

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

AT AUCKLAND

REFUGEE APPEAL NO 76362

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Before: B A Dingle (Member)

Representative for the appellants: The appellants represented themselves

Date of Decision: 24 July 2009

DECISION

[1] These are appeals against decisions of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the grant of refugee status to the appellants, citizens of Israel.

INTRODUCTION

[2] The appellants are a father and a daughter who arrived in New Zealand from Australia in mid-2007 and initially stayed in New Zealand on visitor permits.

[3] They lodged their applications seeking refugee status with the RSB on 3 February 2009. A refugee status officer of the RSB interviewed the appellants on 18 March 2009 and decisions declining the applications were published on 14 May 2009. This Authority received notice of appeals against those decline decisions on 27 May 2009.

[4] Pursuant to ss129P(5)(a) and 129P(5)(b) of the Immigration Act 1987 ("the Act"), where an appellant was interviewed by the RSB or, having been given an

opportunity to be interviewed, failed to take that opportunity, the Authority has a discretion as to whether to offer the appellant the opportunity to attend an interview. In exercising this discretion, the Authority will consider whether the appeal is *prima facie* 'manifestly unfounded or clearly abusive'. Should that be the case, the Authority may determine the appeal on the papers, without offering the appellant an interview. The Authority's general jurisdiction in this regard was examined in *Refugee Appeal No 70951/98* (5 August 1998).

[5] On 17 June 2009, the Authority, through its Secretariat, wrote to the appellants advising that the Authority's preliminary view was that their appeals were *prima facie* 'manifestly unfounded or clearly abusive', and giving reasons in this regard. It was noted that their accounts appeared not to identify any basis for finding that the appellants would face a real chance of persecution for a Convention reason in the event that they returned to Israel.

[6] The Secretariat's letter specifically stated that:

"The basis of your claims to refugee status was that some of your relatives and acquaintances had been harmed by incidents of random violence, bomb attacks or war or general violence and that you feared suffering the same fate upon your return to Israel.

Having reviewed your files, the Authority considers that your appeals may be *prima facie* "manifestly unfounded or clearly abusive". The appeals could therefore be determined without giving you an interview, and the Authority has formed the preliminary view that it would be appropriate to do so.

The purpose of this letter is to set out the basis for this preliminary view, and to afford you the opportunity to respond before the Authority makes its decision.

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 ..."

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?

The Authority's enquiry is forward looking. Therefore, the question is not whether you have experienced persecution in Israel in the past but whether you have a well-founded fear of being persecuted for a Convention reason in the future.

The Authority's preliminary view is that your fear of being at risk of serious harm in the form of death or injury from a terrorist attack falls below the well-founded

threshold. It is well-established in the Authority's jurisprudence that speculation or conjecture about the risk of being persecuted is not sufficient basis on which a refugee claim can be made out. This aspect of refugee jurisprudence has been examined in detail by the Authority in *Refugee Appeal No 72668/01* (5 April 2002) paras [111]-[154]. At [154] the Authority concluded:

"A fear is "well-founded" when there is a real substantial basis for it. A substantial basis for a fear may exist even though there is far less than a 50 percent chance that the object of the fear will eventuate. But no fear can be well-founded for the purpose of the Convention unless the evidence indicates a real ground for believing that the applicant for refugee status is at risk of persecution. A fear of persecution is not well-founded if it is merely assumed or if it is mere speculation."

In assessing the level of the risk of falling victim to a terrorist attack facing you, as Israeli civilians, the Authority has considered the number of deaths in the years since 2000 as a proportion of the Israeli population. According to available statistics, between September 29 2000 and 31 December 2008 there have been 964 Israeli civilians killed by Palestinians in Israel. (See for example The Israeli Information Center for Human Rights in the Occupied Territories at www.btselem.org). The highest rates of death were recorded in 2001-2003. The total deaths for the years 2006-2008 are recorded as being 33.

In a population which is now recorded as being in excess of 7.4 million people, the Authority can only conclude that the risk of harm faced by individual Israelis is a remote or random risk, as opposed to a real chance. To provide some statistical comparison, there is more chance of a New Zealand citizen being killed in a road accident in New Zealand than there is of an individual Israeli citizen being killed in terrorist violence. The risk therefore falls below the level required for your fear of being persecuted to be considered well-founded in refugee law terms. While this point is not intended to belittle the impact for those individuals who are affected, in terms of accepted refugee jurisprudence your refugee claim cannot, *prima facie*, succeed."

