

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76449

AT AUCKLAND

<u>Before:</u>	B L Burson (Member)
<u>Representative for the Appellant:</u>	The appellant represented himself
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	1 March 2010
<u>Date of Decision:</u>	10 March 2010

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour declining the grant of refugee status to the appellant, a national of India.

INTRODUCTION

[2] The appellant claims to have a well-founded fear of being persecuted in India by reason of the Indian police falsely believing him to be associated with Kashmiri terrorist groups.

[3] The appellant arrived in New Zealand on 22 June 2009 on a limited purpose visa valid until 22 January 2010. On 6 July 2009, the appellant lodged his refugee claim. He was represented by Mr Roger Chambers, Barrister. The appellant was interviewed by the RSB in respect of his claim on 11 September 2009. By decision dated 30 October 2009 the RSB declined the appellant's case. An appeal was filed on the appellant's behalf by Mr Chambers on 6 November 2009.

[4] When this matter came before the Authority on 1 March 2010, Mr Chambers indicated that he was withdrawing from the case. He had, however, on 5 February 2010, filed written submissions with the Authority and attached to

those submissions were items of country information relating to the treatment of Sikhs in the Punjab and their ability to seek internal protection elsewhere in India. Mr Chambers indicated to the Authority that the appellant had been given a copy of these submissions and that they stood as the appellant's submission in the appeal. Mr Chambers thereafter took no further part in the hearing.

[5] What follows is a summary of the evidence given by the appellant in support of his appeal. An assessment follows thereafter.

THE APPELLANT'S CASE

[6] The appellant was born in the late 1980s. He is the youngest son of five children born to his parents. He was born in Jalandhar and remained living there all his life. Save for the events which caused him to flee to New Zealand he remained living with his parents at the family home, including after his marriage.

[7] The appellant's troubles began when, in 2007, he began working as a driver for a businessman in Jalandhar. The appellant worked approximately eight to 10 hours per day, although his start and finish times would vary. Each day his employer telephoned him and told him to come to the employer's house and begin his daily duties. The appellant's duties were to drive his employer to various places in Jalandhar and also more distant places in Punjab and neighbouring states. Approximately once or twice a month the appellant's employer also requested that the appellant take other men who were at his employer's house when the appellant arrived there, and drive them around. He took them to locations in Jalandhar and also to various places in other states.

[8] The appellant encountered no particular difficulties until early 2008. On this occasion he was arrested from home by the police the day after he had returned from a trip to Srinagar with his employer. While in Srinagar, after leaving his employer at his meeting destination, his employer requested that the appellant take two men to another destination. The appellant did so before returning to Jalandhar the following day with his employer.

[9] When the police came to the appellant's parents' house they told the appellant that they wanted to question him about the two men he had driven in Srinagar. He explained to the police that he was simply acting as a driver on instructions from his employer. His parents also told the police that their son was merely a driver. Nevertheless, he was arrested and taken away to the police

station in Jalandhar where he was detained for a period of four days. He was interrogated for the first three days about the identity of the people he had driven to Srinagar and where they were going. The appellant replied to all of these enquiries that he was simply acting on his employer's instructions and had no idea who the men were or what they were doing. The police told him the two men he drove were Kashmiri terrorists. The appellant denied any association with them.

[10] The appellant explained that on the first day of his detention he was simply interrogated but, when interrogated during the second and third days, he was beaten by the police officers who did not believe his continued protestations of innocence. He was beaten about the face and body with fists and hit about his body and feet with a large stick, which caused a fracture in his right foot and an injury to his left thumb. Eventually, his parents managed to find sufficient money to pay to the police and the appellant was released.

[11] As a result of injuries he sustained during his detention the appellant could not resume work immediately. When his employer next telephoned him the appellant explained what had happened. The appellant's employer told him not to worry and said he would make sure that the police were aware that he was acting for him and assured him that everything would be alright. Although anxious, the appellant accepted his employer's assurances and returned to work after about a week or 10 days. As a precaution, he now gave his parents details of his employer and the area in which his employer lived.

[12] Approximately two months after his release the appellant was requested by his employer to take two men to another town, in another state, situated about 250 kilometres from Jalandhar. While travelling there and after having crossed into this other state, the appellant's car was stopped and surrounded by police. The two men, who were his passengers, were arrested and taken away. He never saw them again. After being questioned, the appellant was transported back to Jalandhar police station where he was held for a further week.

[13] During this time the appellant was questioned in much the same manner as he had been during his first detention. The police wanted to know what the men in the car were doing and what they were planning. He said he did not know and explained once again that he was simply acting as a driver on his employer's instructions. Again, the appellant was beaten during this detention although he described the beatings as being much harder than during his first detention.

[14] After being detained for a week, the appellant's parents came to the police station with his employer. His employer arranged for the payment of money by the appellant's parents to secure his release. When he arrived home the appellant was told by his parents that they had in fact come to the police station two or three days after his detention but the police had refused to release him. They said it was then that they went to the appellant's employer and had him come to the police station. His parents also told him that his employer had told the police that the appellant was his driver, although he did not say that the men the appellant was driving when arrested were being transported by the appellant on his instructions.

[15] After his release, the appellant became suspicious that his employer may have had some connection with the people the authorities suspected were Kashmiri terrorists and decided not to return to work. Thereafter, whenever his employer asked him to return, the appellant refused. However the appellant was concerned that, having been detained and interrogated on two occasions about such matters, he would always be in danger whenever there was an outbreak of violence in India.

