

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76148

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AT AUCKLAND

<u>Before:</u>	M A Roche (Member)
<u>Counsel for the Appellants:</u>	C Curtis
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	25 & 26 February 2008
<u>Date of Decision:</u>	24 June 2008

DECISION

INTRODUCTION

[1] These are appeals against decisions of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the appellants' second refugee status claims. The appellants are Indian nationals who are husband and wife. They are Dalits from the Punjab and have converted to Christianity since the determination of their first refugee claim. They claim that, as Christian converts who are Dalit, they risk being harmed because of their religion and caste should they return to India.

[2] In a decision determining their first refugee appeal, a different panel of this Authority found that the appellants are at risk of mistreatment by the police in their home villages, should they return there, but that they would be able to live safely elsewhere in India. The appellants now claim because of language difficulties and because of their caste and religion, they would be unable to settle elsewhere in India.

[3] The central issues to be determined in this appeal are firstly, whether the appellants' claims are true and secondly, whether, because of their religious and caste profile, they risk being persecuted in India.

[4] The appellants' second appeals were heard together as they are based on the same set of facts. Each appellant gave evidence in support of both their own and their spouse's appeals.

JURISDICTION RELATING TO SECOND OR SUBSEQUENT APPEALS

[5] The Authority's jurisdiction in relation to second or subsequent claims is set out in s129O(1) of the Immigration Act 1987 ("the Act"):

"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."

[6] Jurisdiction to hear and determine subsequent refugee claims under s129O(1) of the Act is determined by comparing the previous claim to refugee status against the subsequent one. This involves a comparison of claims as asserted by the refugee claimant. In the absence of significant difference in the grounds upon which the claims are based, there is no jurisdiction to consider the subsequent claim: *Refugee Appeal No 75139* (18 November 2004).

[7] Where jurisdiction is established, the merits of the subsequent claim will be heard by the Authority. This hearing may be restricted by the findings of credibility or fact made by the Authority in relation to the previous claim. Section 129P(9) of the Act prohibits any challenge to a finding of fact or credibility made by the Authority in relation to a previous claim and the Authority has a discretion as to whether to rely on any such finding.

The appellants' first refugee status claims

[8] The appellants arrived in New Zealand on 3 May 2002 and applied for refugee status approximately one month later. It is not proposed to set out in full the account presented by the appellants in support of their first claims for refugee status in New Zealand. A detailed summary of their account can be found in the decision of this Authority in *Refugee Appeal Nos 74508 & 74509* (23 May 2003).

Essentially, the husband claimed to have been a fund-raiser for the All India Sikh Student Federation (AISSF) and to have been targeted by the Punjabi police as a result. He claimed that he was arrested and detained on two occasions in May 2000 and November 2001 and that he was released on both occasions following the payment of bribes.

[9] It was claimed that the wife had been assaulted by the police in May 2000 when the husband was arrested and that her injuries had caused hearing loss. It was also claimed that the wife was briefly detained on two occasions when the police were looking for the husband.

[10] The RSB declined the appellants' first applications for refugee status on 16 December 2002. This led to their first appeals to the Authority. The Authority heard these appeals on 12 March 2003. In its decision in *Refugee Appeal Nos 74508 and 74509*, the Authority accepted that the appellants' account of their treatment at the hands of the police in their village was credible. However, the Authority rejected a claim of on-going interest in the husband by the Punjabi police, and found that this was an embellishment to the appellants' accounts.

[11] Although the Authority found that the husband and wife had a well-founded fear of being persecuted in their home village, it found that this was not for a Convention reason and further, any risk to them was confined to the husband's local village or district and they could therefore live safely in India anywhere outside this district.

The appellants' second claim for refugee status

[12] On 23 May 2007, the appellants filed their second claims for refugee status with the RSB. These claims were based on their conversion to Christianity in New Zealand and upon their membership of the Dalit caste. They were interviewed by the RSB in connection with these claims on 26 July 2007. On 28 September 2007, the RSB published a decision dismissing their second claims. Although it was accepted that the appellants had converted to Christianity and were Dalits, the decision found that there was not a real chance that they would be persecuted in India because of their religion and caste.

[13] The appellants have appealed against this decision.

ASSESSMENT OF JURISDICTION AND CONSIDERATION OF S129P(9)

[14] The Authority has jurisdiction to consider a second appeal from the appellants. Although the appellants seek to reiterate the events giving rise to their first claim, their second claim is based on their conversion to Christianity in late 2006 and upon increases in communal violence against Dalits and increases in violence against Christians that have occurred in India since the determination of their previous appeals. The Authority is satisfied that, in terms of s129O(1) of the Act, there are changed circumstances and the second claims are therefore brought on significantly different grounds.

S129P(9) - Whether the Authority will rely on previous credibility findings

[15] At the commencement of the hearing, the Authority advised the appellants and their counsel that it did not intend to rely on the findings of fact and credibility made by it in respect of the previous claim pursuant to s129P(9) of the Act but rather, the Authority intended to hear evidence from the appellants concerning the events in the Punjab that preceded their departure from India and to make findings of fact and credibility concerning these claimed events, independent of the findings of the previous panel of this Authority.

[16] The Authority's consideration of the appellants' second refugee claims therefore encompasses the events that preceded their departure from India, as well as the events that have occurred since their previous claims were determined.

THE APPELLANTS' CASE

The husband's case

[17] What follows is a summary of the evidence given by the husband at the hearing, augmented by a summary of his previous account as recorded in *Refugee Appeal Nos 74508 and 74509 (supra)*. An assessment of his evidence follows later in this decision.