[7] The Secretariat's letter also advised 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 appellants' case. The appellants were provided with an opportunity to present submissions and/or evidence to support their claims, by 1 July 2009. Notice was given that, unless the Authority was persuaded otherwise by such submissions and evidence, it could consider and determine the appeals without giving the appellants an opportunity of attending a further interview. Reference was also made to *Refugee Appeal No 70951/98* (5 August 1998).

[8] The Secretariat's letter advised 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 72668/01* (Minute No 2) (5 April 2002) and in *Anguo Jiao v Refugee Status Appeals Authority* (HC, Auckland, M207-PLO2, 29 July 2002, Potter J)). The letter further advised that 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'; see Hathaway, *The Law of Refugee Status* (1991) 104 to 108, as adopted in *Refugee Appeal No 2039/93* (12 February 1996) at 15.

[9] On 1 July 2009 the Authority received a letter from the appellants (dated 25 June 2009) making further comments about their claim and the circumstances in Israel. The letter urges the Authority to consider their plight and to accept that the risk of serious harm to them is at a threshold such that they should be afforded refugee protection. The appellants requested an opportunity to be interviewed to be asked more questions and to "talk about it again". The appellants also submitted a DVD and copies of media reports relevant to their appeal. These submissions and the material are considered further below.

JURISDICTION OF THE AUTHORITY TO DISPENSE WITH AN INTERVIEW

[10] Having carefully considered all relevant matters, for the reasons which will be apparent later in this decision, the Authority is satisfied that the appellants' appeals are *prima facie* 'manifestly unfounded or clearly abusive'. The Authority notes that the appellants were interviewed by the RSB. It is appropriate to now proceed to determine the appeals on the papers pursuant to ss129P(5)(a) and 129P(5)(b) of the Act, without giving the appellants an opportunity to attend a further interview. All material and submissions tendered throughout the determination process have been taken into account in determining this appeal.

THE APPELLANTS' CASE

[11] The father and daughter are both Israeli nationals who were born in Tel Aviv.

[12] Since childhood, the father has been aware of the various conflicts between Israel and its neighbouring countries. One of his cousins and other people that he knew were killed in the 1973 conflict with Egyptian and Syrian forces.

[13] Between 1977 and 1980, the father completed military service during which time he was not required to participate in armed combat or go to Lebanon. He married after completing military service.

[14] The daughter was born in 1984 and her younger sister was born in 1986.

[15] In 1983, one of the father's cousins was killed in an explosion caused by a Palestinian group. In 1992, he witnessed an explosion destroying a bus in Tel Aviv. In 2000 the appellants' neighbour was killed in an attack.

[16] The daughter also recalls incidents of violence which affected or killed people she knew including: an attack in 1990 which destroyed her ballet school and damaged the family home; hearing a mall explosion in 2000 in which some of her friends were injured; the death of a friend in 2000 from an explosion and the targeted death of one of her teachers (a peace advocate) in 2002.

[17] Between 1992 and 2004, the family moved between different locations in Israel, some of which were very close to Arab villages or settlements.

[18] In October 2004, the family moved to Tel Aviv to establish a food retail business. In November 2004 a bomb exploded in a nearby market, very close to the business. Approximately 10 people died in that attack. As a result the family began to seriously consider their options and the father encouraged both of his daughters to leave Israel.

[19] In August 2005, the daughter departed Israel for Australia where she was issued a visitor permit.

[20] In April 2006, the father divorced his wife and she has since moved to another country.

[21] In July 2006, Israel became involved in a conflict in Lebanon. As a result bomb attacks occurred in cities in Israel and the Palestinian groups threatened to attack locations in Tel Aviv. The father tried to sell his business but was unable to because people were not interested in buying a business in that area of Tel Aviv.

[22] The father departed Israel in October 2006 to visit the daughter who was still in Australia (having overstayed her visitor visa by several months). The daughter was then required to leave Australia but did not wish to return to Israel and so both appellants travelled to New Zealand on 23 May 2007. They were issued visitor permits valid until 23 August 2007.

