REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

AT AUCKLAND	Application No 75539
IN THE MATTER OF	An application pursuant to s129L of the Immigration Act 1987 to cease to recognise a person as a refugee
BETWEEN	A refugee status officer of the Department of Labour **APPLICANT**
AND	**RESPONDENT**
BEFORE	J Baddeley (Chairperson)
Counsel for the Applicant:	A Sandberg
Respondent:	No appearance by the Respondent
Date of Decision:	29 June 2007

DECISION

---

[1] This is an application by a refugee status officer in accordance with s129L(f)(ii) of the Immigration Act 1987 (the Act) for a determination that the Authority should cease to recognise the respondent (hereinafter referred to as "the refugee"), a national of India, as a refugee on the ground that recognition may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information.

[2] The Department of Labour alleges that in the period the refugee claimed to have been persecuted in India in 1988 and 1989, he was actually living in Norway with the consequence that his recognition as a refugee by this Authority was

obtained by fraud, forgery, false or misleading representation or concealment of relevant information. It is further alleged that having subsequently obtained New Zealand citizenship by grant and a New Zealand passport, the refugee left New Zealand and is evading service of these proceedings brought by the Department of Labour seeking, in effect, the cancellation of his refugee status.

[3] On 1 March 2005, the Refugee Status Branch (RSB) lodged with the Authority an application in relation to loss of the refugee's refugee status. Before proceeding to consider this application, the Authority must determine whether the service requirements contained in s129S of the Immigration Act 1987 (the Act) and Regulation 18 of the Immigration (Refugee Processing) Regulations 1999 (the Regulations) have been satisfied.

The attempted service of the application

[4] The Authority instructed a process server to personally serve a copy of the application on the refugee at the address supplied by the Department of Labour from the refugee's Immigration New Zealand (INZ) records (the most recent address previously used by the refugee as an address for service). By affidavit dated 22 May 2006 the process server notified the Authority that he had been unable to serve the refugee personally. Furthermore, the occupants of the address who knew the refugee advised that they had not seen him for over 12 months. He had previously, they stated, used the address as a postal address.

[5] The Authority then made further enquiries of the Department of Labour to ascertain whether its records showed other addresses where the refugee might be personally served, including previous addresses for service, places of employment, residential addresses or the refugee's banking records. The Department of Labour advised that the most recent communication which it had with the refugee was the issuing of his New Zealand passport on 28 June 2001. The refugee had supplied an address to which the passport was to be sent. The Authority instructed a process server to serve the refugee or make enquiries as to his whereabouts at that address. On 3 August 2006, the Authority received advice from the process server that he had been unable to locate the refugee at the address and upon questioning the occupants, had obtained no information of his likely whereabouts.

[6] The Application Management System (AMS) of Immigration New Zealand records disclosed that the refugee had departed New Zealand on 29 April 2003. There is no record of his return.

[7] The Authority concludes that it is highly unlikely that the refugee will be personally served or these proceedings brought to his notice at any address in New Zealand. Furthermore, the Authority is unaware of any recent address outside New Zealand to which notification of this application could be sent for the purpose of bringing it to the refugee's notice.

[8] The Department of Labour filed submissions arguing that the Authority had fulfilled its statutory obligations as to service and should proceed to determine the application. To summarise, the Department of Labour's submissions are:

(a) The Authority is required, pursuant to s129S of the Act, to "take reasonable steps to notify the person concerned in the prescribed manner of the matter which has been considered". The Authority had taken "reasonable steps" to notify by instructing a process server in the manner outlined.

(b) Regulation 18(1) of the Regulations, while specifying that the Authority must arrange for a copy of the application to be served personally, does not specify that the refugee must be served personally. The present application is distinguishable from service requirements elsewhere in the Act where personal service is mandatory.

(c) Regard should be had to the strength of the evidence in support of the application. There is "irresistible objective evidence" that the refugee was in Norway (not in India as claimed) at the time he alleges he was persecuted by the Indian authorities.

