

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76013

AT AUCKLAND

<u>Before:</u>	S L Murphy (Member)
<u>Counsel for the Appellant:</u>	S Sharma
<u>Appearing for the NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	27 March 2007
<u>Date of Decision:</u>	27 June 2007

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of Immigration New Zealand (INZ) declining the grant of refugee status to the appellant, a national of Pakistan.

INTRODUCTION

[2] The appellant arrived in New Zealand on 1 July 2002 and lodged a claim for refugee status on 22 July 2002. He was interviewed by the RSB on 13 November 2002 and 17 March 2003, and a decision declining his claim was delivered on 30 April 2004. He appealed that decision and the Refugee Status Appeals Authority (RSAA) (differently constituted) heard his appeal on 30 September and 3 November 2004, and declined his appeal on 28 June 2005 (see *Refugee Appeal No 75176* (28 June 2005)).

[3] The appellant lodged a second claim to refugee status on 27 September 2006. He was interviewed by the RSB on 31 October 2006, and his claim was declined in a decision dated 18 January 2007. It is from that decision that he has appealed to this Authority.

Jurisdiction to consider second claim to refugee status

[4] Section 129J of the Immigration Act 1987 (“the Act”) sets out the circumstances in which a refugee status officer may receive and determine a second or subsequent claim to refugee status:

“A refugee status officer may not consider a claim for refugee status by a person who has already had a claim for refugee status finally determined in New Zealand unless the officer is satisfied that, since that determination, circumstances in the claimant’s home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim.”

[5] The Authority has jurisdiction to consider appeals in respect of second or subsequent claims by virtue of s129O(1) of the Immigration Act. That section provides:

“A person whose claim or subsequent claim has been declined by a refugee status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that circumstances in the claimant’s home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer’s decision.”

Comparison of claims

[6] In *Refugee Appeal No 75139* (18 November 2004) the Authority found that:

“Jurisdiction under ss129J(1) and 129O(1) is determined by comparing the previous claim to refugee status against the subsequent claim. This requires the refugee status officer and the Authority to compare the claims as asserted by the refugee claimant, not the facts subsequently found by that officer or the Authority.”
([55](e))

[7] Thus in order to determine whether the Authority has jurisdiction to consider the appellant’s second claim to refugee status, a comparison of the claims advanced in each claim must first be made.

Claim advanced on first appeal

[8] The following summarises the appellant’s first claim.

[9] The appellant was appointed secretary of the Pakistan Peoples’ Party (“PPP”) for his local area in 1996.

[10] The appellant campaigned for the successful PPP candidate in the 1997 general election.

[11] In 1999 General Musharraf seized power. The appellant was involved in

campaigning for the PPP in the subsequent 2001 national elections.

[12] In August 2001 the appellant and a friend were attacked by members of the Pakistan Muslim League-Q party (“PMLQ”). The appellant was hospitalised for two weeks as a result. He complained to the police but they failed to investigate.

[13] In December 2001, the appellant’s friend, AA, who was the secretary of the local PPP student federation, was assassinated by political opponents. The appellant was with AA at the time. The assassins tried to shoot the appellant but missed.

[14] The appellant sought assistance from the police but the police refused to take any details of the complaint as the suspects were powerful members of the PMLQ party.

[15] The appellant then went into hiding in Karachi. After three months he began to become involved in PPP politics again.

[16] In late April 2002, he was attacked by 8-10 people outside the PPP office in Karachi. He was badly injured and hospitalised. He then went to Lahore where he hid for two months prior to coming to New Zealand.

[17] The previous Authority found the appellant to be a member of the PPP. However his claim to have witnessed the assassination of AA, and been subsequently pursued and attacked by the PMLQ was held to be false. The claim was found to be implausible, and his evidence mobile and evasive. Moreover, a 27 December 2001 newspaper article about the assassination obtained by the RSB differed in key aspects from the appellant’s evidence of the assassination.

