

## Refugee Review Tribunal

### AUSTRALIA

#### RRT RESEARCH RESPONSE

**Research Response Number:** FJI30388  
**Country:** Fiji  
**Date:** 9 August 2006

Keywords: Fiji – Asylum procedures – UN Refugees Convention – Inquisitorial process – Judicial review

This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

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#### Questions

1. Provide a brief overview of asylum procedures for this country (mentioning whether or not the country is a signatory to the UN Convention and Protocol).
2. Is there a second tier of review (i.e. comparable to the RRT)?
3. What processes are applied by the body/agency at the second tier review level (i.e. inquisitorial process similar to the RRT, or adversarial process applied at the AAT)?
4. Is there judicial review?
5. Is the judicial review process confined to points of law or can facts of cases be re-examined at this level?

#### RESPONSE

1. Provide a brief overview of asylum procedures for this country (mentioning whether or not the country is a signatory to the UN Convention and Protocol).

Fiji law allows for asylum claims, but it appears that few people have applied for or gained asylum in Fiji and no cases were found where the Fijian Courts dealt with asylum matters.

Fiji is a party to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, succeeding to both the Convention and the Protocol on 12 June 1972 (United Nations High Commissioner for Refugees (undated), 'States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol', UNHCR website <http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3b73b0d63> – Accessed 21 July 2006 – Attachment 1).

Claims for protection in Fiji are permitted under Section 6 of the *Immigration Act 2003* (Fiji government 2003, *Immigration Act 2003*, 6 November, PacLII website <http://www.paclii.org/cgi->

[bin/disp.pl/fj/legis/num\\_act/ia2003138/ia2003138.html?query=immigration%20fiji](http://bin/disp.pl/fj/legis/num_act/ia2003138/ia2003138.html?query=immigration%20fiji) - Accessed 8 August 2006 – Attachment 2). This section outlines the procedures, which are briefly:

- The asylum seeker must make a claim to an Immigration officer, fill in an application form, give the grounds for the claim along with any evidence. (Art.39)
- The claim is determined by the Permanent Secretary responsible for Immigration “on the basis of the information, evidence, and submissions provided by the claimant” as well as “information from any source” except “from the authorities of the country of origin”. (Art.39) The Permanent Secretary must, when determining a claim, be guided by the provisions of the Refugee Convention. (Art.41)
- The Permanent Secretary may determine a claim by an asylum seeker to be recognised as a refugee in the Fiji Islands or refuse the claim (Arts. 40 & 41)
- Claims may be also refused on a number of grounds, including prior protection, criminal record, involvement in war crimes, national security or terrorism (Art.41)
- The asylum seeker may be invited to an interview and required to produce documents as requested (Art.42)
- Asylum seekers must be notified in writing of the decision and the right of Appeal (Art.43).

In February 2006, the annual US Department of State Report on Fiji for 2005 states in Sec.2d:

#### Protection of Refugees

The law includes provisions for providing refugee and asylum status in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol. At year's end the government was in the process of establishing a system for providing protection to refugees. In practice the government provided protection against refoulement, the forced return of persons to a country where they feared persecution. The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in assisting refugees. **The government received no applications for refugee status or asylum during the year.**

(US Department of State 2006, *Country Reports on Human Rights Practices – 2005 – Fiji*, 8 March, Sec.2d – Attachment 3)

The annual US Department of State Report on Fiji for 2004 stated:

The law includes provisions for providing refugee and asylum status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees or its 1967 Protocol. The Government cooperated with the office of the U.N. High Commissioner for Refugees and other humanitarian organizations in assisting refugees.

In practice, the Government provided protection against refoulement, the forced return of persons to a country where they feared persecution. The Government granted refugee status or asylum. **However, in the past, the Government has been reluctant to grant temporary protection without assurances that the asylum**

**seeker would be moved to a third country.**

(US Department of State 2005, *Country Reports on Human Rights Practices – 2004 – Fiji*, February, Sec.2d – Attachment 4)

The most recent short U.S. Committee for Refugees and Immigrants report on Fiji states only:

We did not do a country update on Fiji in the 2004 Survey (and will not do one in the 2005 Survey either). Accordingly, searches for country information on Fiji should lead the reader to the report in the 2003 Survey (and it should be clearly indicated that it is from the 2003 Survey).

