

AT AUCKLAND

Appellant:	AV (Fiji)
Before:	B Dingle (Member)
Representative for the appellant:	The appellant represented himself
Counsel for the respondent:	No Appearance
Date of hearing:	21 July 2011
Date of decision:	10 August 2011

DECISION

INTRODUCTION

[1] The appellant is a national of the People's Republic of Fiji ("Fiji") who claims to be at risk of serious harm in Fiji because he assisted a family member to campaign in the 2006 election under the banner of the *Soqosoqo Duavata ni Lewenivanua* ("SDL party"). He believes that the current governing regime and members of the Fijian military seek to do him harm and that he will not be safe until further democratic parliamentary elections are held.

[2] For the reasons given below, the appeal is dismissed because it is not well-founded.

THE APPELLANT'S CASE

[3] The account which follows is that given by the appellant at the appeal hearing. It is assessed later.

[4] The appellant is of Indo-Fijian ethnicity and has lived in Fiji all of his life except for a period in the late 1980s when he studied overseas.

[5] He was previously married and has two sons aged 12 and 13 years.

[6] In 2006, approximately one month prior to the general election for members of the House of Representatives, the appellant began assisting a relative, AA, with his campaign to be elected under the banner of the SDL party. At the time, the appellant was self-employed as a taxi driver and so most of his assistance was in the form of driving the candidate from place to place during the campaign period. He also drove other supporters and campaign participants home after meetings and kava ceremonies and drove supporters to the voting booth on election day. The appellant did not experience any difficulties in relation to his involvement with the SDL at that time.

[7] In mid-2008, the appellant established a retail food business in Suva. However, he had difficulties maintaining the business because his food suppliers were not reliable. Sometimes they would not supply the food as contracted or they would not adhere to agreements about the timing of supply. The appellant believes that the suppliers were obstructing his business because of his SDL involvement in 2006 although they never said so directly. These difficulties, along with others, meant the business was not profitable and it closed in mid-2009.

[8] Because of debts accrued relating to the business, the appellant decided to sell his home. He found a purchaser but the sale process was slow. The appellant stopped making mortgage payments in approximately mid-2009.

[9] In 2009 the appellant obtained a visitor's visa for New Zealand, valid until 2012. Between mid-2009 and mid-2010 he made several return trips to New Zealand to visit family, some of whom live here permanently.

[10] The appellant arrived in New Zealand for the last time in mid-2010. Once here, his (then) wife, still resident in Fiji, informed him that the Fiji Independent Commission Against Corruption (FICAC) would not approve the sale of their house, supposedly because there were allegations that the funds used to build it were unlawfully obtained. The appellant asked his wife to obtain further details about the ban but she was not successful. The appellant is not aware of any documents or information issued by FICAC in relation to his house. Neither has he sought further information from FICAC because it would be expensive to make

a telephone call to them and he believes he would be transferred from one official to another.

[11] In New Zealand, the appellant has been questioned by INZ about an allegation that he has been working unlawfully here. He believes that this allegation was made by someone aligned with the Fijian regime who wanted him returned to Fiji. He is unable to say who made the allegation or how it is related to his 2006 election involvement but he cannot think why else such an allegation would be made against him.

[12] Soon after his arrival in New Zealand in mid-2010 the appellant told his wife of his intention to stay here and find employment. She hoped that he would obtain refugee status quickly so that she and the sons could travel to New Zealand and the family would be reunited. When the wife became disenchanted with the appellant's lack of progress in organising the family's move to New Zealand, she accused him of neglecting the family and sought a divorce. The divorce was finalised in approximately July 2011. The wife now lives with her mother. The two sons live with the appellant's parents on their farm.

[13] The appellant claims that he is at risk of torture or other serious mistreatment in Fiji because he is perceived to have an anti-regime political opinion. He concedes that he has not been harmed, threatened with harm or identified as being opposed to the regime previously. However, he has heard that people are being targeted for political reasons and he fears the same fate will befall him should he return to Fiji.

Documents

[14] The Tribunal and the appellant have been provided with the files of the RSB, including copies of all the documents submitted by the appellant at first instance.

[15] In addition, the appellant provided a hand-written letter dated 21 July 2011 repeating some aspects of his claim and asking to be permitted to remain in New Zealand.

Credibility and Factual Findings

[16] For the purposes of this decision the Tribunal accepts the appellant's account as to his identity, family details, education and work history. It also

accepts his account of having assisted AA during the 2006 Fijian election by providing taxi services, to have started a retail business in 2008 which failed and to have had some difficulty with the sale of his house. Having accepted those aspects of the account, for the reasons outlined below the Tribunal wholly rejects the appellant's speculative claims as to the reasons why he had difficulties in the business and the sale of his house.

Failure of the business

[17] The appellant claims that the difficulties he had with suppliers to his food retail business were related to his political involvement. However, asked to identify statements, threats or other behaviour to support his assertion that the suppliers were even aware he had been involved in the 2006 campaign, the appellant conceded that there were none. He had simply assumed the difficulties he had with the suppliers were due to his previous political involvement because he could not think of any other explanation for them. The appellant's assumption is misplaced. There may be myriad reasons why the suppliers were difficult to deal with and there is no sensible or plausible basis on which to find that they were seeking to harm him for his 2006 political activity.

Sale of the house

[18] As to the more recent difficulties the appellant and his ex-wife have had with the sale of their house, those too appear to be unrelated to his political activities. The appellant admits that mortgage payments were in arrears for a considerable period prior to the sale and that may have some connection to the difficulties. In any event, there is no credible evidence before the Tribunal as to the specific nature of the difficulties and the appellant has not sought further information from FICAC.