Claim advanced on second appeal

[18] The appellant’s second claim to refugee status, until the day of the hearing of the RSAA appeal, centred on a challenge to one of the planks of the credibility findings of his first claim, namely the veracity of the 27 December 2001 newspaper article obtained by the RSB about the assassination. His second confirmation of claim form simply said “refer to my previous statement and my lawyer’s letter”. In a letter to the RSB attaching the second confirmation of claim form, the appellant’s counsel enclosed a copy of a newspaper article that the appellant’s brother had obtained, which was said to be the same page number of the newspaper of 27 December 2001 that the RSB had obtained. He said that the article appeared to

demonstrate “that the article that the Branch provided to our client is incorrect as there was never any article in the [X newspaper] on 27 December 2001 on [AA]”.

[19] The appellant confirmed in the RSB hearing on his second claim that his second claim was based on the same facts as his first claim. To that end, when asked by the refugee status officer to provide a written statement for his second claim, he provided a copy of the statement that he had provided in respect of his first claim.

[20] In the second appeal hearing, the appellant’s counsel in his opening submissions reiterated that the second claim centred on the first claim. He addressed the jurisdictional issue by saying “the primary basis for the claimant’s subsequent claim is in relation to the newspaper article obtained by the RSB” as “the second article puts into issue the accuracy of the first article; as a result of the second article his belief is now that the original article is manufactured, and that it was provided by the people that he fears in Pakistan”.

[21] The appellant’s counsel, after opening submissions regarding the second claim being based on the same facts as first claim, as augmented by the new newspaper article, then made brief reference to a further matter. He said the appellant, on the morning of the hearing, had brought to his attention certain “personal” information which counsel described as being “more on a family level”.

[22] When questioned by the Authority about the “personal” information that his lawyer had referred to, the appellant revealed an array of dramatic new evidence about the arrests and disappearances of three members of his family in the month preceding the second appeal hearing. He claimed that he had been telephoned on the morning of the hearing by his brother-in-law who had advised him:

- (a) That his younger brother BB had disappeared on 1 March 2007;
- (b) That his two other brothers CC and DD had been sent into hiding;
- (c) That his father had contacted a human rights organisation about BB’s disappearance.
- (d) That the human rights organisation had taken a case to the Supreme Court about the disappearance of BB and others.

- (e) That his father and uncle had been arrested two days prior to the hearing and their whereabouts were unknown.

Decision on jurisdiction

[23] The second claim, as it was relayed in the appellant's confirmation of claim to refugee status, in evidence before the RSB, and by the appellant's counsel in his oral addressing of the jurisdictional matter before the Authority does not meet the jurisdictional threshold for second claims. This is because there is no change of circumstances in the home country asserted. Moreover the appellant's submissions in his second claim in relation to the credibility finding of the first Authority are statute barred under s129P(9). Refugee claimants who lodge second or subsequent claims to refugee status are specifically precluded under s129P(9) of the Immigration Act from challenging any finding of credibility or fact made by the previous Authority.

[24] On its face, the new evidence provided in the hearing before the Authority meets the jurisdictional threshold for second or subsequent claims. This is because the appellant asserts recent major changes in the circumstances of his family in his home country. Although partly related to the appellant's previous claim, they are also said to relate to activities undertaken by the appellant's brother since the appellant's departure, and as such *prima facie* amount to significantly different grounds to the previous claim.

THE ISSUES

[25] 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."

[26] 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 Assessment

[27] The next task of the Authority is to assess whether the appellant's second claim is credible.

[28] The appellant's evidence with respect to his second claim was, similarly to his first claim, vague, evasive, mobile, and, with respect to its timing, implausible.

[29] The appellant's evidence was that his brother-in-law, unaware of his impending second appeal hearing, phoned him coincidentally on the morning of the hearing, and advised him of the grave array of difficulties that had suddenly beset his family.

[30] The appellant has now been in New Zealand for some five years. His first claim to refugee status was found to be fabricated, and, in the absence of changed circumstances in his home country, the grounds for his second appeal had been roundly dismissed by the RSB as failing to meet the jurisdictional criteria for second claims. In that context, the Authority views with considerable suspicion his claim to have been privy to a telephone call on the day of the appeal hearing in respect of his second claim, providing dramatic new evidence that prima facie meets the jurisdictional criteria for second claims.