(d) There is evidence to suggest that the refugee left New Zealand in order to evade proceedings being prepared in relation to possible fraud charges which arose out of the circumstances in which he claimed refugee status. The refugee was interviewed on 28 August 1998 by an officer of the NZIS concerning possible revocation of his residence permit on the grounds that it had been obtained by false and misleading representations. The refugee was questioned about his deportation from Norway and his previously undisclosed marriage. It is these allegations which form the basis for the current cancellation proceedings. The refugee therefore knew that his residence status was being investigated. However, no further steps had been taken by the INZ to cancel his residence permit prior to his departure from New Zealand on 29 April 2003.

(e) Where personal service could not be effected the Authority has the power to direct substituted service which could be effected by registered post to all

previous addresses provided by the refugee: service on a family member or person known to be in contact with the refugee; by way of advertisement in a local newspaper; or dispense with service altogether.

(f) To leave the application unresolved would be to undermine the integrity of the refugee processing system and border security.

THE ADDRESS FOR SERVICE

[9] The Act provides a scheme for service of applications, notices etc required in proceedings under the Act. This scheme prescribes not only the manner in which service is to be effected but also the prescribed address at which service must take place.

[10] The appropriate address for service in cancellation proceedings is to be found in s129P(3) of the Act:

> "An appellant must provide the Authority with a current address in New Zealand to which communications relating to the appeal may be sent and a current residential address in New Zealand, and must notify the Authority in timely manner of a change in either of those addresses. The Authority may rely on the latest address so provided for the purpose of communications under this Part."

[11] This address can be relied on for the purposes of all communications under Part 6A of the Act which includes cancellation proceedings.

[12] The requirement of the appellant to provide and the ability of the Authority to rely on this address was mirrored exactly in s129G of the Act in regard to communications between an applicant for refugee status and a refugee status officer.

[13] Section 146(3) of the Act reiterates the scheme for the service of documents in relation "to any matter" falling within the ambit of the Act. It provides:

> "Where under any of the provisions of this Act any person is to be notified of any matter, written notice of that matter shall be given, served on, or supplied to that person either by personal service or by registered post addressed to that person at that person's New Zealand address, or by service upon the person's solicitor in accordance with subsection (4) of this section."

[14] By virtue of s146(6) such a notice referred to in s146(3) is deemed to have been given or served or received seven days after the date on which it is posted.

[15] In each of the abovementioned sections of the Act the relevant address is "the New Zealand address". The New Zealand address is further defined in s2(1):

"**New Zealand address, -**

(a) In relation to a permit holder, means the last known of the following addresses:

(i) The address for the time being nominated by that holder under section 37:

..."

[16] By analogy "the New Zealand address" in relation to these proceedings is the last known address in New Zealand supplied by the refugee.

[17] The foregoing sections when considered together reveal an underlying scheme for the provision of an address for service of proceedings under the Act which is supplied by the individual on which the Authority (or Immigration New Zealand) can rely in fulfilling its obligations to bring matters to the notice of the individual who is the subject of the proceedings.

[18] In these proceedings the Authority attempted service at not only the latest address provided by the refugee to Immigration New Zealand (thereby fulfilling its obligations under s129P(3) but further attempted service at the most recent address provided by the refugee to the Department of Internal Affairs for the delivery of his passport. In doing so the Authority has complied with the service provision of the Act by attempting service at the address for service prescribed therein.

THE SERVICE REQUIREMENTS

[19] The procedures which the Authority must follow in relation to applications to cancel refugee status are set out in s129S of the Act:

"**129S Procedures to be followed in carrying out non-appellate functions**
When carrying out any function under section 129R—
(a) The Authority must take reasonable steps to notify the person concerned in the prescribed manner of the matter that is being considered; and
(b) Section 129P and any regulations made under this Part apply (unless the context otherwise requires, and with any necessary modifications) as if the matter being considered were an appeal under section 129O and the person concerned were an appellant."

