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COMMISSION DES RECOURS DES REFUGIES

# MAIN FINDINGS IN FRENCH CASE LAW ON THE GRANTING OF REFUGEE STATUS

## I. THE GRANTING OF REFUGEE STATUS ON THE BASIS OF CONSTITUTIONAL ASYLUM PURSUANT TO THE LAW OF 11 MAY 1998

The Refugee Appeals Board granted refugee status, for the first time on this basis, to an Algerian national, an activist and member of the Culture and Democracy Party (CDP) [*Rassemblement pour la culture et la démocratie, RCD*], who, in his application, alleged that he was the subject of persecutions by armed groups although such action was not encouraged or voluntarily tolerated by the Algerian government authorities[1]. Relying on the grounds for appeal defined within the scope of the Law of 1952, the Appeals Board considered that "*given the goals pursued and the means employed by the CDP on behalf of which he was an activist*," the petitioner has to be regarded "*as persecuted because of his action for freedom*" (Refugee Appeals Board, 22 December 1998, *Haddadou*).

In subsequent rulings, the Appeals Board accepted that the notion "*of action for freedom*" could reflect a form of commitment which is not necessarily that of traditional political action (Refugee Appeals Board, Special Combined Hearing, 25 June 1999, *Zitouni* for an Algerian national persecuted by armed Islamic fundamentalist groups because of his voluntary involvement in self-defence groups and his voluntary participation in within this group whose essentially defensive actions were intended to protect people from the actions of armed groups; (Refugee Appeals Board, 9 July 1999, *Acosta Barrero* for involvement in social work for an organization).

Involvement in a women's rights organization in Algeria (Refugee Appeals Board, 7 February 2001, *Mrs. Amimeur (formerly Teffahi)* or a male Bangladeshi painter's work promoting secularism, peace and the emancipation of women (Refugee Appeals Board, 15 June 2001, *Bhuiyan*) are also considered actions for freedom.

## II. THE GRANTING OF REFUGEE STATUS ON THE BASIS OF THE UNHCR MANDATE

The UNHCR's mandate constitutes, by virtue of Section 2, paragraph 2, of the Law of 25 July 1952, one of the possible grounds for granting refugee status, provided that such mandate is exercised pursuant to Articles 6 and 7 of the UNHCR's statutes[2]. This requirement leads to granting refugee status to individuals who are in a situation very close to those of refugees recognized as such on the basis of the 1951 Refugee Convention. In fact, Article 6 of the UNHCR's statutes contains a definition of a refugee and a mandate suspension clause which are similar to those set forth in Article 1 of the 1951 Refugee Convention; Article 7 provides for cases that are excluded from the convention which are very similar to the cases provided for in this same convention.

[1] Council of State, 27 Mai 1983, *Dankha* (Leb. P. 220).

[2] Introduced by the Law of 24 August 1993, this means that individuals whose cases are covered by a so-called *broad* mandate, namely those individuals vis-à-vis to which the UNHCR uses "good offices" and whose situation is examined individually in relation to Article 1, A, 2 of the 1951 Refugee Convention, are not eligible for refugee status.

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In a recent case, the Refugee Appeals Board ruled that the exclusion clause provided for in Article 1, F, C of the 1951 Refugee Convention could not be applied to a member of the ex-FAZ, placed under UNHCR mandate in May 1998, pursuant to Articles 6 and 7 of the international organisation's statutes, whilst he was in Brazzaville. Recalling that the terms of Article 7 of the statutes targeted the crimes defined by the provisions of paragraph 2 of Article 14 of the Human Rights Declaration and, consequently, actions inconsistent with the goals and principles of the United Nations and noting that the UNHCR, after examining the petitioner's situation in relation to all such terms, had decided to maintain the petitioner under its mandate, the Appeals Board considered that the provisions of Section 2 of the Law of 25 July 1952 relating to persons in connection with which the UNHCR exercises its mandate leave the Office for the Protection of Refugees and Stateless Persons and the Refugee Appeals Board no option to grant refugee status on this basis (Refugee Appeals Board, Special Combined Hearing, 5 June 2000, *Mbingo*).