[18] The husband is aged in his late 30s. He has four children, three of whom were born in New Zealand and one, his eldest daughter, who lives in India with her maternal grandmother.

[19] The husband is from a Sikh family in a Sikh village in the Punjab near Jalandhar. His father was a tree-cutter and his mother was a housewife. They were Dalits and are members of the Chamar sub-caste. He had four brothers and one sister.

[20] The husband's family lived in a three-roomed house. There were no toilet facilities and the family used the village fields which belonged to high caste villagers. If they were caught going to the toilet on the fields, they were forced to pick up their own waste.

[21] The husband and his brothers attended primary school. They completed six years of primary school education and one year of high school. The husband left high school after one year because of the discrimination and abuse he experienced there on account of his Dalit caste. This included being sworn at and beaten by high caste boys and having his books torn.

[22] After leaving school, the husband trained to be a carpenter until approximately 1989. He worked for another Dalit man and they were frequently not paid by high caste customers.

[23] After leaving school, the husband with his brothers, collected funds for the Sikh Students Federation. He was not a member of this organisation but would occasionally attend their meetings. He and his brothers supported them because they had promised to support the rights of Dalits. The husband's brothers had some difficulties with the police because of their involvement with the Sikh Students Federation.

[24] In 1989, the husband travelled to Iraq to work as a carpenter. He did this because the money was attractive and because he was not earning enough working as a carpenter in his village. Around this time, he ceased his involvement with the Sikh Students Federation.

[25] The husband returned to India approximately one year later and worked as a carpenter in a furniture store for about two years.

[26] In 1992, the husband left India again and went to work in Saudi Arabia. He remained there until November 1998, when he returned to India.

[27] In December 1998, the appellants married. The husband returned to Saudi Arabia again in April 1999 and remained there until April 2000. He then resumed living with his family, including his wife and his baby daughter.

[28] In May 2000, the police enquired at the appellants' home about his whereabouts. He was not there. The police beat his father who died of his injuries 11 days later.

[29] On 16 May 2000, the police raided the appellants' home. Both the husband and wife were there. The police proceeded to beat the husband. When the wife tried to intervene, she was pushed against a wall, causing her ear injuries. The husband was taken to the village police station where he was detained for three days and accused of being a terrorist. While being held, he was asked to reveal the whereabouts of his associates. He was released following the payment of a bribe.

[30] In June 2000, the husband travelled to Saudi Arabia to work. He returned to India in September 2001 and established a furniture shop in his village.

[31] On 19 November 2001, the police raided the furniture shop. They attacked the husband and beat him until he became unconscious. They then took him to the village police station where he was detained for three days and questioned about his associates. Once again, he was released following the payment of a bribe. After being released, the husband kept a low profile and frequently stayed away from home.

[32] In January 2002, the wife was briefly detained at the village police station on two occasions and questioned about the husband's whereabouts.

[33] On 6 April 2002, the husband's mother died while in New Zealand. The husband and wife applied for visitors' visas to enable them to attend her funeral. They did not include their baby daughter in their applications because they were advised that if they did so, their visa applications were unlikely to be successful. They departed from India and arrived in New Zealand on 3 May 2002.

[34] Several months after their arrival here, the police visited the husband's home searching for him. They left an arrest warrant with his brother.

[35] While in New Zealand, the appellants have become interested in Christianity. This interest was sparked when they were visited by Mormons who left them with magazines about the Mormon faith. In late November 2006, they began attending a church in the Hawkes' Bay. They attend services every Sunday. They also read the Bible in Punjabi and pray at home. They like the Christian religion because of the love and acceptance they have found within the

church which is something that, as Dalits, they have never experienced in India. The only person in India they have informed about their conversion is the wife's mother. She has warned them that there is a lot of violence against Christians in India.

[36] There is no Christian church in the husband's village although he is aware of a church in a nearby village that is attended by Dalit Christian converts.

[37] The husband fears returning to India for a number of reasons. He fears that he will be subjected to anti-Christian violence. He also fears that he will be mistreated because of his membership of the Dalit caste. He does not believe he is able to return to either his own or his wife's home village because of the ongoing police interest in him and believes that he would be unable to settle anywhere else in India because of his language, caste and religion.

The wife's case

[38] What follows is a summary of the evidence given by the wife at the hearing. An assessment of this evidence follows later in this decision.

[39] The wife is aged in her early 30s. Like her husband she is a Dalit from a village in the Punjab. She too is a Sikh. Her village is approximately 100 kilometres away from her husband's village.

[40] The wife has four sisters and two brothers. She and all her siblings completed high school but did not obtain a tertiary education because the level of discrimination against Dalits made this impossible. At high school, the wife and other Dalit students were required to bring their own water. As Dalits, they were prohibited from drinking from the water taps used by high caste students. The wife was also beaten by high caste pupils and had her books torn up by them.

[41] After completing high school the wife stayed home for approximately three years until she entered into an arranged marriage with her husband. She then went to live with her husband and his family but also frequently stayed with her own family.

[42] The husband's family home was of a similar standard to the wife's family home. Like the wife's family home it had no running water and the family fetched their water from a communal source. This water, which was exclusively for Dalits,

was frequently polluted because high caste people would throw animal carcasses into the reservoir.

[43] The wife has a number of relatives present in New Zealand. Her father is here although she has no contact with him. She also has an uncle here who immigrated to New Zealand from India many years ago and, through him has a network of cousins here. One of her brothers is also here and has claimed refugee status.