[20] The "manner of notification" as prescribed in Reg 18 of the Regulations is:

"18 Serving of notice of application
(1) If an application for loss of refugee status is accepted for consideration, the Authority must arrange for a copy of the application to be served personally on the person to whom it relates."

[21] Section 129S of the Act does not prescribe personal service only as mandatory. It is relevant that under s129S, the Act allows "reasonable steps to be

taken in order to notify the person concerned" (by way of personal service Reg 18). The drafters of the Act evidently contemplated the situation where personal service could not be effected. In such cases the service requirements would be satisfied by the taking of reasonable steps. By contrast other provisions of the Act explicitly mandate personal service without the qualification of "reasonable steps":

> **"s56 Service of removal order**
> (1) Except where section 141C(d) applies, a removal order may be served by an immigration officer or member of the Police on the person named in the order by personal service only."
>
> **s77(1) Service of deportation order**
> A deportation order made under s72 or s73 shall be served on the person named by personal service only."

[22] From the above it is evident that Parliament intended that the service requirements for deportation and removal should be more rigorous and restrictive than those for applications pursuant to s129R of the Act. The rationale for this may be found in the differential consequences which flow from these provisions. Removal and deportation are procedures which result in finally terminating a person's entitlement to remain in New Zealand. Whereas an application under s129R of the Act is the first of several steps to be taken in the process of revoking a person's entitlement to be in New Zealand. Even after a successful application under s129R of the Act further steps must yet be taken (such as cancellation of citizenship; revocation of permanent residence or the cancellation of a passport and in some circumstances revocation or deportation proceedings) before an individual's entitlement to remain in New Zealand is finally extinguished.

[23] The service requirements for revocation of a residence permit are more restrictive than the s129S provisions of the Act. Section 20(2) of the Act provides:

> **"20 Revocation of residence permit by Minister**
> (2) Written notice of the revocation of a residence permit under this section shall be served on the holder by personal service only, and the revocation shall, except where the holder appeals against the revocation to the High Court or the Tribunal under section 21 or section 22 of this Act (in which case the provisions of section 23 of this Act shall apply), become effective on the date 21 days after the date of such service."

[24] There is no modification of the phrase personal service only permitting the service requirement to be satisfied by "the taking of reasonable steps".

[25] It is also relevant to notice that a Notice of Deprivation of Citizenship must be served by personal service, or in lieu, an application may be made for an order dispensing with service where an individual's whereabouts is unknown or service is not practicable (refer s19 of the Citizenship Act 1977). No such explicit

alternative is provided under s129S of the Act or Reg 18 of the Regulations for situations like the present one where the refugee's whereabouts are unknown. Instead only the "reasonable steps" qualification modifies the personal service requirement under Reg 18 of the Regulations.

[26] The Department of Labour has acknowledged that this application was brought in response to its concern to protect "the integrity of the refugee processing system as well as border security". The Authority therefore concludes that if this application succeeds, the Department of Labour intends to take steps which could lead to the cancellation of the refugee's entitlement to citizenship and/or residence in New Zealand. This would necessitate the fulfilment of the stricter service requirements of s20(2) of the Act and provides a further safeguard against removal from New Zealand to a person whose refugee status was cancelled pursuant to s129R of the Act without having been notified of an application to cancel.

[27] From consideration of the foregoing provisions the following principles can be distilled:

(a) From the wording of s129S of the Act it is obvious that Parliament contemplated the situation where a refugee was unable to be served personally and allowed for the lesser requirement of "reasonable steps to notify" as sufficient for the purpose of service of an application under s129R of the Act;

(b) In this regard s129S of the Act is less restrictive than the revocation and removal provisions which *per se* result in the final termination of entitlement to remain in New Zealand, unlike applications pursuant to s129L of the Act;

(c) In this regard the provisions of s129R of the Act more closely correspond to the less rigorous service provisions relating to cancellation of citizenship and cancellation of passports which like s129R of the Act do not immediately *per se* revoke an individual's entitlement to remain in New Zealand;

(d) Section 129R of the Act (unlike s19 of the Citizenship Act) does not explicitly provide for dispensation of service of a notice or any alternative such as substituted service. The Authority therefore concludes that personal service is the means of service contemplated by the legislation, and reasonable steps to effect such personal service will satisfy the requirements of s129S of the Act.