## III. THE GRANTING OF REFUGEE STATUS ON THE BASIS OF ARTICLE 1, A, 2 OF THE 1951 REFUGEE CONVENTION

It has been nearly fifty years now that the Appeals Board, under the supervision of the Council of State, has been applying the 1951 Refugee Convention, Article 1, A, 2 of which defines a refugee as a person who "*rightly fearing persecution because of his/her race, religion, nationality, he/she belongs to a social group, or his/her political opinions, while outside of the country of which he/she is a citizen, and who cannot or, because of his/her fear, does not want to claim protection from such country*".

This definition has given rise to an abundant case law relating to the five grounds of persecution listed, to the nature of the persecution and to the perpetrators thereof, and France's interpretation of the Refugee Convention requires that persecution be, at least indirectly, imputable to a government authority of the country of origin.

### The Five Grounds of Persecution as Defined in Article 1, A, 2 of the 1951 Refugee Convention:

The ground of persecution based on race has never been strictly interpreted in case law and has to be understood as covering belonging to an ethnic minority. With respect to the ground of persecution based on nationality, understood in the sense of a national minority, it is worth noting that it has been relied upon with increasing frequency since the disintegration of the USSR and the break-up of the former Yugoslavia.

Persecution because of political opinions is naturally accepted when the petitioner reports a commitment to political action but must also be accepted, the Council of State pointed out, when the petitioner's activities, even when they have no political motive, are regarded by the government of his/her country of origin as a manifestation of political opposition likely to result in persecution (Council of State, 27 April 1998, *Beltaïfa*).

The case law arising from being part of a social group, which is not very extensive, involves chiefly the nationals from Southeast Asia whose pasts, as part of the wealthy business class, caused them to be regarded as counter-revolutionaries by the regimes in power in the countries of origin. It has only been recently that the more new issue of transsexuals belonging to a social group as defined in the 1951 Refugee Convention has been raised. In a ruling on a matter of principle in the case of an Algerian national, the Council of State held that the Appeals Board had to seek to determine whether the situation of transsexuals in Algeria made it possible to "regard the latter as constituting a group whose members would be likely to be exposed to persecutions because of the common characteristics that define them in the eyes of the Algerian government authorities and society" (Council of State, 23 June 1997, *O*). By applying this principle, the Appeals Board considered that with regard to

condemnation against them, the discrimination they face, and the attacks of which several of them were victim that went unpunished, transsexuals are at present in Algeria, due to the very characteristics that are unique to them, exposed to persecutions by large fractions of society, deliberately tolerated by the government authorities. They thus constitute, in the circumstances of time and place thus defined, a social group as defined in the 1951 Refugee Convention (Refugee Appeals Board, Special Combined Hearing, 15 May 1998, *O*).

The Appeals Board also recognised the existence, under the currently prevailing conditions in Algeria, of a persecuted social group in that constituted by "*the persons who are proud of their homosexuality and intend to manifest it in the outer behaviour and are thereby exposed to prosecution on the basis of the penal code which punishes homosexuality as well as police surveillance and bullying*" (Refugee Appeals Board, Special Combined Hearing, 12 May 1999, *Djellal*).

However, the fact that the petitioner is the father of five children in China cannot, not withstanding the risks of repression to which the petitioner is thereby exposed, cause him to be regarded as belonging to a particular social group as defined in the terms of the 1951 Refugee Convention (Council of State, 29 December 1993, *Cheng*). The concept of a social group effectively assumes the existence of a circumscribed and sufficiently identifiable set of persons (Refugee Appeals Board, 23 November 1998, *Mrs. Ayoubi* for a negative solution).

**The Nature of the Persecution:**

Persecution assumes a certain degree of gravity. Thus, being held in police custody for a short period of time or a simple ID check cannot be regarded as measures likened to persecutions as defined in the 1951 Refugee Convention. On the other hand, constant police pressure, bullying or vexatious measures repeated to the point the person who is a victim thereof can no longer live normally, can constitute persecutions when they stem from one of the grounds listed in Article 1, A, 2 of the 1951 Refugee Convention. According to consistent case law, persecution or fear of persecution must furthermore be personal in nature (Council of State, 21 May 1997, *Sahin*).

