REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 70739/97

AT AUCKLAND

Before: S Joe (Chairperson)
H ten Feld (UNHCR Member)

Counsel for Appellant: D Ryken

Date of Hearing: 7, 8, 20 and 24 April 1998

Date of Decision: 17 December 1998

DECISION

This is an appeal against the decision of the Refugee Status Branch of the New Zealand Immigration Service (RSB), declining the grant of refugee status to the appellant, a national of the Russian Federation.

INTRODUCTION

The appellant arrived in New Zealand on 13 June 1997, together with his brother-in-law, AB. Both indicated upon their arrival at Auckland airport that they wished to apply for refugee status in New Zealand. AB lodged his application for refugee status with the RSB on 26 June 1997 and was interviewed by the RSB on 8 October 1997. In a decision delivered on 28 November 1997, the RSB declined his application. AB filed a notice of his appeal against this decision with the Authority on 23 December 1997. By letter dated 9 January 1998, the Secretariat advised that AB's appeal hearing was scheduled for 10am on Tuesday, 10 March 1998.

A formal application for refugee status was similarly filed by the appellant with the RSB on 26 June 1997. The appellant was interviewed in respect of his application

by the RSB on 24 September 1997. In a decision, delivered by letter dated 23 January 1998, the RSB declined the appellant's application. By letter dated 2 February 1998, Mr Ryken, as the appellant's counsel, filed a notice of appeal on the appellant's behalf with the Authority on 5 February 1998.

Subsequently, by letter dated 9 February 1998, Mr Ryken advised the Authority that he had also received instructions to act for AB and therefore would be acting as counsel for both the appellant and AB in their respective appeals. Mr Ryken further advised that as both the appellant and AB had, to some extent, shared experiences, each would be giving evidence in support of one another's appeal claims and, while their cases were slightly different, similar issues arose to be determined by the Authority. In such circumstances, Mr Ryken recommended that both appeals be heard together by the same constituted Authority panel. Given his unavailability, however, to attend the scheduled hearing date of AB due to a Court of Appeal fixture, Mr Ryken applied for an adjournment of this hearing, and for new hearing dates to be scheduled for both the appellant's and AB's appeals to be heard together.

By letter dated 13 March 1998, the Secretariat informed Mr Ryken that the Authority had directed that both appeals be heard together on 6 and 7 April 1998 respectively. On 6 April 1998, both appellants appeared before the Authority and confirmed that they wished their appeals to be heard together by the Authority, with each other's evidence being given in support of one another's appeal claims. (See the Authority's decision Refugee Appeal No. 70770/98 (17 December 1998) determining AB's appeal.)

On 6 April 1998, the Authority heard a full day's evidence from the appellant, and adjourned the hearing part-heard to be concluded on the following day, as scheduled. However, following the lunch-time adjournment on 7 April 1998, at which time the appellant's evidence before the Authority had yet to conclude, Mr Ryken made a formal application that Mr Bitiev, the interpreter assigned to the appeal hearing, be discharged from the proceedings and a new interpreter be assigned in his place. It was Mr Ryken's submission that he had, since the lunch-time adjournment, been advised by both the appellant and AB that they had, at Mr Bitiev's invitation, met his family for dinner the previous evening and now had concerns as to Mr Bitiev's commitment to his obligation of confidentiality in the appeal proceedings. AB, in particular, who had yet to give evidence, was reluctant to proceed with the appeal hearing in Mr Bitiev's presence. As for the appellant,

Mr Ryken could not elicit any definitive answer from him as to whether or not he would be willing to proceed. However, while Mr Ryken confirmed that he had no objections to Mr Bitiev's competence as an interpreter and wished to rely on the evidence already given by the appellant through Mr Bitiev, he submitted that his application for an adjournment of the proceedings be granted until such time that a further fixture could be arranged and a different interpreter assigned to the appeal proceedings. It is to be noted that Mr Ryken's submissions were made, at his specific request, in the absence of Mr Bitiev himself. Accordingly, Mr Bitiev was not afforded any opportunity to comment on the claims alleged by the appellants.

However, this matter aside, it was clear to the Authority that the proceedings would not be concluded that day. Further, if the Authority proceeded, it was likely that it would only have time to hear AB's evidence for a brief period only, and in view of the detailed nature of the evidence to be given, would result in a dis-jointed narrative that would assist neither the appellant nor the Authority. In such circumstances, while the Authority made no specific finding as to the merits of the application for an adjournment submitted by Mr Ryken, the Authority considered that the hearing be re-set to a further date for the purely practical considerations outlined above.

Accordingly, the proceedings were adjourned part-heard, and a further date was scheduled for 10 am on 24 April 1998. On 24 April 1998, the Authority heard the remainder of evidence from the appellant and the evidence also of AB. A different interpreter was assigned to assist on these occasions. Neither counsel nor the appellants indicated that there was any problem with the interpreter assigned.