Summary of service

[28] The Authority has attempted to effect personal service of the proceedings by way of a process server sent to two addresses supplied by the Department of Labour.

[29] The first address was supplied by the Department of Labour as the refugee's most recent address for service used for a work visa application. Service was not effected.

[30] The second attempt was at the most recent address used by the refugee for communication with the Department of Internal Affairs. This was in respect of the issuance of a New Zealand passport in June 2001.

[31] The Authority is unaware of any more recent addresses used by the refugee. This is unsurprising given that the INZ AMS system reveals that the refugee departed from New Zealand on 29 April 2003.

WHAT CONSISTUTES REASONABLE STEPS?

[32] The Authority now turns to consider what constitutes reasonable steps in the context of service requirements in cancellation proceedings under s129S of the Act.

The drafting history

[33] There is little in the drafting history of s129S of the Act which assists in the definition of reasonable steps. The report from the Social Services Select Committee concerning Immigration Amendment Bill No 183-2 contains no commentary on the matter of service. The General Policy Statement in the Explanatory Note to the Immigration Amendment Bill No 183-1 contains a general contextual statement to the effect that the intention of the Bill is to "strengthen the mechanisms used to manage the risks associated with immigration".

[34] The Explanatory Note goes no further than to record that s129S of the Act provides "that the normal procedures for determining an appeal will also apply to the additional functions of the Authority set out in s129R".

Additional sources

[35] The Authority's researches have discovered no judicial comment or

academic discussion of what constitutes reasonable steps in effecting service in proceedings under the Act. There is also little discussion or comment about this matter in other contexts. There is some commentary contained in McGechan On Civil Procedure as to what constitutes "reasonable efforts" as a prerequisite to substituted service, but this is of little assistance to the present case.

[36] As a general proposition, it has been recognised that inquisitorial bodies such as the Authority may exercise greater leniency in their procedure than courts of general jurisdiction. The High Court has acknowledged that a distinction can be made between courts of general jurisdiction and inquisitorial bodies as to the manner in which they may carry out their procedures. In *Y v X* [2003] 3 NZLR at 261, Heath J held that inquisitorial tribunals have a greater leniency in their procedure than courts of general jurisdiction.

> "The inquisitorial nature of the Family Court jurisdiction is of importance in this context. The Court which exercises inquisitorial jurisdiction is likely to be given greater leniency to deal effectively with the subject matter of jurisdiction than would be a court of general jurisdiction."

[37] This general proposition is reflected in the provisions of Schedule 3C of the Act which allows the Authority to regulate its own procedure "subject to the Act and any regulations made under it".

The Australian jurisprudence

[38] The notice requirements under proceedings brought for the cancellation of a visa under s501(2) of the Immigration Act 1958 have been considered by the Federal Court of Australia in *Osborne v Minister for Immigration and Multicultural and Indigenous Affairs* (2002) 124 FCR 416; [2002] FCA 113. The relevant regulations in those proceedings required that Notice of Cancellation be served by giving it to the person concerned; posting or transmitting by facsimile or email to the address known to the Minister. Although the equivalent Australian legislation and regulations contained no "reasonable steps" provisions, the Court made the following observations as to what constitutes reasonable steps. French J states at para 20:

> "The implied condition of notification is not absolute. It could not be. For otherwise a person could defeat the cancellation provisions simply by moving to an address not known to the Minister or his offices. The implied condition requires only that reasonable steps be taken to notify the visa holder. To send a notice of intended cancellation to his last known address is a reasonable step."