[23] After their arrival here, the father telephoned his sister in Israel almost daily and she informed him that the economic and security situation in Israel was deteriorating and there was a constant fear of war.

[24] The appellants were unsuccessful in obtaining work and student permits for New Zealand. They did not want to return to Israel and so submitted Confirmation of Claim forms to the RSB on 3 February 2009. They were interviewed by the RSB on 18 March 2009. Decisions declining their claims to refugee status were issued on 6 April 2009 and it is from those decisions that the appellants now appeal.

[25] The basis of their claims is that the security situation in Israel is such that they fear being killed or injured by terrorist or other violent attacks or in the course of conflict between the Israeli and Palestinian forces. They are also unwilling to return to Israel because of the persistent stress caused by living in a country which suffers terrorist attacks and other ongoing violence. In his Confirmation of Claim form, the father summarised his fear as "I fear getting injured or killed and having to deal with more casualties and terror in my life". For her part, the daughter summarised the basis of her fear of returning to Israel in E1 of her Confirmation of Claim as follows (*verbatim*): "I fear for the safety of my life, physically and mentally, being terrorised and traumatised and not being able to go through life safe from harm".

[26] In the appellants' letter (received on 1 July 2009), they repeat the claims that living in Israel and being subject to the fear and stress of anticipating violence is sufficient to meet the threshold for refugee protection. In summary, they make the following submissions:

- (a) The reality of living in Israel and always fearing for your life and safety because of terrorist attacks is like living with a curse;
- (b) Despite Israel attempting to prevent terror attacks, they continue and Israelis continue to die;
- (c) People are forced to relocate their homes and lives in an attempt to avoid the Palestinian attacks or in instances where the land is to be resettled by Palestinians;
- (d) Recent speculation about an upcoming *Intifada* is causing a heightened level of anxiety and fear amongst Israelis;
- (e) The law (meaning presumably refugee law) should accommodate those from Israel who come from a "terrorised country" even though it is said the fear and risk is not high enough.

FURTHER DOCUMENTARY EVIDENCE

[27] The Authority and the appellants have been provided with the RSB files, including copies of all material submitted by the appellants at first instance.

[28] On 1 July 2009, the appellants submitted a portable digital disc containing a montage of video footage of bomb attacks in Israel and other matters relating to the ongoing conflict between Israel and Palestine. Much of the footage is overlaid with music and the spoken and written words were not translated except in a few instances. As the Authority understands from the appellants' letter, the material is provided to show "roughly what it's like to live in a reality of terror" and appeared to be mostly excerpts of television reports of terrorist attacks. The disc also contains excerpts from an internet site "We should not forget" (www.jr.co.il/terror/israel) which records Israeli deaths and injuries as a result of Palestinian attacks, including descriptions and photographs. None of the material portrays incidents in which the appellants were directly involved although one of the incidents occurred very close to the family business in Tel Aviv and it is implied by their letter that the aftermath was witnessed by them and caused considerable distress.

THE ISSUES

[29] 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."

[30] 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 APPELLANTS' CASE

[31] As the Authority has determined not to interview the appellants, their accounts, as recorded above, are accepted for the purposes of determining this appeal.

[32] The refugee inquiry is forward looking – applicants must demonstrate that they face a real chance of being persecuted if returned to their country of nationality. As noted in the Authority’s letter of 17 June 2009 (referred to in [5] above), the real chance threshold requires that there be a real substantial basis for the claim to be at risk of serious harm as opposed to a random or speculative chance. (See *Refugee Appeal No 72668/01* (5 April 2002) paras [111]-[154]).

[33] There is an abundance of country information which records the Israeli/Palestinian conflict, including acts of violence directed toward Israeli citizens and it is not necessary to recite it at length in this decision. For example see: “History of Israel: Key events” *BBC online*, at <http://news.bbc.co.uk> (accessed on 17 July 2009). As to the recent events, the 2009 Human Rights Watch report usefully summarises the attacks on Israeli civilians which occurred in 2008.