[44] The wife's mother remains living in the family home in the Punjab. The appellants' eldest daughter who is aged 8 lives with her. This daughter was left behind when the appellants came to New Zealand and her long separation from her daughter is a source of great distress to the wife. The wife's youngest sister and brother also remain in the family home. The brother is unemployed and spends most of his time hiding from high caste villagers who would attack him if they found him. The sister helps her mother with domestic duties and will probably marry in the near future. The home has no electricity. None of the Dalit households have electricity supplied to them. As a result, Dalit villagers are susceptible to malaria because they are unable to operate fans to keep mosquitoes away at night.

[45] The wife's mother has diabetes and although she has obtained treatment and medicine for this condition, the treatment and medication she has received is inadequate and of a lesser standard than that which would be provided to a higher caste diabetic.

[46] A number of the wife's male relatives work as labourers in the Middle East. Throughout her childhood, the wife's father spent most of his working life in the Middle East.

[47] The wife gave birth to her eldest daughter in a hospital near her village. She was taken to the hospital because of complications with the birth. However, because she was Dalit no doctor at the hospital was willing to assist her. In the end, a Dalit nurse delivered the baby. She then encouraged the wife to take the baby home because the wife would not receive proper care in the hospital because of her caste.

[48] From the beginning of their marriage, the husband had difficulties with the police who would chase and beat him. The husband was always frightened of the

police who used to call regularly at the home and this was why he spent so much time in the Middle East.

[49] The wife recalls two occasions in particular. On one of these occasions she attempted to intervene when the husband was being beaten by the police at their home. She was pushed against a wall and suffered damage to an eardrum as a result. On another occasion he was arrested from his furniture shop. Because of the passage of time, the wife is unable to recall these events clearly or the order they occurred in. She also recalls an occasion when her father-in-law was beaten severely at home by the police but is unable to recall whether she was present or not when this occurred. She is also unable to recall whether she went to the police station with her parents-in-law to secure the release of the husband on the occasions he was detained.

[50] Because of the police interest in him, when the husband was in India he used to hide with different relatives and spent very little time at home. On one occasion the wife was taken from home to a police station where she was held for half an hour while the police questioned her about her husband's whereabouts.

[51] The appellants' daughter in India attends primary school sporadically. When she does go to school she is subjected to beatings from high caste children and her books get torn. The wife has been separated from this daughter for six years which is a matter of extreme distress to her. Apart from missing her she is very worried about her daughter's welfare especially now that her mother, who has been caring for her, has begun to experience failing health.

[52] The wife confirmed that she has been attending an Anglican church in the Hawkes Bay for approximately 15 months. She has become a Christian and enjoys Christianity because of the love and acceptance she and her family have found in the Church. This acceptance is something that they have never received in India because of the stigma of their caste.

[53] The wife has told her mother in India that she has converted to Christianity. Her mother has told her that she will not be safe in India because there is a lot of violence against Christians. The wife believes that it would be impossible for her family to live in India now. Her three New Zealand-born children (which include a set of twins) are aged 5 and 6. Having been brought up in New Zealand she does not believe they would be able to cope with the deprivations that life as Dalits in India involves. Although she can tolerate insults to herself she is unable to

tolerate such insults to her children. She told the Authority she would probably kill herself and her children if she was forced to return to India.

Documents received

[54] Counsel filed two sets of written submissions (opening and closing submissions). Three bundles of country information comprising some 1,300 pages of material had been submitted to the RSB in support of the appellants' second refugee claim and formed part of the Department of Labour file.

[55] On 19 June 2008 counsel filed further written submissions and, under cover of these submissions, filed further items of country information.

THE ISSUES

[56] 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."

[57] 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 APPELLANTS' CASE

Credibility

[58] Prior to determining the framed issues it is necessary to make an assessment of the appellants' credibility. Having heard the husband and wife describe their claimed difficulties with the police in the Punjab and having read the

various accounts of these difficulties they provided in connection with their first refugee claim, the Authority is satisfied that these claims are entirely false.

[59] It is noted that the panel of the Authority that determined their previous claim did not question the wife in any detailed or close way. Having questioned the wife at length and having found her unable to corroborate either her own claims or the claims made by her husband, and having questioned the husband and having found him unable to recall key events at the core of his own account, the Authority has determined that it is appropriate to depart from the findings of fact and credibility made in *Refugee Appeal No 74508 and 74509* (23 May 2003).

[60] In submissions dated 20 March 2008, counsel for the appellants contends that the findings of credibility and fact made by the previous panel of the Authority in *Refugee Appeal No 74508 and 74509* (23 May 2003) should stand. She submits that the passage of time caused the difficulty the appellants experienced recalling the events of their first refugee claim. She also submits that the examination of the appellant husband in the earlier hearing was comprehensive and led to findings that should be relied on. Finally, she suggests that neither she nor the appellants had expected the credibility findings made in respect of the previous claim to be revisited. The implication is that there was unfairness in the Authority not forewarning her of this. At the hearing, she referred to the fact that the appellants had been unable to revise their previous statements and decisions and the disadvantage this caused them.

[61] The Authority does not doubt that, had the appellants revised their previous refugee account before their second appeal hearing, they would have had less difficulty in recounting it from memory. That is not the point. Appellants appearing before the Authority with second or subsequent claims should not assume that the Authority will either rely upon or depart from the credibility findings made in respect of their earlier claims. The discretion as to whether to do so under section 129P(9) is unfettered.