**The Perpetrators of Persecution:**

In keeping with established case law in France, a refugee is a person who flees state persecution. The alleged fears of persecution will be examined with regard to the authorities of the petitioner's country of citizenship or, failing citizenship, with regard to the petitioner's usual country of residence. Taking into consideration the consequences of the break-up of the former Soviet Union, the Appeals Board recently indicated the petitioner's usual country of residence should be considered as the county *in which he/she was born and lived on a permanent basis up until 1989*, in the case of a member of the Yezidia community living in the Ukraine but Armenian-born (Refugee Appeals Board, 5 April 2002, *Bakoev*), the country in which he was entitled to claim citizenship (Council of State, 2 April 1997, *Spivak*).

While the notion of encouragement has not particularly gained currency – persecutions are regarded as encouraged by the government authorities when they are perpetrated by groups who support the government in power (parallel police, paramilitary groups, political party, etc.) – the notion of voluntary tolerance on the other hand is more difficult to identify.

It must not be confused with the notion of the government authorities inability or powerlessness to provide for the protection of its citizens (Council of State, 22 November 1996, *Messara*).

The Appeals Board was forced to provide clarification that a reaction of voluntary tolerance of persecutions can take on the form of systematically refusing protection (Refugee Appeals Board, Special Combined Hearing, 22 July 1994, *Elkebir*). Similarly, the Appeals Board acknowledged that, in certain very particular cases, the efforts undertaken by the petitioner with respect to the government countries could be useless or to no avail (Refugee Appeals Board, Special Combined Hearing, 25

February 1994, *Ameur* for an Algerian persecuted by Islamic fundamentalists for converting to Christianity) or that the actual circumstances of a particular gravity could justify that a person may not at any time be able to seek the protection of said authorities (Refugee Appeals Board, Special Combined Hearing, 6 October 1997, *Bouziani* for a protesting Algerian artist who was abducted and forcibly held in detention where he received serious ill-treatment).

In addition to persecutions committed by individuals, the Appeals Board also takes into account persecutions carried out by non-state authorities. It is true that the events that have occurred over the past ten years have profoundly affected the state model as defined in international law: breakdown of States in Europe after the collapse of the communist block, splitting up of disputed territories between several self-proclaimed authorities, and emergence of new quasi-state national entities with as yet ill-defined sovereignties.

Realising the consequences of such unprecedented situations from the perspective of the application of the 1951 Refugee Convention, the Appeals Board coined the notion of *de facto* authority. Put forward during the war in Liberia (Refugee Appeals Board, 4 September 1991, *Freemans*), this notion made it possible to grant refugee status to victims of persecution which, not by the country's legal authorities themselves newly set up or rendered vulnerable by a conflict, were carried out by an authority that substituted itself for the legal authorities to conduct *de facto* all or part of functions normally devolved to the government authority of a State (Refugee Appeals Board, Special Combined Hearing, 12 February 1993, *Dzebric* and *Dujic* for recognition of the *de facto* Serbian authorities in Bosnia and in Croatia). This solution was later extended to other situations: South Lebanon and Afghanistan in 1996, Somaliland in 1999 and the Independent Territory of Iraqi Kurdistan in 2001.

However, when it appears that the fears reported are the result of a general situation of insecurity, case law has failed to apply the 1951 Refugee Convention (Refugee Appeals Board, Special Combined Hearing, 9 October 1998, *Maxamed* for a Somali national whose fears arose from the general situation prevailing in Somalia, divided into areas ruled by different clans and factions, and could not be imputed to the action of an organised power exercising *de facto* authority in the country).

In certain situations where it recognised the existence of a *de facto* power behind persecutions, the Appeals Board accepted that it was impossible for victims to claim the protection of government authorities in place on the national territory because they were rendered vulnerable (aforementioned *Dzebric* and *Dujic*) or because they no longer existed (Refugee Appeals Board, Special Combined Hearing, 6 October 2000, *Sheikh Wali* for Somali nationals persecuted by rival factions sharing a *de facto* power in Mogadishu.

But can a *de facto* authority itself be a source of protection as defined on the Convention for certain groups of individuals in a country? While this question has yet to be decided, the Appeals Board, which had been asked the examine the situation in Kosovo since the withdrawal of the Yugoslavian forces and the arrival of the UN Interim Mission, found that this Yugoslavian province was now considered to be a quasi-State placed under international mandate. It is thus as such that it determines whether individuals from this province warrant special circumstances making it possible to be regarded as being unable to claim the protection of the authorities currently empowered by virtue of a UN mandate (Refugee Appeals Board, Special Combined Hearing, 17 November 1999, *Hadzikadri*) or whether the fears alleged were voluntarily tolerated by the said authorities (Refugee Appeals Board, 30 April 2001, *Saljih*).

