

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

**REFUGEE APPEAL NO 76336**

**AT AUCKLAND**

**Before:** A R Mackey, Chairman

**Representative for the Appellant:** S Singh

**Date of Decision:** 4 May 2009

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**DECISION**

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[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 was born in AA, Fiji in mid-1984. Her mother was a domestic worker and her father a cane-cutter. She is of Indo-Fijian ethnicity. She married in 2003 but separated not long after.

[3] The appellant obtained a Fijian passport in 2007. Using that passport, she applied to travel to New Zealand. She was issued a visitor's visa in April 2008 and arrived in Auckland two days later to stay with her mother who had moved to New Zealand after remarrying in 2005.

[4] On 19 December 2008, the appellant lodged a confirmation of claim for refugee status with the RSB, which was dated 10 September 2008. She was interviewed by a refugee status officer on 27 January 2009. A decision to decline her application was made by the RSB on 27 March 2009 and, on 6 April 2009, the

appellant appealed to this Authority.

[5] The Authority wrote to the appellant, care of her representatives, on 15 April 2009, stating that the Authority had reached the *prima facie* conclusion that the appellant's claim was manifestly unfounded and/or clearly abusive. The appellant was given until the close of business on 29 April 2009 to present submissions responding to the matters raised in the Authority's letter of 15 April 2009, and advised that following that deadline, the Authority, unless persuaded otherwise by evidence and submissions presented, may determine the matter on the documents without offering the appellant an opportunity to attend an interview. No response has been received to the Authority's letter as at the time of this decision.

### **JURISDICTION OF THE AUTHORITY TO DISPENSE WITH AN INTERVIEW**

[6] In certain circumstances, the Authority is permitted to determine an appeal on the papers without the appellant being given an interview. This arises under s129P(5)(a) and (b) of the Act where the 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).

[7] The Authority, through its Secretariat, wrote to the appellant's representatives, Central Immigration Service, Porirua, on 15 April 2009. That letter advised that, in the Authority's preliminary view, the appellant's appeal was *prima facie* manifestly unfounded or clearly abusive as on the basis of the claim submitted by the appellant, the Authority had reached a preliminary view that the appellant had not established that she would have a well-founded fear of being persecuted on return to Fiji.

[8] The Secretariat's letter set out all the issues involved and a brief summary of the Authority's reasons for concluding the lack of a well-founded fear and thus that this was a manifestly unfounded or clearly abusive appeal.

[9] In the Secretariat's letter it was also explained that the appellant bore the responsibility for establishing her refugee claim, pursuant to ss129P(1) and 129P(2) of the Act, as explained further in *Refugee Appeal No 72668/01* (Minute No 2) (5 April 2002) and in *Anguo Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA).

[10] The appellant, through her representative, was provided with an opportunity to present submissions and/or evidence to support the appeal by 29 April 2009 and was advised further that, unless persuaded otherwise, the Authority would proceed to determine the matter without giving the appellant the opportunity to attend a further interview.

[11] No response was received from the appellant or her representatives.

### **CONCLUSION ON WHETHER TO DISPENSE WITH AN INTERVIEW**

[12] This appellant was interviewed by a refugee status officer on 27 January 2009. Despite being given an opportunity to persuade the Authority that an interview with the Authority was necessary and could assist in establishing her appeal, the appellant has failed to do so.

[13] In the circumstances of this case, therefore, the Authority will determine this matter on the papers without giving the appellant the opportunity to attend a further interview.

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

[14] The appellant claimed in her application that she feared persecution by "indigenous Fijians and have also been threatened with rape by my uncle". She referred to the several coup that had taken place in Fiji over recent years and that after the 2000 coup, Indians were attacked by ethnic Fijians. In her interview with the RSB, the appellant stated that in 2007, she had obtained employment in BB and that her mother had sent her to live with her first step-father's brother, SS, and his family in BB. Subsequently, SS began to touch the appellant in appropriately and undesirably. As a result of this, the appellant returned to AA, staying with an uncle and aunt who refused to send her back to BB. The appellant did not report the incidents with SS to the Fijian authorities.

[15] SS was later in contact with the appellant in AA and asked her why she had left his house and told her that she would be welcome to return.

[16] The appellant stated that she could not return to Fiji as her uncle in AA had informed the appellant's mother that he would make the appellant perform domestic duties and work the land if she returned to Fiji.

## **THE ISSUES**

[17] 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."

[18] 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**

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

[20] After a re-assessment of all of the evidence presented, including the interview and relevant country information, it is clear that the appellant can safely return to her home district of AA in Fiji. The only harm predicted by her, if she returned there, would be that she would have to undertake menial duties for her aunt and uncle. The appellant is under no necessity whatsoever to relocate to the home of SS in another part of Fiji.

[21] The concept of being persecuted has been adopted and interpreted in New Zealand such that there is a requirement to establish, at the level of a real chance, "a sustained or systemic denial of basic human rights"; see Authority decisions such as *Refugee Appeal No 74665* (7 July 2004) and *Refugee Appeal No 71427/99* (16 August 2000). The claimed treatment by her relatives in AA to which the appellant predicts she would be subjected, does not in any way rise to the level of being a sustained or systemic violation of core human rights. Accordingly, the appellant does not have a well-founded fear of being persecuted, should she return to Fiji.

[22] It is the responsibility of the appellant to establish her own case. The Authority considers this appellant has not, at any point, established that she is at a real risk of being persecuted on return to her home country. The objective country information confirms these conclusions.

[23] In this situation, the first issue is answered in the negative. It is unnecessary to proceed with the consideration of the second issue.

### **CONCLUSION**

[24] 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.

"A R Mackey"  
A R Mackey  
Chairman