[62] At the very commencement of the second appeal hearing, the Authority informed both counsel and the appellants that reliance would not be placed on the previous findings and the hearing proceeded on that basis. The difficulties the appellants had in recalling the claims made in their earlier hearing went far beyond what could be attributed to the passage of time and left the Authority with no doubt that the claimed events involving the Punjabi police and the appellants were false.

[63] It is appropriate to note that in her submissions of 19 June 2008, counsel suggested that there had not been a full hearing of the issues in their first refugee claim (at their second hearing) and that if there were credibility concerns, a full (re)hearing of their first refugee claim should be convened. This submission is rejected. The whole of their file from their first refugee claim and appeal was before both the Authority and the appellants. Considerable time during the two day second hearing was devoted to questioning both the husband and wife about their claimed difficulties with the Punjabi police. They were both then re-examined by counsel and given the opportunity to make further statements about their claims. There is no basis for reconvening the hearing.

[64] The Authority also finds that the appellants gave false evidence about their experiences as Dalits in India. It is accepted that the appellants are Dalits from the Chamar sub caste. Given country information concerning the widespread and entrenched discrimination against Dalits in India, the Authority accepts that the appellants may have experienced difficulties, including harassment and discrimination in India because of their caste. The Authority is not satisfied, however, that the husband or the wife gave a truthful account of their experiences as Dalits.

[65] The Authority accepts that the appellants attend church in the Hawkes Bay, that they have become Christians, and that they have found welcome and acceptance in their church community.

[66] The reasons for the credibility findings about the appellant's evidence are given below. This will be followed by an assessment of whether their fear of being persecuted in India, on the basis of their caste and religion, is well-founded.

Claims of Mistreatment by the Punjabi Police

[67] The Authority turns first to the claimed difficulties with the Punjab police which the husband claimed had arisen from his involvement with a Sikh separatist organisation.

[68] The husband initially claimed in his evidence that the reason he went to work in Iraq in 1989 was because of difficulties he was experiencing with the police. Later in the hearing he retracted this evidence and said that he went to Iraq for financial reasons and that his problems with the police started later. The husband's first departure from India would have been a significant event for him

and the Authority would expect him to be able to spontaneously recall the reason for this departure even many years later. The manner in which he gave evidence that this was an escape from trouble with the police and then retracted this evidence points to both his unreliability as a witness and the fictitious nature of his claimed difficulties with the Punjabi police.

[69] The appellant's first refugee account had featured two major incidents where he was beaten by the police and detained for several days in police custody before his release was secured by the village *Sarpanch*. In *Refugee Appeal No 74508 and 74509* it is recorded that the first of these incidents took place in May 2000, approximately 10 days after the husband's father was beaten by the police, receiving fatal injuries.

[70] In the Authority's decision and the first RSB decision it is recorded that on this occasion the appellant was at home with his wife when the police arrived and that, after being beaten by the police, he was taken to the Jalandhar police station where he was held for several days before his release was secured. The husband's father died of his injuries shortly after his release. The second incident was recorded as having occurred approximately one and a half years later in November 2001, and featured the husband being attacked at his carpentry shop by the police who beat him and took him to the village police station where, again, he was detained for several days before his release was secured.

[71] When giving his evidence to the Authority however, the husband asserted that his first arrest had been from his furniture shop and that the incident at home occurred later. He also claimed that on both occasions he was taken to the village police station. When reminded that he had previously claimed to have been detained at the Jalandhar police station (a major police station in a large city) he claimed to remember going to the Jalandhar police station to make a complaint about the village police. When reminded that he had stated he was detained for several days in the central police station in Jalandhar he speculated that it was possible that he was taken from the village police station to the Jalandhar police station. When reminded that in his previous account his first arrest had been from home some 18 months before the second arrest at the furniture shop, he said that he could not remember which had come first but that he was sure he had been arrested twice.

[72] The Authority accepts that the passage of time may affect the husband's ability to remember the details of events. However, it does not accept that this

provides an explanation for the husband's inability to recall when and where he was first arrested by the Punjabi police and, once arrested, where he was taken and held for several days. This is particularly the case because in his original account he had claimed that a few days prior to his first arrest his father had been beaten by the Punjabi police who were looking for him and that this beating resulted in fatal injuries.

[73] Had these events been real, it would be expected that there would be a strong association between the father's beating and the husband's arrest from home a few days later. The impression the Authority formed from the husband's evidence about his two arrests and detentions by the police was that these events were not real and the husband was having great difficulty recalling a fabricated account.

[74] Our conclusions in this regard are strengthened by our impression of the wife's evidence. She claimed to recall the event when her husband was beaten at home and when she received an injury to her eardrum. However, she stated that this incident took place when she was newly married and newly pregnant. On this reckoning the incident would have occurred at some stage between the marriage in December 1998 and the husband's departure for the Middle East in April 1999 making it at least a year before and not a few days after the father's fatal beating.

[75] The wife's evidence about this incident (the claimed fatal beating of the father-in-law) was also problematic. She first claimed to be unsure whether she had been at home or not when the father-in-law was attacked by the police. She then claimed to have recalled that she was present when the father-in-law was beaten by the police. Later in the hearing, she changed her evidence again and claimed that she had been at her parent's home in a different village when the father-in-law was beaten by the police. The Authority was left in no doubt that her various claims concerning this incident were entirely false.