## IV. The Granting of Refugee Status on the Basis of the Family Unity Rule.

This rule was introduced as a general principle in refugee law by the Council of State (Council of State, Assembly, 2 December 1994, *Agyepong*). This is the second general principle of law that the Council of State articulated in refugee matters. The first principle prevents refugees from being

handed over, in any manner whatsoever, to the authorities of their country of origin within the limitation however set forth in Article 33.2 of the 1951 Refugee Convention (Council of State, Assembly, 1st April 1988, *Bereciartua Echarri*).

The basis for the family unity rule is in the protection granted to the refugee under the 1951 Refugee Convention and which, to be full and complete, must encompass the protection of his/her family.

However, case law has limited the application of this rule to the refugee's immediate family: his/her spouse (Council of State, aforementioned *Agyepong*) or his/her significant other (Refugee Appeals Board, Special Combined Hearing, 21 July 1995, *Lembe* upheld by the Council of State, 21 May 1997, *Gomez Botero*) on the proviso that they have the same nationality as the refugee and that marriage or the beginning of cohabitation occurred prior to date at which the refugee made application for refugee status. The refugee's children under the age of majority also benefit from the application of this family unity rule (Council of State, aforementioned *Agyepong*) on the proviso that they are under the age of majority at the date of the entry into France (Council of State, 21 May 1997, *Sirzum*).

Thus sticking to the refugee's immediate family, case law has not accepted that the family unity rule can require that the same status be granted to all the persons who are or who were, in the country of origin, dependent upon the refugee (Council of State, aforementioned *Sirzum* for the child having reached the age of majority upon arrival in France; Council of State, 7 October 1998, *Kanagaratnam* for a refugee's dependent ascendant), with a reservation for the case where there is an allegation of a special circumstance that could justify the application of this rule. Such is the case of a disabled person who is dependent, in material or psychological terms, upon a refugee on the double proviso that such special dependency situation existed in the refugee's country of origin before he/she entered France and that it gave rise to a guardianship measure placing the disabled individual under the refugee's responsibility (Refugee Appeals Board, Special Combined Hearing, 29 October 1999, *Soysuren*).

## V. Persons Who Do Not Qualify for Protection Under the Refugee Convention.

While Article 1 of the 1951 Refugee Convention defines the term refugee by articulating positive criteria that a person applying for refugee status must fulfil to be granted this status, it also provides for cases in which the applicant for refugee status does not qualify for the protection afforded under the Convention, in particular when deemed unworthy of such protection[3].

This is the gist of paragraph F of this article, the implementation of which relies on the existence of "*serious reasons to think*" that a person committed crimes or was guilty of actions disqualifying him/her from benefiting from the protection afforded under the Convention. The work of presiding judges ruling on refugee cases will therefore involve determining whether such reasons can exist based on all the information he/she has when taking a decision without being bound by the charges that criminal court magistrates could apply to such acts.

Persons targeted by the 1951 Refugee Convention's exclusion clauses are, in the first place, those persons for whom there are serious reasons to think that "*they have committed a crime against peace, a war crime or a crime against humanity as defined in international instruments introduced to provide provisions relating to such crimes…*" (Article 1, F, a).

Since the Refugee Appeals Board was set up in 1952, this clause, which is the result of the will of the architects' of the Convention to disqualify from any international protection persons considered to be responsible for the crimes set forth in the statutes of the International Military Tribunal in

[3] The 1951 Refugee Convention also provides, in paragraphs D and E of Article 1, for two other cases of exclusion targeting people already benefiting from a protection.

Nuremberg, was applied for the first time against a Polish national, a block chief at the Birkenau camp (Refugee Appeals Board, 14 May 1954, *Szafman*) then against two individuals who, from 1942 to 1945, belonged to a Croatian army unit responsible during this period for acts of the nature of those set forth in Article 1, F, a of the Convention (Refugee Appeals Board, 6 June 1961, *Rendulic* and 21 December 1961 *Ujevic*).

