethnicity. She came to New Zealand in December 2006, less than a week before the military coup in Fiji. The appellant's mother and only sibling remain living in Fiji.

[16] In 1987, following the military coup of that year, the appellant's father committed suicide. He was depressed because he had lost his job as a result of the 1987 coup and could not support his family.

[17] In May 2000, a coup led by George Speight overthrew the democratically elected government of Fiji. Following that, the appellant and her family were

subjected to demands for food by indigenous Fijians and had stones thrown on their roof. The appellant also witnessed an attack on a Fijian Indian girl by indigenous Fijians, during which the girl was beaten and her jewellery stolen. During 2000, the appellant experienced bullying by indigenous Fijians at school. The appellant changed schools and she did not experience any difficulties at the new school.

[18] Since 1990, the family have suffered approximately five burglaries. On one occasion, the appellant has had her purse snatched by indigenous Fijians.

[19] In 2005, the appellant completed her final year of school and, in February 2006, she began attending the University of the South Pacific. She completed one semester at university but was unable to finish a second semester because she could not afford to pay the tuition fees.

[20] In mid-2006, the appellant was issued with a Fijian passport. In late 2006, she applied for a New Zealand visitor's visa which was granted approximately one month later. Towards the end of November 2006, the appellant heard on the radio that another coup was imminent in Fiji. In early December 2006, the appellant departed Fiji and arrived at Auckland International Airport, before the most recent coup in December 2006.

[21] Since arriving in New Zealand, the appellant has kept in contact with her family in Fiji. They have not experienced any particular problems as a result of the December 2006 coup, although they have been affected by the general deterioration in the Fijian economy.

[22] The appellant fears returning to Fiji because of the general climate of violence and the discrimination towards Fijian Indians there. She fears suffering discrimination in education and employment and that she herself may become a victim of ethnic violence.

THE ISSUES

[23] 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."

[24] 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

[25] As the Authority has determined that it will not interview the appellant, an assessment of her credibility will not be made. Accordingly, her account, as recorded above, is accepted for the purposes of determining this appeal.

[26] In refugee law, persecution has been defined as the sustained or systemic denial of basic or core human rights such as to be demonstrative of a failure of state protection; Hathaway, *The Law of Refugee Status* (1991) 104 to 108, as adopted in *Refugee Appeal No 2039/93* (12 February 1996) at [15].

[27] The Authority has previously noted that discrimination is not in itself sufficient to establish a case for refugee status. Nor does every breach of a claimant's human rights amount to being persecuted; *Refugee Appeal No 71404/99* (29 October 1999) [65] to [67].

[28] The issue of whether an appellant faces a real chance of being persecuted is nevertheless a forward-looking assessment. The relevant determination is therefore whether or not the appellant faces a real chance of being persecuted for a Convention reason if she were to now return to Fiji.

[29] The appellant may face some discrimination from indigenous Fijians in Fiji on account of her Indian ethnicity. However, there is no evidence before the Authority to indicate that such discrimination would amount to a "sustained or systemic violation of basic or core human rights such as to be demonstrative of a failure of state protection". The Refugee Convention is only engaged where such discrimination can be characterised as a violation of an individual's core human rights. In the present case, the risk of discrimination to which the appellant may be exposed falls well short the persecution threshold.

[30] The appellant also claims to fear the generalised climate of violence and random criminal attacks in Fiji. However, as the Authority found in *Refugee Appeal No 75780* (19 April 2007), the December 2006 coup was notable for the absence of violence against Indo-Fijians, in contrast with the earlier coups of 1987 and 2000. The country information available to the Authority shows that, to date, the political environment following the December 2006 coup has not led to deterioration in the security of the Indo-Fijian community and, in particular, there has been virtually no violence directed towards Indo-Fijians by the indigenous Fijian populace.

[31] There is no evidence before the Authority to suggest that the risk of the appellant experiencing any violence is anything more than speculative. In any event, it is a well-established principle of refugee law that nations are presumed capable of protecting their citizens. Clear and convincing evidence is required to demonstrate a state's inability to protect its citizens; see *Refugee Appeal No 523/92* (17 March 1995). It is noted that the Authority's preliminary view, that the presumption of state protection applies in the appellant's case, was put to her for comment in the Authority's letter dated 12 October 2007. She did not reply.

[32] There is no evidence before the Authority which indicates that the appellant faces a real chance of being persecuted in Fiji, should she return there now. Her experiences there in the past fall far from the threshold of "being persecuted" and she has presented no evidence that she will be denied basic or core human rights in Fiji, demonstrative of a failure of state protection in the future. This is particularly significant given that the appellant bears the responsibility for establishing her claim for refugee status; ss129P(1) and 129P(2) Immigration Act 1987; *Refugee Appeal No 72668/01 (Minute No 2)* (5 April 2002) and *Anguo Jiao v Refugee Status Appeals Authority* [2003] NZAR 647.

[33] All of the points referred to above were raised in the Secretariat's letter dated 12 October 2007. The appellant and her representative have elected not to reply.

[34] For all of the reasons above, the Authority finds that the appellant does not have a well-founded fear of being persecuted in Fiji. The first issue framed for consideration is answered in the negative and therefore the second issue does not arise.

CONCLUSION

[35] 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