[76] Both the husband and the wife claimed that while in India the husband spent a lot of time in hiding in an attempt to avoid the police. Both had previously claimed that in January 2002, the wife had been taken from home on two occasions and briefly detained at the village police station where she was questioned about her husband's whereabouts. When interviewed by the RSB about this detention in 2002, the wife claimed that on the first occasion she was questioned about the whereabouts of her mother-in-law. When giving evidence to the Authority at her second appeal hearing, the wife stated unequivocally that she

had been detained on only one occasion and that on this occasion she was home with her mother and father-in-law when she was arrested. When asked why she and her husband had previously claimed that she had been detained twice, she denied that she had been detained a second time despite her previous statements about this second detention being clearly recorded in the RSB interview transcript. When reminded she claimed to have been questioned about her mother-in-law's whereabouts she claimed to recall that her mother-in-law had been outside the house when she was arrested.

[77] The Authority finds that the evidence of the husband and wife about their claimed difficulties with the Punjabi police, arising out of the husband's involvement with a Sikh separatist organisation, is entirely false. This finding is significant because, when assessing whether the appellants have a well founded fear of being persecuted in India on the basis of their caste status and religion, their situation can be assessed in relation to their home area. The question of the Internal Protection Alternative does not arise.

Claims of Mistreatment Because of Caste

[78] The Authority now turns to the appellants' evidence about their experience and living conditions as Dalits in the Punjab.

[79] When questioned by the Authority about his mother-in-law's household, the husband gave evidence that the house had electricity but no running water and that his youngest brother-in-law, who lived at home, attended college somewhere in the district.

[80] The wife gave contradictory evidence. She claimed that her younger brother spent his time hiding in order to avoid beatings from high caste boys and was not at college. She also claimed to have hidden this information from her husband. She denied that her family home had electricity. The Authority prefers the evidence of the husband to that of the wife and finds that the wife's family home has electricity and that her younger brother is attending college. There is no reason why the husband would lie about his wife's home having electricity.

[81] When questioned about his education, the husband claimed that he was forced to leave school because of the mistreatment he was subjected to there as a Dalit. He described this mistreatment as involving beatings and having his books torn. When interviewed by the RSB in October 2002, in connection with his first

claim, and asked why he left school, he had stated that he left because his family were poor and needed money and stated unequivocally that he had had no problems at school. When asked to explain this discrepancy the husband said that both reasons were true (that he left school for financial reasons and that he left because of caste-based mistreatment) but that in his previous case he had been emphasising his political problems whereas now he was emphasising problems arising from his caste status.

[82] The Authority was left with the impression that the husband and the wife were attempting to embellish the deprivations they had suffered as Dalits in India and that this embellishment involved presenting exaggerated and untrue evidence to the Authority. The wife's account of constant beatings at school and the tearing up of her books by high caste students sits uneasily against her concession that she and all her siblings completed high school. When interviewed by the RSB in 2002, she had stated that she was in school until the age of 20.

[83] The Authority rejects the evidence of both the husband and wife to have been subjected to severe caste based harassment at school. Their lack of credibility and willingness to present untrue evidence leads the Authority to conclude that it cannot rely on their evidence about caste-based harassment and discrimination (such as their claims of being forced to pick up their own faeces from fields and having their water supply polluted). Their circumstances will be assessed in light of country information concerning the treatment of Dalits from their caste in the state of Punjab and against those parts of their evidence the Authority is able to accept (such as the husband's work history and the type of housing both of their families had in the Punjab).

On the facts as found do the appellants have a well-founded fear of being persecuted on return to India?

[84] It is accepted that the appellants are Dalits and that they have recently converted to the Christian faith. It must be determined whether they face a real chance of being persecuted in India for either their religion or caste or the cumulative effect of both.

[85] The term "being persecuted" has been defined in refugee law as the sustained or systemic violation of basic or core human rights such as to be 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).

[86] The Authority turns first to the issue of the appellants' untouchable or Dalit caste. A report published by Human Rights Watch in 1999 described the caste system as follows:

"India's caste system is perhaps the world's largest surviving social hierarchy. A defining feature of Hinduism, caste encompasses a complex ordering of social groups on the basis of ritual purity. A person is considered a member of the caste into which he or she is born and remains within that caste until death, although the particular ranking of that caste may vary among regions and over time. Differences in status are traditionally justified by the religious doctrine of Karma, a belief that one's place in life is determined by one's deeds in previous lifetimes. Traditional scholarship has described this more than 2,000-year-old system within the context of the four principal varnas, or large caste categories. In order of precedence these are the Brahmins (priests and teachers), the Kshatriyas (rulers and soldiers), the Vaisyas (merchants and traders), and the Shudras (labourers and artisans). A fifth category falls outside the varna system and consists of those known as "untouchables" or Dalits; they are often assigned tasks too ritually polluting to merit inclusion within the traditional varna system.

Within the four principal castes, there are thousands of sub-castes, also called jatis, endogamous groups that are further divided along occupational, sectarian, regional and linguistic lines. Collectively all of these are sometimes referred to as "caste Hindus" or those falling within the caste system. The Dalits are described as varna-sankara: they are "outside the system" – so inferior to other castes that they are deemed polluting and therefore "untouchable". Even as outcasts, they themselves are divided into further sub-castes. Although "untouchability" was abolished under Article 17 of the Indian constitution, the practice continues to determine the socio-economic and religious standing of those at the bottom of the caste hierarchy. Whereas the first four varnas are free to choose and change their occupation, Dalits have generally been confined to the occupational structures into which they are born."