More recently, the Appeals Board was forced to exclude, on this basis, Rwandan nationals for whom there were serious reasons to think that they were accomplices to the massacre of Tutsis in Rwanda, which the international community described as the crime of genocide as defined in the 9 December 1948 Convention on the Prevention and the Repression of Crimes of Genocide (Refugee Appeals Board, 19 June 1996, *Ntagerura* and *Mbarushimana*; Refugee Appeals Board, Special Combined Hearing, 8 October 1999, *H*).

The persons targeted by the terms of Article 1, F, b of the Convention are those for whom there were serious reasons to think "*that they have committed a serious common law crime outside this host country*[4] *before being admitted there as refugees*".

Very early, case law made it clear that it was not necessary to give the word crime the precise meaning that French law confers upon it (Refugee Appeals Board, 7 February 1958, *Gardaï*), and that the notion of crime had to be appreciated separately from the criminal charge applied under domestic law (Refugee Appeals Board, 15 June 1991, *Saleh*). Furthermore, the notion of a serious common law crime covers a common law crime in the strict sense as well as a crime committed in connection with a political combat waged by the petitioner. In this regard, not only the gravity of the crime should be taken into account but also the goals pursued by the perpetrators and the degree of legitimacy of the violence that they carried out (Council of State, 28 February 2001, *Silva Ilandari Dewage*).

The third possible exclusion clause targets persons for whom there are serious reasons to think "*that they are guilty of actions inconsistent with the goals and principles of the United Nations*" (Article 1, F, c). Amongst the actions considered as such are first and foremost grave human rights violations. In the *Duvalier* ruling on 18 July 1986, the Appeals Board held "*that it was not found in the review that the petitioner had personally committed such actions, he necessarily covered them with his authority; that, subsequently, pursuant to the terms of the Geneva Convention, he cannot claim to benefit from said Convention*"[5].

Apart from this case, the degree of personal involvement of the petitioner in the commission of such actions (Council of State, 25 March 1998, *Mahboub*), which can be determined by the nature of the functions performed by the petitioners and their level of responsibility in judicial, penal or law enforcement agencies.

The Appeals Board thus holds that persons who have occupied positions of responsibility in judicial, penal or law enforcement agencies and who, in this capacity, covered with their authority and facilitated actions inconsistent with the goals and principles of the United Nations must be excluded from the benefit of the Convention (Refugee Appeals Board, Special Combined Hearing, 29 October 1993, *Brahim* for responsibilities in the Chadian political police's securities services; Refugee Appeals Board, 26 October 1994, *Khairzad* for a political official working in a prison where prisoners of opinion were detained in Afghanistan). This case law was applied more recently to persons having occupied positions of responsibility in the judicial, penal or law enforcement agencies of the fallen regime of the former Zaire (Refugee Appeals Board, Special Combined Hearing, 5 June 2000, *Dembre Nyobanga* for an official in the Special Presidential Division).

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[4] Council of State, Section, 25 September 1998, *Rajkumar* ruling that the commission of a crime in the host country by an applicant for refugee status is not one of the grounds that can legally justify a refusal to grant refugee status pursuant to the terms of b) of paragraph F of Article 1 of the 1951 Refugee Convention.

[5] Ruling upheld by the Council of State (Council of State, 31 July 1992, *Duvalier*).

Also covered by Article 1, F, c of the Convention are individuals who are subalterns only in charge of executing actions inconsistent with the goals and principles of the United Nations (Refugee Appeals Board, 2 October 1995, *Rubilika* for a member of a Hutu pro-government militia in Rwanda who committed acts of torture; Refugee Appeals Board, 18 May 1995, *Rabhi* for an Algerian police officer who committed such acts).

Finally, the Appeals Board held that actions inconsistent with the goals and principles of the United Nations could also be committed by persons who, without being part of the bodies in power, participated in the activity of judicial, penal or law enforcement agencies. It is thus that two nationals from the Democratic Republic of Congo who admitted their involvement, as informers paid by the former civilian guard, in the arrest and the persecution of opponents of the regime of the deposed president (Refugee Appeals Board, 8 December 2000, *Mrs. Okenge (formerly Mosengana)* and Refugee Appeals Board, 1st December 2000, *Mrs. Kufusura (formerly Musampa)*.

## VI. THE SUSPENSION OF REFUGEE STATUS

Refugee status is suspended when it appears that the refugee who has legally received refugee status no longer needs the protection of the Convention for one of the reasons provided for in Article 1, C of the 1951 Refugee Convention. Suspension also occurs when the circumstances of the case reveal that the application on the basis of which the status was granted was fraudulent. However, since the Appeals Board's decisions granting refugee status are final and conclusive, OFPRA is prevented from overturning such decision (Council of State, Section, 5 December 1997, *Ovet*).