**World Refugee Survey 2003 Country Report**

The estimated 100 Fijians who were internally displaced at the end of 2001 returned to their lands in 2002. **No refugees or asylum seekers from other countries were known to be in Fiji.**

(U.S. Committee for Refugees and Immigrants 2004, *World Refugee Survey 2004-Fiji*

<http://www.refugees.org/countryreports.aspx?area=investigate&subm=19&ssm=29&cid=101> – Accessed 8 August 2006 – Attachment 5)

**2. Is there a second tier of review (i.e. comparable to the RRT)?**

**3. What processes are applied by the body/agency at the second tier review level (i.e. inquisitorial process similar to the RRT, or adversarial process applied at the AAT)?**

There does not appear to be a second tier of review (i.e. comparable to the RRT), but Section 6 of the *Immigration Act 2003* (Fiji government 2003, *Immigration Act 2003*, 6 November, PaCLII website – Attachment 2) notes there is a right of appeal, and that appeals are determined by the Minister (Sec.44, 45). Part 8 of the Act deals with appeals to the Minister, which must be lodged within 21 days. Section 58(1)(d) of Part 8 notes that a ‘*reviewable decision*’ means a decision of the Permanent Secretary ... refusing a claim or cancelling a refugee status under Part 6”.

No information is given in the Act regarding the procedures to be followed in processing appeals.

The *Immigration Act 2003* also allows for “subsequent claims” to the Immigration Department in cases where “since the most recent claim by the person, circumstances in the claimants home country have changed to such an extent that the subsequent claim is based on significantly different grounds to the previous claim”. (Art.40 (2))

**4. Is there judicial review?**

**5. Is the judicial review process confined to points of law or can facts of cases be re-examined at this level?**

Nothing in the *Immigration Act* specifically allows or denies judicial review of decisions. From a review of Fiji High Court decisions on the PaCLII database (<http://www.paclii.org/databases.html#FJ>), it appears that persons unhappy with decisions by the Immigration Department may apply for “leave to apply for judicial review”. In this case the applicants must show they have an arguable case before they are granted leave to apply for judicial review. Three cases were found where this was done in relation to decisions made under the *Immigration Act*. Leave was refused in the only recent Immigration case on the database:

[Pillai v Permanent Secretary for Immigration \[2004\] FJHC 431; HBJ0009.2004L \(5 July 2004\)](#) (Attachment 6)

Two older cases, however, granted such leave for Immigration cases:

[State v Principal Immigration Officer, Ex parte Mo Xing Bo \[1995\] FJHC 30; Hbj0021j.1990s \(9 February 1995\)](#) (not attached)

[State v Minister of Immigration ex parte Wright \[1991\] FJHC 78; \[1991\] 37 FLR 113 \(21 November 1991\)](#) (not attached)

No other cases were found which concerned the Immigration Act. None of these cases concerned asylum applications, but were the only cases found with concerned the Immigration Act.

The most recent case (High Court of Fiji 2004, Pillai v Permanent Secretary for Immigration [2004] FJHC 431; HBJ0009.2004L, 5 July, PacLII website <http://www.paclii.org/cgi-bin/disp.pl/fj/cases/FJHC/2004/431.html> – Accessed 9 August 2006 – Attachment 6) provides the following information on leave to seek judicial review (with researcher emphasis in bold):

Order 53 Rule 3(1) of the High Court Rules provides and I quote: -  
“No application for judicial review shall be made unless the leave of the court has been obtained in accordance with this rule.”

Lord Diplock in Inland Revenue Commissioners, ex p. National Federation of Self-Employed & Small Business [1982] A.C. 617 at 642 said and I quote: -  
“The need for leave to start proceedings for remedies in public law is not new. It applied previously to applications for prerogative orders, though not to civil actions for injunctions or declarations. Its purpose is to prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error, and to remove the uncertainty in which public officers and authorities might be left whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived.”

The Fiji Court of Appeal has said on occasions that it is a little anachronistic to still **require leave to be sought and granted to facilitate judicial review. However, the rule prevails and leave is required.**

The conditions precedent that must be satisfied to enable leave to be granted are: -  
(a) An application, if for certiorari, must be made within three months of the decision sought to be reviewed;  
(b) The applicant for leave must have a sufficient interest in the matter to which the application relates; and  
(c) **The applicant must show he has an arguable case** – Fiji Airline Pilots’ Association v Permanent Secretary for Labour & Industrial Relations (Civil Appeal No. ABU0059U of 1997 – Judgment 27 February 1998).