[87] With regard to the context for caste violence the report stated:

"Most Dalit victims of abuse are landless agricultural labourers. According to the 1991 census, 77% of the Dalit workforce is in the primary (agricultural) sector of the economy. Those who own land often fall into the category of marginal land owners. Land is the prime asset in rural areas and determines an individual's standard of living and social status. Lack of access to land makes Dalits economically vulnerable; their dependency is exploited by upper and middle caste landlords and allows for many abuses to go unpunished." Human Rights Watch *Broken People: Caste Violence Against India's Untouchables* (March 1999) chapter 3, p2.

[88] Despite the outlawing of untouchability in both the Indian Constitution and the 1955 Civil Rights Act, the practice continues:

"The Constitution and the 1955 Civil Rights Act outlaws the practice of untouchability, which discriminates against Dalits and other people defined as Scheduled Castes; however, such discrimination remained an important aspect of life. Despite longstanding efforts by the Government to eliminate the discriminatory aspects of caste, the practice has remained, and widespread discrimination based on the caste system occurred throughout the country.

Many rural Dalits worked as agricultural laborers for caste landowners without remuneration. The majority of bonded laborers were Dalits (see Section 6.c.) Dalits, among the poorest of citizens, generally did not own land, and often were illiterate. They faced significant discrimination despite laws to protect them, and often were socially prohibited from using the same wells and from attending the same temples as caste Hindus, and from marrying caste Hindus. In addition, they faced social segregation in housing, land ownership, and public transport. Dalits were malnourished, lacked access to healthcare, worked in poor conditions (see Section 6.e.), and continued to face social ostracism. NGOs reported that crimes committed by higher caste Hindus against Dalits often went unpunished, either because the authorities failed to prosecute vigorously such cases or because the crimes were unreported by the victims, who feared retaliation. Discrimination against Dalits covered the entire spectrum of social, economic, and political activities, from withholding of rights to killings: United States Department of State *Country Reports on Human Rights Practices for 2006: India* (6 March 2007).

[89] In a comprehensive decision concerning the treatment of Dalits, *Refugee Appeal Nos 75221 and 75225* (23 September 2005), the Authority noted that:

“[51] Country information therefore establishes that despite the formal outlawing of the practise of untouchability in the Indian Constitution and other legislation, in general terms, the life of Dalits in India remains one of socio-economic marginalisation and discrimination. They continue to be subjected to caste-motivated violence.”

[90] However the Authority went on to distinguish Dalits from communities such as in Rwanda and the former Yugoslavia in recent times where all members of an affected community face a real chance of being persecuted simply because of their membership of a particular ethnic or religious community:

“[55] ... the situation for Dalits in India, while one characterised by continuing socio-economic marginalisation and incidents of caste violence, cannot be placed in a similar category. Therefore, for the risk of serious harm faced by an individual Dalit to rise above the real chance threshold, something more than simply being Dalit will be required. Each case must be considered on its own facts. As with any other refugee claimant, these appellants must therefore establish that their particular circumstances give rise to a well-founded fear of being persecuted”

[91] Counsel filed a considerable volume (over thirteen hundred pages) of country information concerning conditions in India for Dalits and Christians. This country information, which includes a large amount of material downloaded from the internet, was not indexed or analysed in any way. At the commencement of the hearing counsel was asked to identify what in particular she sought to rely on in the country information filed. In response, she identified the Human Rights Watch report *Hidden Apartheid* in respect of the Dalit issue and a United Kingdom Immigration Appeal Tribunal case, *Secretary of State v Farrer* UKIAT 04874 (15 October 2002) in respect of the Christian issue. (As noted earlier, additional country information was filed by counsel on 19 June 2008).

[92] *Hidden Apartheid* was produced as a “shadow report” to the United Nations Committee on the Elimination of Racial Discrimination (CERD), in advance of its February 2007 consideration of a report by the government of India. It is a lengthy report that reviews the treatment of Dalits in India and reports on their segregation, discrimination against them, and instances of caste-based violence. In an appendix to the report is a table illustrating the forms in which untouchability is practiced in rural India and the degree of prevalence. Information from the table was gathered from 565 villages in 13 major states in India including Punjab.

[93] Many of the instances of caste-based violence detailed in the *Hidden Apartheid* report are horrific and include the rape and murder of Dalit villagers committed by upper caste community members in order to enforce caste based norms. In addition to instances of extreme violence, the report details instances of harassment and discrimination carried out against Dalits.

[94] The difficulty for the appellants in relying on the report is that it refers to the plight of Dalits in India in a general way and makes little if any allowance for local conditions. In addition, the locations of the violent incidents detailed in the report are often not recorded. None are recorded as having occurred in the Punjab although some may have occurred there.

[95] Caste practice throughout India varies as each region has specific and unique characteristics that closely impact its socio-political and economic structures. ‘Thus, for a correct understanding of the phenomenon of caste and untouchability, specificities of a region hold critical importance’: Dr Ronki Ram *Burden of Past and Vision of Equality: Political Sociology of Social Exclusion and Jat-Dalit Conflicts in Punjab* (2003) ambedkartimes.com/ronkiran.htm (accessed 19 June 2008)(“the *Burden of Past* report”).

[96] The majority of the population of the Punjab is Sikh: India, Office of the Registrar General, *Census of India 2001: Punjab: data highlights* (7 March 2007). The 2001 census recorded the Dalit population in the Punjab as numbering just over 7 million. This is approximately 29% of the Punjab population which is the highest proportion of Dalits in India. The literacy rate of Dalits in the Punjab is above the national average for females (48.3% compared to 41.9% nationally) and slightly below the national average for males (63.4% compared to 66.6% nationally). The appellants’ Chamar caste has a literacy rate of 63.7% while 23.1% of Chamars attain education up to Matriculation, secondary or higher

secondary level: India, Office of the Registrar General, *Census of India 2001: Punjab: data highlights: the scheduled castes* (7 March 2007).