[31] The Authority's concerns about the veracity of this new evidence were borne out by the following flaws in its rendering.

[32] First, in response to questions by his counsel, the appellant showed the Authority his mobile telephone to prove that he had received a telephone call from his brother-in-law on the morning of the appeal hearing. When the appellant first showed the Authority his telephone, it simply showed a telephone number prefaced by the Pakistani code and the time of 4.43 am. His counsel then asked him to prove that it was a received call rather than a sent call, and the appellant went into his list of received calls within the view of the Authority. However, when viewed as a received call, the 4.43 am call appeared under the name of CC, a

brother who was supposedly in hiding. When the Authority questioned the appellant about the name associated with the telephone number, the appellant became flustered, and said that his brothers had “left the phone” when they went into hiding.

[33] The appellant initially told the Authority that his brother-in-law had told him about the disappearance of BB prior to the day of the hearing, and that in the conversation in the morning of the hearing, his brother-in-law told him that the whereabouts of BB is “still unknown”.

[34] However, later in the hearing, the appellant told the Authority that he did not learn of BB’s disappearance until the telephone call that morning. Further, when the Authority questioned him as to the inconsistency between that and his prior evidence, he became vague and evasive, giving evidence such as “prior to that he told me that he had gone somewhere”. We have no doubt that the appellant would be well aware whether he had learned that his brother was missing that morning or earlier.

[35] He also gave mobile and conflicting evidence of events that had occurred since his departure from Pakistan. At one point of the second appeal hearing he said that people had attacked his house since his departure from Pakistan, yet later in the hearing he said that as far as he knew his house had not been attacked since his departure. When this discrepancy was put to him he said “yes when my friend was murdered at that time took place but after I left I don’t know”. However he had just said that his house had not been attacked at any stage, explaining that, unlike his factory, it would be difficult to attack because it was in a residential area.

[36] The appellant’s evidence was also vague and evasive about his father’s contact with human rights groups about the disappearance of BB. He was initially uncertain which organisation or organisations had been contacted by his father about BB’s disappearance; saying that his father “might” have met a lawyer involved in a movement that advocated for the disappeared.

[37] He later said, however, that his father had indeed gone to a human rights group that advocated for disappeared persons, and that the group had gone to the Supreme Court about BB’s case among others. However a search by the Authority for information about a person by the name of BB having disappeared in Pakistan yielded no results. When the Authority informed the appellant of the

outcome of the search, he did not specifically comment, instead providing the Authority with a copy of a document purporting to be a “private complaint” to the police about the disappearance of BB.

[38] We find the private complaint document to be fraudulent. The document is dated 6 March 2007 and says that the appellant’s father is missing. However the appellant was quite specific in his evidence that his father was arrested on 25 March 2007, two days prior to the second appeal hearing, from his home. When questioned about difficulties faced by his father before the arrest the appellant made no reference to any prior disappearance. Further, the references in the ‘private complaint’ document to the appellant’s first claim undermine its credibility. The document says “it is not out of place to mention here that [BB]’s brother, namely [the appellant]’s friend was murdered in the same manner, and [BB]’s brother [the appellant] was forced to leave the country for his personal safety”. Not only does this give the document the appearance of being self-serving, but the appellant’s evidence in his first claim was found to be fabricated. In this regard we reiterate that the Authority is entitled to rely on the credibility findings of the Authority that heard his first claim (s129P(9) Immigration Act 1987). Nothing about the appellant’s 11th hour evidence in his second claim gives us reason to depart from the Authority’s credibility findings in his first claim and the findings on the first appeal are relied upon.

[39] Taken cumulatively, the foregoing concerns satisfy the Authority that the new information advanced by the appellant at the second appeal hearing is untrue. It is disbelieved. As to his attempt to also repeat the claim which was before the Authority on the first appeal, it is rejected as not credible for the reasons advanced by the panel on the first appeal, upon which the present panel relies.

CONCLUSION

[40] For the above reasons we find that the appellant’s evidence on his second claim is fabricated. There is no real chance of the appellant being persecuted if he returns to Pakistan. The first principal issue for consideration is answered in the negative, and the second issue does not arise.

[41] 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.

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S L Murphy
Member