However, the suspension of the status can only be done legally on the basis of Article 33-2 of the Refugee Convention which authorises a refugee for whom "*whom there are serious reasons to consider as a danger for the security of the country in which he/she is located or who, having been convicted for a particularly serious crime or offence, constitutes a menace for the community of said country*" to be turned over to the authorities of his/her country of origin (Council of State, 21 May 1997, *Pham*). In this case, it is up to the police authority to decide, under the supervision of the common law administrative judge, whether the person should be deported, including whether the individual should be deported to his/her country of origin.

In most cases, suspension occurs in the case where the refugee voluntarily claimed protection of the country that he/she fled because of fears of persecution (Article 1, C, 1). The Appeals Board, hearing an appeal against a decision by OFPRA taken on this basis, seeks to determine if the reasons for the formalities with the consular authorities (Refugee Appeals Board, Special Combined Hearing, 18 July 1997, *Dogan* and *Cacan*), and the issuance of a passport (Refugee Appeals Board, Special Combined Hearing, 21 November 1997, *Luntala Luzala*) were related to a compelling constraint. If this is not the case, such actions are regarded as acts of allegiance justifying the end of the refugee status.

Article 1, C, 5 concerns the change in the circumstances which had justified the granting of the refugee status. This provision of the 1951 Refugee Convention is generally applied in the case of a change in regime in the country of origin removing the personal fears of persecution which gave rise to the granting of refugee status (Refugee Appeals Board, 28 February 1984, *Ibarguren Aguirre*, relating to the democratisation of the Spanish regime).

But Article 1, C, 5 of the Convention is also applied in cases where the refugee's family tie that justified the application of this family unity rule has ceased existing (Council of State, 25 November 1998, *Niangi* for a divorce; Refugee Appeals Board, 27 September 2000, *Mrs. Tofan (formerly Constantin)* for the split between a cohabiting couple and Refugee Appeals Board, 10 October 2000, *Miss Kalenga Kalonji* for guardianship link to a refugee which ceased existing because the individual attained the age of majority). Though, absent some circumstance opposing the maintaining of the refugee status granted to a refugee's under-aged child on the basis of the family unity rule, the

individual's attaining the age of majority cannot cause him/her to loose such status. In such a case, the refugee certificate provided for in Section 3 of the Decree of 2 May 1953, as amended, is automatically issued and thus there is not need to determine if the individual would fear persecution in the event of return to his/her country of origin even if the individual petitioned OFPRA only several years after reaching the age of majority (Refugee Appeals Board, Special Combined Hearing, 10 October 2000, *Moua*).

Recently, the Appeals Board applied, for the first time in the case of a refugee who had Soviet nationality with his usual residence in the Russian Federation before obtaining refugee status, but since he had not received Russian nationality since the collapse of the Soviet Union, the provisions of Article 1, C, 6 of the 1951 Refugee Convention, according to which the Refugee Convention no longer applies to a person who has no nationality, if the circumstances pursuant to which such person was granted refugee status have ceased to exist, the individual is able to return to the country in which he/she had his/her usual residence (Refugee Appeals Board, 12 October 2001, *Belov*).

## VII. Appeals Against a Decision by OFPRA to Reject a New Application for Refugee Status

A person whose application for refugee status is rejected can always, now under certain conditions (*the last paragraph of Section 3 of the Decree of 2 May 1953, added by the Decree of 14 March 1997*), may reapply to OFPRA, then, if necessary, to the Appeals Board.

An appeal application against a fresh rejection by OFPRA is admissible and can be examined on the merits only if the petitioner alleges facts that occurred after the previous decision of the Appeals Board or of which it can be documented that the petitioner could only have had knowledge after such decision. It is up to the Appeals Board to determine whether they are documented and relevant and, if they do meet these two standards, to rule on all the facts that the petitioner has alleged in his/her new application, including those facts that the Appeals Board already examined (Council of State, 28 April 2000, *Thiagarasa*; )

However, a mere additional element of proof pertaining to known facts may not be regarded as a new fact (Council of State, Section, 27 January 1995, *Gal*).

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