[16] Through acquaintances he learnt of an agent in Jalandhar, who was sending people abroad. He met with the agent and told him his story. The agent told the appellant he could send him to a safe country and he helped the appellant to obtain a genuine Indian passport for that purpose. Wanting to protect himself from any further arrest the appellant decided to go into hiding and from around this time he began staying at a succession of friends' houses until he departed for New Zealand almost 12 months later. During this time he occasionally went back to the family home where he would stay overnight.

[17] When the appellant arrived in New Zealand he noticed a number of other Punjabi men from his flight waiting to travel to Blenheim to work in a vineyard. However, the appellant only worked for the employer for a few days. He was not paid enough money and found he was often going hungry so he left the employment. He then met a person named Kulwant Singh and told him his story. Kulwant Singh assisted the appellant to fill out his refugee claim.

[18] The appellant is very concerned for his safety if returned to India. Now that he is in the police system, whenever something happens in India they will come and arrest him. He has been in periodic contact with his family since he has been in New Zealand and 10 days ago learnt that there was an outbreak of violence in

Jalandhar and that Punjab state had been shut down. He fears that because of his history at this particular time, as well as generally, he would be in danger if returned to the Punjab. He believes nowhere in India is safe for him. The police will be able to locate him wherever he is when violence breaks out in India.

Documents and submissions

[19] As mentioned, on 5 February 2010 the Authority received written submissions from the appellant's then counsel which were adopted as the submissions on behalf of the appellant for the purposes of the appeal. Attached to the submissions were various items of country information. These submissions have been taken into account in reaching this decision.

THE ISSUES

[20] 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."

[21] 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

Credibility

[22] The Authority does not find the appellant to be a credible witness. His evidence was vague and characterised by multiple discrepancies about issues going to the core of his claim.

Discrepancies

[23] The evidence the appellant has given in support of his claim and on appeal, specifically accounts about his detentions and the continuing interest by the police in him, is characterised by multiple discrepancies and mobility. Thus:

[24] Regarding his first detention the appellant told the Authority that :

- (a) He was arrested on the first day after his return from Srinagar. However, in his interview before the RSB he said that he had been arrested two days after he had returned;
- (b) He had been detained during his first period of detention for a period of four days. He gave detailed evidence about what happened on each day of this four day detention. Yet, in his RSB interview he told the officer that he had been detained on this occasion for a period of two days only;
- (c) This arrest took place in February 2009, whereas he told the RSB it had been in February 2008.

[25] In relation to the second detention the appellant told the Authority that:

- (a) He had been arrested on his way to the other state while alleged terrorists were still in the car. This repeated what he had told the RSB. However, in his statement prepared and filed with the refugee claim he stated that the second arrest took place on his way back to Jalandhar from the other state;
- (b) His family first came to the police station to look for him after two or three days. When the Authority expressed surprise that the appellant's family would wait so long before coming to look for him, bearing in mind he had suffered a previous detention and that he had given them the details of his employer in case a similar event should happen again, the appellant changed his evidence to say that his parents first came to the police station "one or two days after he had been detained";
- (c) He was not aware of any interest in him by the authorities following his last detention and went into a lengthy period of hiding because he feared they might come looking for him in the event there was a

further outbreak of inter-communal violence. However, in his RSB interview the appellant, after first claiming that he did not have any problems with the police after being released from his last detention, went on to assert that the police had been coming to his home and whenever they used to come and check he would “go away from home”.

[26] The appellant had no convincing explanation for these multiple discrepancies and mobility in his evidence. He repeatedly stated to the Authority that he was under stress and this caused him to forget details and dates. While the Authority accepts that giving evidence before it can be stressful for appellants, there are simply too many discrepancies and mobility over a number of issues which go to the very core of his claim for the Authority to be satisfied that this comprises a satisfactory explanation. Rather, the Authority has no doubt that the myriad of discrepancies and mobility is, when viewed cumulatively, evidence that his claim is one that is, at its core, not true.

[27] The Authority’s concerns in this regard are reinforced by other concerns in relation to the appellant’s evidence.

Other credibility issues

[28] The appellant was vague in relation to the activities of his employer. Apart from saying that he drove the employer to “meetings” he could give no meaningful details. It is implausible that had the appellant been employed as a driver for two years on a daily basis he would not have a better sense of the nature of the employer’s business.

[29] The appellant’s evidence was implausible in places. He claims that despite telling the Jalandhar police that his employer had been the one who had directed him to carry the men the police regarded as terrorists, at no stage was his employer ever questioned about this allegation. Moreover, the appellant went on to claim that his employer even came to the police station to help secure his release. If it were genuinely the case that the appellant had been arrested on suspicion of transporting suspected terrorists, it is implausible that the appellant’s employer would not have been questioned about this by the authorities when he came to the police station.

Conclusion on credibility

[30] The Authority does not accept that the appellant has been arrested and detained as he claims or that the Indian authorities have any interest in him whatsoever. He has a genuinely issued Indian passport. The Authority finds that there is no real chance that the appellant will be persecuted on return to India. The first principal issue is answered in the negative. There is no need for the Authority to address the second.

CONCLUSION

[31] For the reasons mentioned above, 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.

"B L Burson"

B L Burson
Member