[97] An Indian Professor of Sociology, Surinder Jodhka, has addressed the practice of caste in the Punjab. He states that Sikhism does not doctrinally support the practice of caste and the Sikh holy scripture, the *Adi Granth*, includes the writings of Dalit gurus. He also states that the caste based concept of “pollution” (the idea that Dalits pollute what they touch) is not as strong in the Punjab as in other parts of India. Jodhka also asserts that caste and untouchability are viewed as core Hindu values and the struggle against them has been associated with the movement for a separate religious identity for Sikhs. There is therefore a major difference in the caste structure of a Sikh and a Hindu village. In a Hindu village, caste hierarchy and differences have religious sanctions behind them while there are no such sanctions in the Sikh religion.

[98] Like Jodhka, other academic commentators have noted that the marginalisation of Dalits in the Punjab, rather than arising from concepts of purity and pollution (which are doctrinally Hindu concepts), in fact arises from the widespread landlessness of Dalits and the monopoly of the Jats (the dominant caste) of agricultural land. Dr Ronki Ram notes in the *Burden of Past* report that until recently, landlessness confined a large majority of Dalits to agricultural labouring and made them subservient to landowners.

[99] Caste-based violence certainly occurs in the Punjab. However, the information before the Authority establishes that it is less frequent and different in origin and character than in many other Indian states. A Canadian report describes caste-based violence in the Punjab as rare: Immigration and Refugee Board of Canada, IND43499.E. *India: the current situation of the Scheduled Castes, especially in Punjab* (18 April 2005). Another article states that while violence does occur, ‘Bihar style anti-Dalit carnage is unknown’: Praveen Swami “Dalits’ Battle in a Punjab village” *Frontline* (26 April 2003). Many of the incidents described in the *Hidden Apartheid* report occurred in Bihar state.

[100] Incidents of violence against Dalits in the Punjab appears to originate from changing power relations between Dalits and Jats. In the *Burden of Past* report Dr Ronki Ram notes the recent participation of Dalits in other occupations has reduced their dependence on landowners and that:

‘the social mobility of the new middle class of Dalits coupled with their emancipation from the economic dependence on the landowners led to the emergence of Dalit assertion in

Punjab...the Jats interpreted this assertion as a challenge to their long established supremacy in the state'.

[101] This assertion has resulted in Dalit-Jat clashes such as the widely reported Talhan caste riots which occurred in 2003. The Talhan riots occurred as a result of the exclusion of Dalits from the village Gurdwara management committee. The dispute was eventually resolved when Dalit representation was secured on the committee. Dr Ram predicts that such clashes will escalate in the future as Dalits continue to struggle for social status commensurate with their improved economic status.

[102] An article filed by counsel notes that this month there has been another instance of caste tension arising from the political success of Dalits. In the village of Lachru Khurd, a Dalit member of the Congress party, Sardara Singh, was elected to the village *Panchayat* (council) and had the casting vote for the selection of the *Sarpanch* (village leader). His refusal to vote for another party's candidate resulted in the social boycott of Dalits in the village including refusal to allow them access to the fields which, for many, blocked passages to their homes. Also reported were police raids on the homes of Dalits and on those of Congress party members: "Dalits Face Boycotts in Punjab Village" *The Times of India* (7 June 2008).

[103] The circumstances of Dalits may vary greatly. As noted earlier, the exaggerated and untrue evidence given to the Authority by the appellants makes it difficult to assess their true circumstances in India or the treatment they may expect to receive there should they return. However, on their own evidence, both are of the Chamar sub-caste which is the most successful of the Dalit castes in the Punjab. The *Burden of Past* report notes that Chamars are considered to be the highest caste among the scheduled castes in the Punjab and that they are ahead of other Dalit castes in almost all spheres, "Ad Dharmi Chamars are on top of virtually every parameter – education, urbanisation, jobs, occupational change, cultural advancement, political mobilization, etc."

[104] Both appellants are from families who occupy three-room houses in their respective villages. Both have many male relatives either in employment in India or performing labour contracts in the Middle East. The husband, during the periods he spent in India, was first employed as a carpenter and then operated his own carpentry shop.

[105] While their standard of living may not have been high, there is no credible evidence before the Authority that the appellants suffered socio-economic or other deprivation because of their caste of a type that would engage the Refugee Convention. The appellants were able to afford airfares to New Zealand to enable them to attend the husband's mother's funeral.

[106] The appellants have not provided any credible evidence that in the past they have been subjected to incidents of caste-based violence. While the refugee enquiry is forward looking, past experience often provides an indication of what may be expected to occur in the future: *Refugee Appeal No 70366* (22 September 1997). While political struggle between the Dalit and Jat castes in the Punjab is likely to continue, the chance of the appellants being caught up in a violent clash resulting from such struggle is remote and does not, on the evidence before the Authority, rise to the level of a real chance. Incidents such as the Talhan riots and the boycott in Lachru Khurd arise as a result of local conditions and personalities.

[107] Counsel has submitted that they will now be at an increased risk because of they have learnt English in New Zealand and because their New Zealand born children will behave inappropriately in India in terms of their caste status. These submissions are entirely speculative and are rejected.

[108] In conclusion, after assessing both their own evidence and country information about the treatment of Dalits in the Punjab, the Authority finds that it is not established that the appellants, should they return to the Punjab, would be subjected to treatment that can properly be described as being persecuted by reason of their caste status.