There is of course no issue with respect to the first two conditions. It is only the third that requires greater consideration.

In Fiji Airline Pilots’ Association v Permanent Secretary for Labour & Industrial Relations, it was said and I quote: -  
“The basic principle is that the Judge is only required to be satisfied that the material

*available discloses what might, on further consideration, turn out to be an arguable case in favour of granting the relief. If it does, he or she should grant the application – per Lord Diplock in Inland Revenue Commissioners v National Federation of Self Employed [1982] AC 617 at 644. This principle was applied by this Court in National Farmers' Union v Sugar Industry Tribunal and Others (CA 8/1990); 7 June 1990). In R v Secretary of State for the Home Department ex p. Rukshanda Begum (1990) COD 107 (referred to in 1 Supreme Court Practice 1997 at pp. 865 and 868) Lord Donaldson MR accepted that an intermediate category of cases existed where it was unclear on the papers whether or not leave should be granted, in which event a brief hearing might assist, but it should not become anything remotely like the hearing which would ensure if the parties were granted leave.”*

## List of Sources Consulted

### Internet Sources:

#### **Government Information & Reports**

Fiji Attorney General's Chambers and Ministry of Justice

[http://www.fiji.gov.fj/publish/attorney\\_general.shtml](http://www.fiji.gov.fj/publish/attorney_general.shtml)

Fiji Office of the Attorney General <http://www.ag.gov.fj/>

Fiji Law Reform Commission. <http://www.lawreform.gov.fj/common/Default.aspx>

Fiji Parliament of Fiji Islands Legislative Index

<http://www.parliament.gov.fj/legislative/index.aspx>

Fiji Ministry of Home Affairs & Immigration

[http://www.fiji.gov.fj/publish/m\\_home\\_imm.shtml](http://www.fiji.gov.fj/publish/m_home_imm.shtml)

UK Home Office <http://www.homeoffice.gov.uk/>

US Department of State <http://www.state.gov/>

#### **United Nations (UN)**

United Nations High Commissioner for Refugees <http://www.unhcr.org/>

#### **Non-Government Organisations**

Amnesty International <http://www.amnesty.org/>

Human Rights Watch <http://www.hrw.org/>

International Commission of Jurists <http://www.icj.org/>

International Organisation for Migration <http://www.iom.int/>

Refugees International <http://www.refugeesinternational.org/>

Relief Web <http://www.reliefweb.int/w/rwb.nsf>

US Committee for Refugees and Immigrants <http://www.refugees.org/home.aspx>

#### **Topic Specific Links**

Jurist Fiji Law site <http://jurist.law.pitt.edu/world/fiji.htm>

Worldlii databases on Fiji law <http://www.worldlii.org/catalog/2837.html>

PacLII databases on Fiji law <http://www.pacii.org/databases.html#FJ>

#### **Search Engines**

Google search engine <http://www.google.com.au/>

### Databases:

FACTIVA (news database)

BACIS (DIMA Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

## List of Attachments

1. United Nations High Commissioner for Refugees (undated), 'States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol', UNHCR website <http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3b73b0d63> – Accessed 21 July 2006.
2. Fiji government 2003, *Immigration Act 2003*, 6 November, PacLII website [http://www.pacii.org/cgi-bin/disp.pl/fj/legis/num\\_act/ia2003138/ia2003138.html?query=immigration%20fiji](http://www.pacii.org/cgi-bin/disp.pl/fj/legis/num_act/ia2003138/ia2003138.html?query=immigration%20fiji) - Accessed 8 August 2006.
3. US Department of State 2006, *Country Reports on Human Rights Practices – 2005 – Fiji*, 8 March, Sec.2d.
4. US Department of State 2005, *Country Reports on Human Rights Practices – 2004 – Fiji*, February, Sec.2d.
5. U.S. Committee for Refugees and Immigrants 2004, *World Refugee Survey 2004 - Fiji* <http://www.refugees.org/countryreports.aspx?area=investigate&subm=19&ssm=29&cid=101> – Accessed 8 August 2006.
6. High Court of Fiji 2004, *Pillai v Permanent Secretary for Immigration* [2004] FJHC 431; HBJ0009.2004L, 5 July, PacLII website <http://www.pacii.org/cgi-bin/disp.pl/fj/cases/FJHC/2004/431.html> – Accessed 9 August 2006.