[39] In *Osborne* the Minister had sent the Notice of Cancellation to the last address provided by the appellant to the Department of Immigration and

Multicultural and Indigenous Affairs although at the relevant time the appellant was residing elsewhere and did not receive the notice. The court held in that case that the Minister had met the "implied condition" of reasonable notification.

[40] The Court further noted that the relevant regulations merely established a mechanism for notification. They did not assist in determining what is reasonable in these circumstances. The same observation can be made in respect of Reg 18 of the Act which is silent as to what constitutes reasonableness in the context of personal service.

[41] The Authority is mindful of the potentially far-reaching consequences of cancellation of refugee status and therefore would only in exceptional cases proceed to cancel refugee status in the absence of any evidence that the proceedings had been brought to the notice of the individual affected. However, it is clear that the requirement of notification is not absolute. The Authority accepts the observations of the Federal Court of Australia that there is "no absolute obligation to notify the visa holder" as relevant *mutatis mudandis* to the refugee in cancellation proceedings under the Act.

CONCLUSIONS AS TO REASONABLE STEPS

[42] There is an explicit acknowledgement in the general policy statement of s140 Immigration Amendment Act 1999 (October 1999) that the intention of the Act is to "strengthen the mechanism to manage the risks associated with migration". When personal service cannot be carried out this should not prevent the "mechanisms" provided in the Act from taking effect.

[43] When steps to effect personal service are made not only at the address for service provided by the appellant to Immigration New Zealand but also to a subsequent address provided to the Internal Affairs Department, the steps taken are reasonable. The Authority concludes that in the present circumstances it has taken reasonable steps to effect personal service and thereby has fulfilled its obligations to notify the refugee of these proceedings

[44] The Authority now turns to consider whether it may determine this application pursuant to s129P(6) of the Act which provides:

> "**[129 P**
> **Procedure on appeal**
>
> (6) Despite subsection (5), the Authority may determine an appeal or other matter without an interview if the appellant or other person affected fails without reasonable excuse to attend a notified interview with the Authority."

NATURE OF THE INQUIRY

[45] Pursuant to s129L1(f)(ii) of the Act, a refugee status officer may apply to the Authority for a determination as to whether the Authority should cease to recognise a person as a refugee where that status may have been procured by fraud and the like. The Authority has the function of determining such an application pursuant to s129R(b) of the Act.

[46] When the Authority is considering an application for determination under s129L1(f)(ii), there are two stages to the Authority's enquiry. First it must be determined whether the refugee status of the refugee may have been procured by fraud. If so, it must then be determined whether it is appropriate to recognise the person as a refugee. The determination will depend on whether the refugee currently meets the criteria for refugee status set out in the Refugee Convention: *Refugee Appeal No 75392* (7 December 2005) at [10]-[12].

[47] Given that these are inquisitorial proceedings, it is not entirely appropriate to talk in terms of the burden or onus of proof. Nonetheless it is the Authority's view that in cancellation proceedings, it is the responsibility of the Department of Labour to present such evidence in its possession by which it can responsibly be said that the grant of refugee status may have been procured by fraud. It is also the Authority's view that the term "may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information" is deliberately imprecise and signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion: *Refugee Appeal No 75563* (2 June 2006) at [20].

BACKGROUND TO REFUGEE STATUS

[48] The refugee is aged 32 years. He arrived in New Zealand in November 1989. He applied for refugee status in May 1991. His claim was declined by the RSB on 27 May 1992. His appeal against that decline was heard by the Authority on 1 June 1993 and dismissed by a decision published on 5 November 1993. On 7 March 1994 the refugee lodged a second claim to refugee status which the RSB declined to accept on the ground that it did not meet the jurisdictional requirements of a second or subsequent claim. On 11 May 1995 the Authority granted the refugee's appeal against the RSB's decline of his claim to refugee status.

[49] The refugee was subsequently granted a New Zealand resident's visa and

on 28 June 2001 was issued with a New Zealand passport. He departed New Zealand on 21 April 2003. There is no record of his having returned to New Zealand since that date.

