



**iar  
mj**

# Bad Faith / Good Faith: the Decision-Maker's Dilemma

**Judge M Treadwell  
Chair**

**New Zealand Immigration and Protection Tribunal**



*Re HB, Refugee Appeal No 2254/94 (21 September 1994)*



“... we may have to draw a distinction... between those who unwittingly or unwillingly have committed a politically pertinent act, and those who have done it for the sole purpose of getting a pretext for claiming refugeehood. The former may claim good faith, the latter may not.”

Atlee Grahl-Madsen

*The Status of Refugees in International Law* Vol 1 (1966) 94



“... the tension, on the one hand, between the impulse to focus only on the risk of persecution in the country of origin as opposed, on the other hand, to the need to assess whether the refugee protection system is being manipulated and abused. For it could be said that the debasing and discrediting of the refugee regime will inevitably jeopardize the bona fide asylum seeker for whose protection the regime was intended.”

*Re HB, Refugee Appeal No 2254/94 (21 September 1994)*



“If a bad faith claim is to be held not to support an application for refugee status, the justification for this view must be founded on the interpretation of the Refugee Convention and not on a fiction, namely that the fear of persecution is not well-founded.... The only issue is whether that fear is, in effect, to be excluded from consideration. Only policy grounds could justify arriving at a positive conclusion which, in the words of Simon Brown J in *R v Immigration Appeal Tribunal, Ex parte B* 167 is ‘a surprising and disturbing conclusion, not readily to be arrived at’.”

*Re HB, Refugee Appeal No 2254/94 (21 September 1994)*



“[164] Our decision to interpret the Refugee Convention as requiring, implicitly, good faith on the part of the asylum seeker turns on a value judgment that the Refugee Convention... must be protected from those who would seek, in a sur place situation, to deliberately manipulate circumstances merely to achieve the advantages which recognition as a refugee confers. The sooner abuses of this kind are detected and eliminated, the longer the integrity of the refugee status determination procedures and the protection afforded by the Convention will enable the bona fide asylum seeker to escape persecution. Clearly this is the underlying assumption of the Convention.

*Re HB, Refugee Appeal No 2254/94 (21 September 1994)*



[165] However, the good faith principle must be applied with caution, not zeal.... It may be that a balancing exercise is called for and a careful assessment made of all the circumstances, including the degree of bad faith, the nature of the harm feared and the degree of risk.... We anticipate that only in clear cases... will an asylum seeker fall outside of the Refugee Convention by reason of an absence of good faith.

[166] On the facts of the present case, the balancing exercise leads to a very clear result. The degree of bad faith is high, the harm (questioning by the authorities) trivial and the risk non-existent.”

*Re HB, Refugee Appeal No 2254/94 (21 September 1994)*



## United Kingdom

- *Danian v Secretary of the State for the Home Department*, [1999] EWCA Civ 3000

## Australia

- *Minister for Immigration and Multicultural Affairs v Mohammed* [1999] 56 ALD 210





“ It may be that a balancing exercise is called for and a careful assessment made of all the circumstances, including the degree of bad faith, the nature of the harm feared and the degree of risk....”

*Re HB, Refugee Appeal No 2254/94 (21 September 1994)*