

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

**REFUGEE APPEAL NO 75980**

**AT AUCKLAND**

<b><u>Before:</u></b>	B A Dingle (Member)
<b><u>Counsel for the Appellant:</u></b>	The appellant represented himself
<b><u>Appearing for INZ:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	19 June 2007
<b><u>Date of Decision:</u></b>	27 June 2007

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**DECISION**

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[1] The appellant, a male in his mid-20s, is a national of Pakistan. This is his second appeal to this Authority.

[2] He arrived in New Zealand on 30 March 1999. He was initially granted a student permit but this was revoked in November 1999 after he failed to regularly attend classes. He filed a refugee claim on 25 February 2000 which he subsequently withdrew a year later, following his marriage to a New Zealand citizen. A residence application on the grounds of his marriage was declined in September 2003 on the basis that INZ did not accept that the marriage was genuine. An appeal to the Residence Review Board was dismissed in March 2005.

[3] The appellant filed a further refugee claim on 8 July 2005. This was declined by the Refugee Status Branch (RSB) in a decision dated 29 September 2005 after the appellant failed to attend a scheduled interview. The appellant appealed to this Authority (differently constituted) and that appeal was dismissed on 23 March 2006 on the grounds that the appellant did not have a real chance of being seriously harmed on return to Pakistan (*Refugee Appeal No 75736*).

[4] The appellant lodged a subsequent claim for refugee status on 18 September 2006. Again, the appellant failed to attend the RSB interview and his

refugee claim was therefore dismissed. After his second application was declined by the RSB, the appellant appealed to this Authority for the second time.

[5] The appellant claims he has a well-founded fear of being persecuted on return to Pakistan because the military have visited his parents' home a number of times seeking his whereabouts in relation to his past involvement with the Muslim Students' Federation (hereafter referred to as the MSF). The appellant claims that other people in his situation have been arrested, detained and even killed by the military and that this same fate will befall him should he return home.

[6] This appeal turns upon whether the appellant's second claim to refugee status is credible.

### **JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL**

[7] Because this is the second occasion on which the appellant has appealed to this Authority, the Authority must first determine whether it has jurisdiction to hear the appeal.

[8] Neither a refugee status officer nor the Authority has unlimited jurisdiction to receive and determine a further refugee claim after a first claim has been finally determined. Section 129J(1) of the Immigration Act 1987 ("the Act") is headed "Limitation on subsequent claims for refugee status" and sets out the circumstances in which a refugee status officer may receive and determine a second or subsequent claim for 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.**"

[Emphasis added]

[9] Where the refugee status officer declines the subsequent claim, or finds that there is no jurisdiction to consider the claim on the basis that the statutory criteria are not met, the claimant has a right of appeal to the Authority. Section 129O(1) of the Act provides that:

"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."

[10] The Authority therefore intends to consider the appellant's original claim, together with his further claim as presented at the second hearing, with a view to determining whether it has jurisdiction to hear the second appeal. If so, it will then determine whether the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

### **THE APPELLANT'S FIRST CLAIM FOR REFUGEE STATUS**

[11] In summary, the appellant's first claim for refugee status was based on his involvement with the MSF for a number of years. He began his association at about 14-15 years of age when he, along with several friends, established a branch of the MSF at his high school.

[12] During that time, the appellant and his MSF associates encountered opposition from students in the Anjuman-e-Talbae-Islam (ATI) which at that time was aligned with the ruling Pakistan People's Party (PPP). The ATI started threatening members of the MSF including the appellant. In 1995, the appellant was amongst a group of MSF associates who were attacked by a group of ATI students outside the school. He suffered various injuries and spent several days in hospital.

[13] In 1996, when he attended college, the appellant continued his involvement with the MSF and, after a period, was appointed district vice president with responsibility for organising the MSF throughout the entire district. In this capacity the appellant attended conferences in other cities. At one such conference, the MSF delegates were attacked by ATI students and the appellant sustained injuries which caused him to be hospitalised for more than two weeks.

[14] In late 1998, the appellant was informed that there had been a violent clash between MSF and ATI students in a nearby city, with one ATI student suffering gunshot wounds to his legs which caused both legs to be amputated. As a result of this clash, the appellant was warned that there had been a threat against his life. The appellant therefore continued with plans already afoot to travel to New Zealand for study purposes. He left Pakistan in late March 1999.

[15] The appellant feared to return to Pakistan because he believed that the ATI blamed him and others in the local MSF leadership for the December 1998 incident and would retaliate by causing him serious harm should he return to

Pakistan. He claimed that other MSF associates of his were targeted by the ATI including a friend of his who was shot in the leg some time after the appellant's departure from Pakistan.