Summary of factual findings

[19] In summary, the appellant is a Fijian national who departed Fiji legally and who is able to return on his own passport. He has two parents in Fiji who are caring for his sons and upon whose support the appellant can also rely. He has previously had a variety of employment positions including, at times, self-employment. He has no political profile. It is on this factual basis that the assessment of the appellant's predicament on return to Fiji will be made.

THE LEGISLATION

[20] The appeal is made pursuant to section 194(1)(c) of the Immigration Act 2009 (the Act) against the decision of a refugee and protection officer of the Department of Labour, declining to grant the appellant either refugee status or protected person status.

[21] Pursuant to section 198 of the Act, the Tribunal must determine whether to recognise the appellant as:

- (a) a refugee under the Refugee Convention (section 129); and/or
- (b) as a protected person under the Convention Against Torture (section 130); and/or
- (c) as a protected person under the International Covenant on Civil and Political Rights ("the ICCPR") (section 131).

THE REFUGEE CONVENTION – THE ISSUES

[22] 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."

[23] In terms of *Refugee Appeal No 70074* (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 Claim to Refugee Status

[24] For the purposes of refugee determination, "being persecuted" has been defined as the sustained or systematic violation of basic or core human rights,

demonstrative of the failure of state protection; see *Refugee Appeal No. 2039/93* (12 February 1996). Put another way, persecution can be seen as the infliction of serious harm, coupled with the absence of state protection.

[25] In determining “well founded” as referred to in Article 1A(2) of the Refugee Convention, the Tribunal adopts the approach in *Chen v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), where it was held that a fear of being persecuted is established as well founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective.

[26] The appellant claims that he will suffer serious harm in the form of torture on return to Fiji. He has heard that individuals are being arrested and tortured on account of their political activities in Fiji and he fears that this will happen to him on return. He also believes that the difficulties he has experienced in relation to his retail business and the sale of his house are because of his 2006 political involvement. For the reasons which follow, the Tribunal finds that these claims are not well-founded.

[27] The involvement of the appellant in the 2006 political campaign of AA was for the duration of one month and largely consisted of the appellant driving AA to appointments in his (the appellant’s) taxi. He had no difficulties during the campaign or in the period immediately following it.

[28] Since that time, the appellant has not experienced any objection, hostility or other negative reaction from either the authorities or the military to his involvement in the 2006 election campaign. Neither has any other family member received any negative attention on account of the appellant’s actions or their own political affiliations. In short, there is no evidence before the Tribunal to indicate that any individual or group, aligned to the current political regime or otherwise, has shown any negative interest whatever in the appellant relating to his previous political activity. Neither is there any reason to suggest that negative attention would be focused on the appellant on account of his 2006 activities, should he now return to Fiji.

[29] The appellant’s assertion that the difficulties he had with suppliers to his food retail business were related to his political involvement is misplaced, for the reasons already discussed. There is no sensible or plausible basis on which to find that they were seeking to harm him for his 2006 political activity. As to the

more recent difficulties the appellant and his ex-wife have had with the sale of their house, this, too, is unfounded, for the reasons already given.

[30] In summary, there is simply no credible evidence before the Tribunal to support the appellant's assertion that he is at risk of serious harm on return to Fiji, to the real chance threshold. His assertions are entirely speculative. His characteristics which are accepted (see [16] above), do not give rise to any risk of serious harm if he returns to Fiji. In particular, it is not established that he faces a real chance of becoming the victim of torture or killing that would constitute a sustained or systemic denial of his human rights.

[31] The first issue framed for consideration is answered in the negative. It is therefore unnecessary to consider the second issue of Convention ground.

Conclusion on Claims to Refugee Status

[32] For the foregoing reasons, the Tribunal finds that the appellant is not a refugee within the meaning of Article 1A(2) of the Convention. Refugee status is declined to the appellant.

THE CONVENTION AGAINST TORTURE – THE ISSUES

[33] Section 130(1) of the Act provides that:

"A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand."

[34] Section 130(5) of the Act provides that torture has the same meaning as in the Convention against Torture, Article 1(1) of which states that torture is:

"... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

Assessment of the claim under the Convention Against Torture

[35] The appellant relies on the same evidence in support of his claim under the Torture Convention as he did to support his claims under the Refugee Convention. The Tribunal has already found that the evidence does not establish that he faces a well-founded fear of being persecuted in Fiji. For the same reasons, on the basis of the evidence before it, the Tribunal is satisfied that the appellant has not established that there are substantial grounds for believing that he would be in danger of being subjected to torture if now returned to Fiji.

[36] The appellant is not entitled to be recognised as protected a person under section 130(1) of the Act.

THE ICCPR – THE ISSUES

[37] Section 131(1) of the Act provides that:

“A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.”

Assessment of the claim under the ICCPR

[38] Pursuant to section 131(6) of the Act, “cruel treatment” means cruel, inhuman or degrading treatment or punishment.

[39] Again, the appellant relies on the same evidence in support of his claim under the ICCPR as he did to support his claims under the Refugee Convention. For the same reasons, having regard to the factual findings set out in relation to the claim, the Tribunal finds that the appellant has not established substantial grounds for believing that he would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if returned to Fiji.

[40] The appellant is not, therefore, a person requiring protection under the ICCPR and it follows that he is not a protected person within the meaning of section 131(1) of the Act.

CONCLUSION

[41] For the foregoing reasons, the Tribunal finds that the appellant:

- (a) is not a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture; and
- (c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[42] The appeal is dismissed.

"B. Dingle"
B Dingle
Member

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