BACKGROUND COUNTRY INFORMATION

For a detailed background to, and comprehensive commentary of, the Ingush-Ossetian conflict, see *Russia: The Ingush-Ossetian Conflict in the Prigorodnyi Region*, Human Rights Watch/Helsinki (May 1996). A summary at 2-3 describes the background to the dispute as follows:

> "Originally part of the Checheno-Ingush ASSR, the Prigorodnyi region was given to North Ossetia in 1944 after Stalin's forced deportation of the Ingush and Chechens from the North Caucasus that same year. When the Checheno-Ingush ASSR was reconstituted in 1947, Prigorodnyi was not returned, and North Ossetian authorities discouraged the Ingush from repatriating there. The Ingush consistently maintained their claim to the territory and their right to return; however, a poorly conceived 1991 law passed by the Russian Federation Supreme Soviet allowing for the return and territorial recompensation of Soviet nationality groups repressed and exiled by Stalin simply acted as a catalyst for the conflict. In 1991 and 1992,

tensions between Ingush and Ossetians in the region grew quickly, and there were numerous ethnically motivated killings and violent clashes before the ultimate explosion.

The present Ingush-Ossetian emerges from the policies of both Tsarist Russian and Soviet governments, which exploited ethnic differences to further their own ends, namely the perpetuation of central rule and authority. Tsarist policy in the North Caucasus generally favored Ossetians, who inhabited an area astride the strategically important Georgian Military Highway, a key link between Russia proper and her Transcaucasian colonies. In addition, the Ossetians were one of the few friendly peoples in a region that for much of the nineteenth century bitterly resisted Russian rule. Russian authorities also conducted population transfers of native people in the area at will and brought in large numbers of Russian Cossack settlers, thus creating resentment and competing claims for land.

Under the Soviets, local Cossacks were punished for their support anti-Soviet White forces during the Russian Civil War (1918-1921) and banished from the area, including from the Prigorodnyi region which was given to the Ingush, ostensibly for their support of the Red or Bolshevik forces during the conflict. Soviet administrators often arbitrarily created territorial units in the North Caucasus, thereby enhancing differences by splitting apart like peoples or fostering dependence by uniting different groups. In 1944, Stalin's paranoia led to the forced deportation of the Chechens and the Ingush (among other groups) and the dissolution of the Checheno-Ingush ASSR. The Prigorodnyi region, which had formed part of that unit, was given to North Ossetia, where it remained even after the reconstitution of the Checheno-Ingush ASSR in 1957.

Ossetians were also pawns of central policy. Many ethnic Ossetians living in Georgia and the South Ossetian Autonomous Oblast were told to move to areas in the Prigorodnyi region vacated by the Chechens and the Ingush in 1944. Soviet policy from 1960-1990 generally favored Ossetian attempts to control the Prigorodnyi region and prevent Ingush return. In April 1991, the Russian Federation Supreme Soviet passed the "Law on the Rehabilitation of the Repressed Peoples," which promised the Ingush return of the Prigorodnyi region but created no concrete mechanism to carry this out. Before the break-up of the Soviet Union, some Russian politicians, such as Russian President Boris Yeltsin, were favorably inclined toward the Ingush, who were seen as anti-Soviet and anti-center, i.e. against Soviet President Gorbachev and Soviet central authorities.

Lax or biased attempts by Russian authorities to deal with the conflict since its outbreak in 1992 have blocked its resolution. Few of those who committed the crimes mentioned above have been brought to justice. Russian forces deployed once the conflict broke out are implicated in the forced expulsion of the Ingush population from the Prigorodnyi region. In violation of orders to separate Ingush and Ossetian armed groups and stop the fighting, Russian troops either sat idly by while Ossetian paramilitaries and North Ossetian security forces forced out Ingush civilians along with the fighters, or they assisted those efforts with armor or artillery support. In other cases Russian troops did bring Ingush safely out of the conflict zone, but the question arises why those forces did not carry out their orders and stop Ossetian attempts to force out the Ingush, thus obviating the need to bring the Ingush out of harm's way. Once active fighting ended in mid-November 1992 and the majority of Ingush had been expelled from Prigorodnyi, Russian security forces did little to prevent widespread looting and wanton destruction of abandoned homes in the area."

THE APPELLANT'S CASE

The appellant is a widower in his mid-30s, originally from North Ossetia. His

father, who was Ingush, died of natural causes in 1982. His mother, an ethnic Chechen, died in 1992. The appellant's sister married AB, living with him in Grozny until 1992 when, due to circumstances referred to later in this narrative, she became separated from him until 1995. However, she, together with the appellant's wife and daughter, were all victims of the Chechnya war, having died during a bomb raid in Grozny in early 1995. The appellant has no other living relatives.

The appellant gave evidence that his paternal grandfather, part Ingush, part Russian, was a famous general under the last Tsar who had been knighted and was considered "extremely well-to-do". In Chechnya, there remains a "castle" which was known to previously belong to his family. The appellant claimed his surname or clan name was therefore a well-known one, a matter about which the appellant placed great significance in terms of his being readily identifiable should he return to Chechnya.