[16] As noted above, the Authority in the appellant's first appeal accepted his credibility but found that the appellant did not have a real chance of being seriously harmed on return to Pakistan. His first appeal was dismissed on 23 March 2006.

### **THE APPELLANT'S SECOND CLAIM FOR REFUGEE STATUS**

[17] The appellant's second claim for refugee status is based on the same summary of facts as are recited in [11]-[15] above. Additionally, the appellant now claims that the Pakistan military have twice visited his parent's home and enquired as to the appellant's whereabouts. They have also indicated that they know the appellant is overseas. The first incident occurred in mid-2006 and the second in approximately March 2007. The military have also been observed in the general area around the appellant's parent's home on a number of occasions over the same time period. The ruling regime in Pakistan is currently seeking to suppress all political opposition, especially those individuals with leadership potential, of which the appellant is one.

[18] Although the military have not stated the specific purpose for which they are seeking the appellant, the appellant and his family believe it is related to his past political involvement and his relatively high profile as a MSF leader. The appellant has heard that the person who acted as his immediate senior in the MSF in 1998 has recently been arrested but, due to connections within the regime, was released. The appellant believes that he (the appellant) will now be charged with whatever charges were originally laid against his superior.

[19] The appellant also believes that his name is on a list of wanted persons at border entry posts and that he will therefore be identified as an opponent of the ruling regime as soon as he attempts to re-enter Pakistan. The appellant fears that he will suffer serious harm, likely in the form of arbitrary detention, torture or execution, based on his previous political involvement should he return to Pakistan.

### **THE AUTHORITY HAS JURISDICTION TO CONSIDER THE APPELLANT'S SECOND CLAIM**

[20] The Authority considered its statutory jurisdiction to hear and determine

second and subsequent refugee claims in *Refugee Appeal No 75139* (18 November 2004). In that decision it was held that, under ss129J(1) and 129O(1), jurisdiction is determined by comparing the previous claim for refugee status asserted by the appellant with the subsequent claim.

[21] In the present case, the appellant's first claim for refugee status was based upon political activities with the MSF and threats of serious harm against the appellant from a rival political group, the ATI. His second claim is based upon the alleged fact that the Pakistan military (unconnected in any direct way with the ATI) are now looking for the appellant because of his past position as a political leader.

[22] Comparing the two claims, it is apparent that they are based upon different grounds. In addition, the change of circumstance relied upon, namely the recent interest in the appellant by the military, has occurred since the determination of the first claim. The Authority therefore finds that it has jurisdiction to consider the appellant's second claim.

[23] This decision now turns to consider whether the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

### **THE ISSUES**

[24] 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."

[25] 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**

[26] Before turning to the issues raised by the Convention, it is necessary to address the question of the credibility of the appellant's account.

[27] The appellant's account is not accepted as truthful. In reaching that conclusion, the following concerns are taken into account.

#### Visits from the military to the appellant's home

[28] In his confirmation of claim form ("the claim form") submitted in relation to this second claim, the appellant stated that the military had first visited his parents' house approximately five months before the date of completing the form (that is, approximately April 2006) and that they had visited many times between April and September 2006. In answer to the claim form question at E2 he stated:

"[T]hey [have] already been to my house about 5 months ago and in last five months they came many time." (sic)

[29] This evidence was repeated in relation to question E3 of the claim form in which he stated:

"They [have] been to my house in [the] last five months many time." (sic)

[30] In contrast, the appellant told the Authority that between April and September 2006 the military had only visited his house once. He also said they had visited once in approximately March of 2007. He confirmed to the Authority a number of times that the military have only visited his house twice in total. When asked to explain the discrepancy between his evidence to the Authority and his statements in the claim form, he suggested that because the military were often in the area near his house there was no inconsistency between his two statements.

[31] The Authority does not agree. His claim that the military visited his house many times between April and September 2006 is clear and unequivocal in his claim form. Similarly, his evidence to the Authority that they have only visited his parents twice was clear and unequivocal. His two inconsistent statements cannot be sensibly reconciled. His attempted explanation is simply a spontaneous attempt to mend the obvious inconsistency in his evidence. Furthermore, his statement (received by the Authority on 15 June 2007) mentions only that the military visited his house last year and does not mention the most recent visit which he claimed at the hearing occurred in early 2007. This is a surprising omission given that it is the most recent visit. The appellant could provide no sensible explanation for the omission.

