

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76038

AT AUCKLAND

<u>Before:</u>	A N Molloy (Member)
<u>Representative for the Appellant:</u>	Salim Singh
<u>Appearing for INZ:</u>	No Appearance
<u>Date of Decision:</u>	28 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 Fiji.

INTRODUCTION

[2] The appellant arrived in New Zealand on 8 October 2006 and applied for refugee status on 8 December 2006. He was interviewed by a refugee status officer on 23 January 2007. A decision declining his application was published by the RSB on 5 April 2007.

[3] On 10 April 2007, a notice of appeal against that decision was lodged on the appellant's behalf by Salim Singh, an immigration consultant. Mr Singh's 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 solicitors on 21 May 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 his claim that he 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 he is a Fijian of Indian ethnicity. In the past he has experienced harassment from ethnic Fijians. These instances increased after the coup in 1987 and again after the coup in 2000. On several occasions over the years he has been punched and kicked and suffered injuries including cuts and bruises. His family has also been subjected to demands for food and money, and the police have been unable or unwilling to help.

[The appellant] came to New Zealand in October 2006 in order to attend a family wedding. He was still in New Zealand when the Commander of the Fijian Armed Forces, Commodore Bainimarama, overthrew the government of Prime Minister Qarase in December 2006. The appellant applied for refugee status a few days later. He claims that, as a result of the coup, he is now at risk of being attacked and seriously harmed by indigenous Fijians because of his ethnicity.”

[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 many 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 his claim by 5 June 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 23 January 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 NZIS file.

[15] The appellant is a married male in his mid-20s. He was born and raised a Muslim and is a Fijian citizen of Fijian Indian ethnicity. The appellant was raised on a leasehold farm in the west of Fiji. Although his family were relatively poor, the appellant experienced no particular difficulties relevant to his refugee appeal prior to the military coup which took place in 1987 when the appellant was a young child.

[16] During the period immediately following the military coup in Fiji in 1987, the appellant's family were harassed from time to time by ethnic Fijians. His parents were subjected to demands for food and his father was assaulted from time to time. The family had food and livestock stolen on several occasions.

[17] As he grew older, the appellant was himself subjected to harassment and occasional beatings by ethnic Fijians.

[18] During and immediately following the further coup in Fiji in May 2000, the

appellant's family home was again raided by several ethnic Fijians who stole livestock and various household items.

[19] Some time in 2006, Fijian Indian neighbours of the appellant's family began to experience problems when the lease on their farm expired.

[20] In mid-June 2006, the appellant obtained a Fijian passport with a view to travelling to New Zealand. After receiving a visitor's visa in October 2006, the appellant left Fiji the same month and flew to New Zealand.

[21] The appellant believes that his parents are continuing to experience harassment from ethnic Fijians in the local villages.

[22] Following the further military coup in Fiji in December 2006, the appellant lodged a claim seeking refugee status. His wife and children have not personally experienced any difficulties as a result of the most recent coup but the appellant claimed that he is now at risk of being seriously harmed because of his ethnicity.

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 his credibility will not be made. Accordingly, his 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 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.

[27] The Authority has previously noted that discrimination in itself is not 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] In that connection, the Refugee Convention was not intended to protect persons against any or all forms of even serious harm, but confers protection where there is a risk of serious harm that is inconsistent with the basic duty of protection owed by a state to its citizens (Hathaway, 103). This will generally arise out of an appellant's civil or political status (Hathaway, 93).

[29] While undoubtedly distressing, none of the incidents which have affected the appellant in the past amounted to serious harm tantamount to being persecuted, even if considered cumulatively. However, determining whether an appellant faces a real chance of being persecuted requires a forward-looking assessment. The question is whether the appellant faces a real chance of being persecuted if he returns to Fiji now.

[30] 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 which took place in 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 a deterioration in the security of the Indo-Fijian community and in particular there has been virtually no violence inflicted upon Indo-Fijians by the indigenous Fijian populace.

[31] Further, 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 him for comment in the Authority's letter dated 21 May 2007. He did not reply.

[32] Even if the appellant were to experience harassment upon his return to Fiji, he has presented no evidence that he will be denied basic or core human rights in Fiji demonstrative of a failure of state protection. This is particularly significant given that the appellant bears the responsibility for establishing his 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 21 May 2007. The appellant and his representative have elected not to reply.

[34] The Authority therefore finds that the appellant does not have a well-founded fear of being persecuted in Fiji. The first issue framed for consideration at [24] above is answered in the negative. That being the case, the second issue does not arise for consideration.

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.

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A N Molloy
Member