Christianity

[109] The Authority now turns to an assessment of the appellants' claim to have a well-founded fear of persecution by reason of their recent conversion to Christianity.

[110] There is a long history of conversion by Dalits to Christianity in the Punjab. By 1921 there were over 3 million Christian converts in the Punjab, most of them members of a particular untouchable caste, the Chuhras (scavengers) and mainly from rural areas: "Caste in the Periphery" *ibid*, p6. According to the 2001 government census, Christians now constitute 2.3 percent of the total Indian population of 1.1 billion (that is to say, 23,300,000 Christians).

[111] The 2007 International Religious Freedom report on India records that the vast majority of Indians of every religious group lived in peaceful co-existence during the reporting period. However there were reports of organised societal attacks against religious minority groups, particularly in states ruled by the Bharatiya Janata Party. The report also noted that four states (Orissa, Chattisgarh, Madhya Pradesh and Himichal-Pradesh) have anti-conversion laws (which prohibit persons attempting to convert others in certain circumstances) but that there had been no convictions under these laws. (It is appropriate to note that in her submissions of 19 June 2008 counsel submits at 17(h) that seven states have such laws).

[112] The report noted that according to Christian organisations, there were at least 128 attacks against Christians in 2006. It provided details of a number of attacks and recorded in particular that:

“In May 2006 in the Punjab, after protests by Delhi All-India Christian Council (AICC) leaders, police arrested three Hindu extremists for a raid on an Easter day event, in which they threatened worshippers and vandalized property. When the pastor attempted to register a FIR, the Senior Superintendent of Police at first told him that permission from the district magistrate was required, but later recanted and permitted the services.”

[113] No other reports of anti-Christian violence in the Punjab appear in the report: United States Department of State *International Freedom Report: India 2007* (14 September 2007).

[114] In a letter to the Authority dated 25 March 2005, counsel submitted that there were attacks on Christians throughout India, and stated that, if required, reports could be provided in respect of every Indian state. She submitted that because of this, there was nowhere where the appellants could live safely. In support of this submission she provided seven additional items of country information detailing attacks on Christians. Five of these concerned events in Orissa state, which is described in one article as having one of the worst histories of anti-Christian violence. One report concerned the forcible re-conversion to Hinduism of Christian converts in Himachal Pradesh. The final report concerned an attack on Christians by Hindu nationalists in Chhatisgarh. This report also referred to the arrest of a pastor and two protestant leaders in the Punjab who were warned ‘not to preach the gospel anymore’: “Indian Christians suffer persecution on Christmas day” *AsiaNews.it* (28 December 2006). On 19 June 2008 counsel filed an article reporting that in March 2007, three further instances of anti-Christian violence occurred in the Punjab.

[115] As noted earlier, counsel advised the Authority that in respect of the Christian convert aspect of the appellants' case, she placed particular reliance on the United Kingdom Immigration Appeal Tribunal decision *Secretary of State for the Home Department v Winston Farrer* UKIAT 04874 (15 October 2002). That decision allowed the appeal of the Secretary of State against a decision granting asylum to Mr Farrer by an immigration adjudicator.

[116] The *Farrer* decision, while establishing that Mr Farrer was at risk as a Christian in Gujarat, has little relevance to the situation of Dalit Christians in the Punjab. In the decision it was accepted that Mr Farrer was a Roman Catholic and had been attacked in anti-Christian mob violence in the state of Gujarat in December 2000. It was noted that there is a long history of good relations between Christians and other religious groups in India but that underlying resentment of Christians by Hindus sometimes leads to violent confrontations. The judge concluded that there was no reason to believe that Mr Farrer, as a practising Roman Catholic Christian, would find it unduly harsh to relocate from Gujarat to other areas of India where sentiment against Christians is not strong and that the option of internal relocation was therefore available to him.

[117] In their evidence the appellants stated that there was no church in their village although there was one in a neighbouring village a short distance away which was attended by Dalit converts to Christianity. The husband gave no evidence of violent incidents concerning Christians in his village or the neighbouring village where the Church was located. The wife gave evidence that she had told her mother about her conversion to Christianity but that her mother had warned her not to tell others because it would be dangerous.

[118] Country information shows that there are religious tensions at times throughout India including in the Punjab. At times, such tensions involve mob violence and, as in Himachal Pradesh, forced conversions. The country information and evidence provided by the appellants does not establish that as Dalits from the Punjab who have converted to Christianity, they face a real chance of being persecuted. There is no evidence before the Authority concerning widespread or frequent anti-Christian violence in the Punjab whether against Dalits or other persons. The risk of the appellants being subjected to such violence is remote and speculative and does not give rise to a well-founded fear of being persecuted.

[119] The appellants have not established that they have a well-founded fear of being persecuted in India for any reason. The question of Convention ground does not therefore arise.

[120] It is recorded that much of the wife's evidence was directed toward expressing her concern for her daughter in India, her distress at her separation from her, and her fears regarding the deprivations her New Zealand citizen children would suffer should they accompany the appellants to India. Counsel reiterated such concerns in her submissions of 19 June 2008, for example noting at [14] that the children have never known infectious diseases or water contamination. None of counsel and the wife's claims concerning the children have been considered in this decision except to the extent that it has been claimed that the presence of the children would increase the risk to the appellants. The children are not refugee claimants and the Authority is precluded from considering their circumstances pursuant to section 129W of the Immigration Act 1987.

CONCLUSION

[121] For the reasons mentioned above, the Authority finds the appellants are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeals are dismissed.

"M A Roche"

M A Roche
Member