[32] The appellant's claim is also undermined by the implausibility inherent in the claimed circumstances of his second claim. On his own evidence, the appellant

has not been politically active in Pakistani politics for over eight years. He could give the Authority no plausible explanation why the Musharraf government or the military would now suddenly start looking for him. While the Authority is aware of the Pakistani regime seeking to quieten and oppress current political opponents, the Authority finds it implausible that a vice district president of the MSF from more than eight years ago and who is known to be overseas would be of any interest to the military now. When asked to explain this, the appellant suggested that because he had held a position of some seniority and because his immediate superior had been recently arrested and then released someone had to be blamed and to be charged. The appellant could not explain why the regime would not choose to target people who are resident in Pakistan and who are still politically active.

#### The appellant's siblings

[33] The appellant told the Authority that he has two brothers and one sister – one older brother and one brother of approximately four years of age. The appellant has never previously disclosed information about his younger brother in any of his previous claim forms, statements or in any other part of his INZ file.

[34] When first asked by the Authority at the second appeal hearing how many brothers and sisters he had, he said one brother and one sister. He named his sister and the younger brother. However, when questioned about the brother's name which appears in his 2005 claim form, the appellant changed his evidence and said that he in fact has two brothers and stated that his second brother is that named in the 2005 form. When asked why he had told the Authority he only had one brother and one sister he said he was referring to the names in the 2005 claim form. This is not accepted because as noted above the 2005 claim form names his older brother, not the brother the appellant first named to the Authority.

[35] In any event, his four year-old brother was alive at the time he made his claim in 2005 and yet was not mentioned in that form. When asked to account for this omission, the appellant stated that he had largely copied the information from an earlier claim form (subsequently withdrawn) and that he had failed to add his younger brother's name. He gave the same explanation for having omitted his younger brother's name in the 2006 claim form. The Authority does not accept this explanation because many of the details in his 2005 and 2006 form were changed from the earlier form such as his address, his wife's details and his new passport details (in the 2006 form). While it is not for the Authority to speculate why the appellant may have given inconsistent evidence in this regard, the issue

reinforces the concerns held about the veracity of the appellant's evidence generally.

#### Other matters of concern

[36] For completeness, the Authority notes that in examining the appellant, further matters of inconsistency arose between his evidence to the Authority and evidence given in relation to his first refugee claim and appeal. They include:

- (a) In relation to the two incidents of violence the appellant claimed to have suffered in 1995-1996 and 1997 at the hands of a rival political group, the ATI, the appellant's evidence to this Authority was inconsistent with his evidence to the Authority in his first refugee appeal as to the manner of the attacks on him, the way he escaped from the second attack, and the injuries sustained in both attacks.
- (b) An inconsistency between his first statement (dated 8 July 2005) and his evidence at the second appeal hearing about whether people other than his family knew that he was out of the country. The statement records "no one except my family knows that I am out of the country". In contrast, the appellant told the Authority that within a month or two of his departure in 1999 his parents had informed his close friends and MSF colleagues that he was in New Zealand and, indeed, he had had contact with them himself.
- (c) His evidence about his close friends and MSF colleagues was inconsistent as between his 2005 statement, the first appeal hearing and the second appeal hearing. When asked to explain the inconsistencies, the appellant's evidence became mobile and impressed the Authority as a spontaneous and manipulative attempt to mend the inconsistencies in his evidence.
- (d) The appellant's evidence about his friend who was shot by a rival political gang was inconsistent with his 2005 statement and also with his evidence at the first Authority hearing. When asked to explain the inconsistencies, the appellant's evidence became mobile about both the timing and the location of the attack on his friend.

#### Conclusion on credibility

[37] In light of all the above concerns, the Authority finds that the appellant's second claim for refugee status lacks any credibility both in relation to events which occurred before his departure from Pakistan and following the determination of his first refugee appeal. It is a wholly fabricated account which must be emphatically rejected. In making the credibility finding in relation to events which



also constituted the first refugee appeal, the Authority notes that all appeals before the Authority are conducted by way of hearing *de novo* and therefore all issues of law, fact and credibility are at large: see *Malkit Singh v Attorney General* [2000] NZAR 125,133. The Authority observes that the current panel has had the benefit of the previous Authority decision as a record of evidence previously given, the benefit of a previous record being unavailable to the first panel because of the failure of the appellant to attend the first RSB interview.

[38] Accordingly, there is no credible basis on which the Authority can find that the appellant has a well-founded fear of being persecuted should he now return to Pakistan.

### **CONCLUSION**

[39] For the above reasons, the Authority finds 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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B A Dingle  
Member