“Attacks on Israeli Civilians

Palestinian armed groups in Gaza indiscriminately fired locally-made rockets into the Israeli border town of Sderot and other civilian areas throughout the first half of 2008. The rocket fire killed four Israeli civilians and wounded others in 2008, prior to the June ceasefire. Palestinian armed groups, excluding Hamas, continued to fire small numbers of rockets after the ceasefire came into effect. According to media reports, Hamas authorities temporarily detained several Islamic Jihad members for planning or carrying out rocket attacks. In early November Hamas and other Palestinian armed groups fired over 80 rockets at targets inside Israel, including civilian populated areas in response to an Israeli military operation that killed six fighters. As in previous rocket attacks, Palestinian authorities in Gaza took no action to prosecute any of the individuals involved.

On February 4, a Palestinian suicide bomber killed a 73-year-old woman and injured 11 other civilians in the southern Israeli town of Dimona. The Al-Aqsa Martyrs Brigades and Popular Front for the Liberation of Palestine claimed joint responsibility in a Gaza press conference. Neither of the groups or individuals who claimed responsibility were arrested by Palestinians authorities in Gaza or charged with any offense.

On March 3, a Palestinian with an assault rifle killed eight Israeli civilians, four of them under age 18, in a Jerusalem yeshiva, or seminary. The gunman, who was apparently acting independently, wounded 10 other students. Senior Hamas spokesmen appeared to give their support to the attack as well as to four others in 2008 in which Palestinians targeted Israeli civilians in Jerusalem.”

[34] The Authority was also referred by the appellants to the website “We should not forget” which records Israeli deaths (civilian and military) from Palestinian violence for various time periods. For the period between January 2009 and June 2009, there is one civilian death recorded. For the period January 2008 – January

2009 there are, on the Authority's best assessment, 21 civilian deaths recorded with the number of moderately or seriously injured being approximately 130. In its letter to the appellants, the Authority noted that another record put the total deaths for the years 2006-2008 as being 33; The Israeli Information Center for Human Rights in the Occupied Territories at www.btselem.org.

[35] The Authority accepts that there is some ongoing random violence targeting Israeli civilians in Israel. Regrettably, the violence has led to the deaths recorded above. The following assessment is not intended to detract from the seriousness of the violence or the grief of friends and family who suffer loss. However, the issue for this decision is whether the risk of serious harm to these appellants rises to the real chance threshold as opposed to being random or speculative. The purpose of the Refugee Convention is not to protect individuals from all and every incident of violence or conflict in their home country. Its purpose is to provide a palliative protection regime for those who flee their country because there is a real chance that they will be persecuted for a Convention reason.

[36] The Authority finds that, for these appellants, the real chance threshold is not met. Having considered the statistics for civilian death and injury in light of the Israeli population of 7.4 million people, the Authority can only conclude that the risk of serious harm from terrorist attacks faced by individual Israelis is a remote or random risk as opposed to a real or substantial one.

[37] The submissions and material provided by the appellants in support of their appeal do not displace this finding. The letter of 1 July 2009 simply reasserts the claims and submissions made throughout their refugee application process (and summarised above at [25]-[26]). The other material provides background information and visual representations about the incidents which have been recorded in the country information referred to above. The Authority accepts, for the purposes of this hearing, the appellants' accounts of witnessing some attacks and having relatives and friends who have been affected by them. The Authority also accepts their evidence that they feel stressed about the violence and the chance that they too will be victims of an attack. However, as noted above, an objective assessment of the predicament they face does not support a finding that they face a real chance of serious harm. Moreover, the fact that they have experienced grief and stress as a result of the violence falls a long way short of establishing a well-founded fear of being persecuted.

[38] The appellants do not face a well-founded fear of being seriously harmed in a terrorist attack on return to Israel.

[39] There is no other credible evidence before the Authority that establishes that either or both of these appellants are at risk of being persecuted in Israel for a Convention reason or any other grounds.

[40] Having considered all the circumstances of these appellants, separately and together, and the relevant country information, the Authority finds that there is no evidence to support the claim that either of the appellants has a well-founded fear of being persecuted for a Convention reason.

CONCLUSION

[41] The Authority finds that the appellants are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined to both of the appellants. The appeals are dismissed.

"B A Dingle"

B A Dingle
Member