THE FIRST CLAIM TO REFUGEE STATUS

[50] In his first claim the refugee states that he is a Sikh from a rural community in the Punjab and was a sympathiser with the Khalistan cause which, during the 1980s, was actively promoted in the Punjab by various groups including those who are deemed by the Punjabi authorities to be terrorists. The refugee himself was never a member or supporter of any terrorist group. In 1987 the refugee was detained and tortured by the Punjabi police on suspicion of harbouring terrorists and being a terrorist sympathiser. He left the Punjab in 1988 and went to live with his sister in Haryana. Between July 1988 and June 1989 he was again detained on various occasions by the police and questioned about his alleged involvement in terrorist activities. He left India in August 1989 to escape harassment by the Indian authorities and arrived in New Zealand on 2 November 1989. His application for refugee status was declined by the RSB on 27 May 1992. His subsequent appeal to the Authority was dismissed on the ground that the detentions and bribes, extracted for his release, have been a device whereby the Punjabi police obtained revenue. His claim therefore lacks the required nexus to a Convention ground.

THE SECOND CLAIM TO REFUGEE STATUS

[51] In his second claim to refugee status lodged on 7 March 1994 the refugee reaffirmed his original claim to fear persecution at the hands of the authorities because they suspected him of involvement in terrorist groups. In November 1993 (within days of the release of the Authority's first decline decision) the refugee claimed that he learned that his father had been arrested and beaten by the Punjabi police who were searching for the refugee's brother. His father died as a result of the beating he received by the police in custody. The second and differently constituted panel of the Authority, in allowing the appeal, determined, that on the basis of the father's detention and the deterioration of country conditions manifested by the increasing brutality and extrajudicial killings carried out by the Punjabi police, the refugee faced a real chance of being persecuted. The second panel of the Authority accepted the refugee's claim that the earlier arrests in 1988 and 1989 had been because of his suspected involvement in terrorist groups and that the authorities maintained their adverse interest in him.

THE DEPARTMENT OF LABOUR'S CASE

[52] The refugee status officer in her Notice of Application for Determination Concerning Loss of Refugee Status lodged on 1 March 2005 stated her

preliminary conclusion that refugee status may have been procured by fraud or the like on the basis of documentation received by the Department of Labour from the Indian and Norwegian authorities. The refugee was identified by fingerprints and forensic face mapping evidence as being the same individual as AA (who has the same name as the refugee) who was living in Norway from 1988 to 1989 which is the period during which the refugee claims to have been in India and persecuted by the Indian police. This documentary evidence is considered in detail below:

(a) An extract from the Hindu Marriage Register – Hoshiapur Registry dated 22 April 1987 which records the marriage between AA and KK, a woman normally resident in Norway. AA's personal details (his name and address and his father's name and address) as recorded in the marriage register are the same as those of the refugee supplied by him in support of his first application for refugee status.

(b) An application in the name of AA for a visa to reside in Norway. The application is based on AA's marriage, on 22 April 1987, to KK, a Norwegian resident with the identical Norwegian address to that of KK named in the entry in the Hindu Marriage Register referred to above.

(c) A letter dated 12 July 1997 from the National Bureau of Criminal Investigation, Interpol Oslo to Interpol Wellington advising that an individual named AA, an Indian national married to KK on 22 April 1987 in Hoshiapur, India, had arrived in Norway on 23 February 1988. AA was subsequently deported from Norway for violation of the Immigration Act. Enclosed with the letter were fingerprints and a photograph of AA supplied from the records of the Norwegian police. A further facsimile of the same date from the same source and also addressed to Interpol Wellington confirmed the date of AA's expulsion from Norway as 13 May 1989.

(d) A letter dated 20 January 1998 to Police National Headquarters, Wellington from the chief fingerprint officer of Interpol New Zealand advising that the fingerprints of the refugee, who had been arrested and fingerprinted in Tauranga on 7 November 1994, were identical with those of AA who was fingerprinted in Oslo, Norway, on 12 May 1989 for violation of the Immigration Act and subsequently deported from Norway on 13 May 1989.

