

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 70120/96

RE ORAAS

AT AUCKLAND

Before: R P G Haines (Chairperson)
J C Moses (Member)

Counsel for the Appellant: M Bird

Appearing for the NZIS: No appearance

Date of Hearing: 4 & 8 November 1996

Date of Decision: 1 April 1997

DECISION

The appellant, an Iranian national, arrived in New Zealand on 29 November 1994. At the airport he indicated a wish to apply for refugee status and as a result he was granted a visitor's permit. A formal refugee application was filed on 22 December 1994. Shortly thereafter, on 7 April 1995 the hearing at first instance by the Refugee Status Branch took place but it was not until 18 June 1996 that the Refugee Status Branch issued a decision in which the application was declined.

The appeal was heard over two full days on 4 and 8 November 1996. At the conclusion of the hearing on the second day Mr Bird sought leave to file a forensic medical report within 30 days. The Authority directed that the report be filed by 9

December 1996 but leave was reserved for an extension of time to be sought should this prove necessary.

On 16 December 1996 the medical report was filed.

On New Year's Day the appellant was the driver of a motor vehicle which crashed into a barrier on the Southern motorway. He died from his injuries in Middlemore Hospital the following day. A report of the accident and of the death appeared in the *NZ Herald* Friday, January 3, 1997.

By letter dated 23 January 1997 the Registrar sought submissions as to how the appeal should now be dealt with. By letter dated 7 February 1997 Mr Bird made the following submissions:

"Clearly there is little point in the Authority wrestling to a decision if all that results is a determination that the appeal must fail, and the same is probably true even if the decision is to allow the appeal."

"However, in the latter case I am aware that a close family member hoped for a favourable decision if for no other reason than that it confirmed the legitimacy of [the appellant's] claim."

"I do not want to impose work that serves no purpose on the Authority members. However, the case did raise some issues that, if they are answered, may provide guidance for later cases."

"My feeling, then, is that there may be merit in proceeding to a written decision if the Authority feels there is precedential value involved, but probably not otherwise."

As to these submissions, it is clear that the Refugee Convention was intended to provide surrogate international protection for those persons possessing a well-founded fear of persecution (for a Convention reason) in their country of nationality. But upon death, there ceases to be a well-founded fear of persecution and the need for protection ends. Likewise, the non-refoulement obligation in Article 33 of the Convention ceases to have application.

In these circumstances we conclude that a refugee application does not survive the death of an asylum seeker. There is nothing unusual in this conclusion as it is consistent with the common law position encapsulated in the maxim *actio personalis moritur cum persona*.

It is largely for these reasons that the Authority cannot accede to the request that should its decision be favourable to the appellant, a decision be delivered in order to confirm "the legitimacy" of the appellant's claim. But by way of amplification, it

is to be remembered that it is a settled principle of New Zealand refugee law that the appropriate date at which the well-foundedness of a fear of persecution is to be assessed is the date of determination of the refugee application: Chan v Minister for Immigration and Ethnic Affairs (1989) 169 CLR 379 as applied, for example, in Refugee Appeal No. 81/91 Re VA (6 July 1992) at 5-9 and Refugee Appeal No. 474/92 Re KA (12 May 1994) at 24. As explained in Minister for Immigration, Local Government and Ethnic Affairs v Mok Gek Bouy (1994) 127 ALR 223, 254-255 (FC:FC), there is no two-stage process in which the decision-maker ascertains, first of all, whether the asylum-seeker's fear was well-founded when he or she arrived in the country of refuge and then decides, secondly, whether the original fear of persecution is no longer well-founded at the time the decision is made. Rather, the circumstances to be considered are those which exist at the time the decision is made. It is, of course, relevant to take into account the circumstances which existed at the time the applicant for refugee status left the country of his or her nationality. But what needs to be done is for account to be taken of the whole of the circumstances and a decision made as to what the position is at the date that the matter is decided. In the present case, the appellant having died before a decision could be made on his claim to refugee status, it would be contrary to principle for the Authority to determine whether, prior to his death, the appellant was a refugee within the meaning of Article 1A(2) of the Refugee Convention.

The appeal is dismissed.

.....
Chairperson