(e) An application by the refugee, AA, for residence in New Zealand dated 2 August 1995 and an attached photograph of the refugee.

(f) A record (signed by the refugee) of an interview with Immigration New Zealand dated 28 August 1998 concerning possible revocation of his residence permit in which the refugee denied ever having married or having been deported from Norway.

(g) A report from Dr P Watts, a forensic anthropologist, dated 20 January 2005 of a comparison of the photograph of the refugee which accompanied his application for residence in New Zealand dated 2 August 1995 with a photograph of AA provided by the National Bureau of Criminal Investigation, Interpol Oslo from the photographic database of convicted persons in Norway. Dr P Watts concluded that the forensic face mapping of anatomical facial features and traits revealed a close correspondence between the two photographs. Furthermore the facial proportions of each face showed a close correspondence. His expert opinion is that the photographs of AA provided by the Norwegian National Bureau of Criminal Investigation and the photograph of the refugee, which is attached to his application for residence dated August 1995, are of one and the same person.

[53] The refugee status officer relies on the documents listed above, and in particular, the conclusions reached in the forensic face mapping report, to assert that the refugee, AA, was in Norway rather than India in 1988 and 1989, contrary to the account he presented in both claims to refugee status

REFUGEE RECOGNITION PROCURED BY FRAUD

[54] In the absence of any response from the refugee (other than his denial to Immigration New Zealand in August 1998 that he had ever married or been deported from Norway) the Authority has given close scrutiny to the documentary evidence relied on by the Department of Labour.

[55] As a result of its consideration of this evidence the Authority concludes as follows: the Authority accepts the findings of Dr P Watts and is satisfied that the refugee was photographed in Norway having arrived there on 23 February 1988 and was deported from Norway on 13 May 1989. The Authority finds that the refugee's account of being persecuted by authorities in India and in particular his

detention and questioning by the police on various occasions from July 1988 to June 1989 is an obvious fabrication. He was in Norway during the period of his claimed persecution by the Indian authorities. It is this claimed persecution which forms the basis of both his first and second refugee claims. Without this his claim to refugee status collapses.

[56] Although the Authority does not rely on the evidence of his marriage to KK in reaching its decision, the Authority further finds that the refugee (contrary to his denials to Immigration New Zealand) was married to KK in Hoshiapur on 22 April 1987.

[57] In view of the findings stated above the Authority is satisfied that the refugee advanced a claim to refugee status based on facts which he knew to be untrue and in the knowledge that he did not have a legitimate claim to fulfil the refugee definition. The Authority finds that the grant of refugee status to the refugee may have been procured by fraud, forgery false or misleading representation or concealment of relevant information for the purposes of s129R(b) of the Act.

WHETHER THE REFUGEE SHOULD CEASE TO BE RECOGNISED AS A REFUGEE

[58] Having found that the refugee's grant of refugee status may have been procured by fraud, forgery false or misleading representation or concealment of relevant information, it is necessary to consider the second stage of the two stage test, that is, whether the refugee currently meets the criteria for refugee status.

THE ISSUES

[59] 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."

[60] 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?

[61] The Authority reiterates its findings that the refugee has at no time been a person of interest to the Indian authorities.

[62] The refugee has provided no case for refugee status other than the one presented by him initially in 1991 and essentially repeated in 1995 which the Authority has found to be false.

[63] Given the complete absence of evidence before it establishing that the refugee faces a real chance of being persecuted in India for any reason the Authority finds that the first issue must be answered in the negative and the second does not accordingly arise. It is therefore appropriate to cease to recognise him as a refugee.

CONCLUSION

[64] The following determinations are made:

(a) The refugee status of the refugee may have been procured by fraud, forgery false or misleading representation or concealment of relevant information.

(b) It is appropriate to cease to recognise him as a refugee.

[65] The application is therefore granted.

.....
J Baddeley
Chairperson