The appellant was born and raised in a village, O, in North Ossetia which was predominantly made up of Ingush and Chechen communities, located approximately 20 kilometres from the city of Vladikavkaz. Following completion of his schooling in 1979, he was conscripted into the Soviet military, and served two years of military service until 1982. Thereafter he returned to Vladikavkaz and studied part-time at an agricultural institute while also working on a farm. He completed his studies in 1988 and graduated with a diploma in engineering. Subsequently he obtained a position working as an engineer at a farm in a milk complex in C, located near Vladikavkaz in North Ossetia. In 1990 he married and in June 1991, his daughter was born.

In the five or so years prior to the Ingush-Ossetian conflict occurring in 1992, the appellant claimed that ethnic tensions manifested themselves specifically in the field of employment and generally in the treatment of Ingush and Chechens by the general populace in North Ossetia. During this period, the appellant claimed that without connections, ethnic Ingush or Chechens, such as he, found it difficult to obtain employment. The appellant avoided having drinks with his Ossetian work colleagues after work because, once under the influence of alcohol, they would talk about the presence of ethnic Ingush and Chechens in Ossetia and how they should return home. When he worked on night shifts, he was afraid to give orders to his workers as invariably they would say they did not have to follow the instructions of an Ingush. The fact that his wife returned from the market with

scratches on her face, having been told by other Ossetian women to return to Chechnya, were also early indications of the resentment at their presence in North Ossetia.

By 1992, nationalistic fervour in North Ossetia, which ran along racial divides, was high, and the appellant recounted to the Authority how he had narrowly missed being shot at by a “very hyped-up” police officer on his way home from work, who identified him to be ethnic Ingush/Chechen. The general hostility of Ossetians towards these ethnic groups was clearly apparent. In October 1992, the appellant, together with the 20 or so other Ingush and Chechen employees, were dismissed from their jobs at the milk complex. One sympathetic Ossetian worker advised the appellant not to return to work the following day, otherwise he was likely to encounter problems, and could even be killed.

One evening in late October 1992, amidst the shelling and gunfire, masked men broke down the gate outside the family home, and confronted the appellant, who by this time had gone out to the yard to meet them. The appellant’s mother, wife, and child remained inside, as did his sister, who was there on a visit from Grozny. The appellant recognised by their accents that the men were Ossetians, and one voice in particular he identified as belonging to an Ossetian from his neighbourhood. The masked men, armed with AK47s, asked the appellant “Do you want our land?” and then called him a dog. He was then hit and fell unconscious.

When the appellant regained consciousness, he found himself lying on the ground in the basement of a school, unable to move. The appellant had difficulty breathing. His stomach and legs hurt, and he deduced that while unconscious he had been beaten.

There were approximately 100 other ethnic Chechen and Ingush held in the basement. The appellant learned from the others that “ethnic cleansing” of Ingush and Chechens was being carried out, and in some cases, ethnic Ingush or Chechens had been shot. Prisoners who were seen as trouble-makers were often taken away and were never seen alive again. The appellant estimates that he was held in the basement for some three days. A piece of bread and water was provided each day. Others who had the money would be allowed a loaf of bread.
After three days, the appellant and other prisoners were transferred to a military base in a village called Sputnik, and told that they would be traded for Ossetians

living in the territories of Ingushetia and Chechnya. Upon his arrival in Sputnik, the appellant learned from others, with whom he reunited from his local community, that after he had been taken away by Ossetians, his sister, wife and child had similarly been forced to leave their home and were “traded” with Ossetians resident in Ingushetia. As for the appellant’s mother, the appellant was told she had insisted on remaining at home, and while allowed to do so, was later killed by shots were fired at the family home.

By agreement of the Ingushetian authorities, the Ingush and Chechens living in villages in North Ossetia were sent by bus to Nazran, in Ingushetia. In return, the Ingushetian government allowed Ossetians living in its territory to return to live in North Ossetia. This process of ‘trading’ was monitored by Russian troops stationed at the corridor or border between Ingushetia and North Ossetia to allow for a smooth transition of people to and from each area. The troops fortified the road along the border to prevent the busloads of people being traded from being shot. The appellant alleged that the Russian government had, in fact, provided the Ossetians with military supplies and arms and sided with the Ossetians against the ethnic Ingush and Chechens.

Although women and children in Sputnik were the first category of persons to be ‘traded’, after approximately one week the appellant was similarly traded to Nazran. The appellant told the Authority that he considered himself lucky to be traded, as he had feared that the Ingushetian authorities would have no further Ossetians to ‘trade’ for him. It is the appellant’s understanding that some who were not so lucky were left in Sputnik in such a predicament, and the Ingush were prohibited from returning to North Ossetia, given the Ossetians’ claim that the Prigorodnyi region belonged to them.

Upon his arrival in Nazran, the appellant registered his name and family details, so that this would assist his chances in reuniting with his family and was also issued with identity documents. These records were kept so that family members could trace and locate other family members from whom they had been separated during the war. The appellant and other arrivals were held in makeshift shelters, in schools, kindergartens or factories. The appellant arrived to find that there was a state of emergency in Ingushetia at the time, and therefore all camp inhabitants were subject to 10pm curfews.

Initially, the appellant claims, the presence of such an influx of Ingush and

Chechen people into Ingushetia was tolerated, largely because it was not expected that the Ingush-Ossetian conflict would last so long. Some locals regarded those displaced who had the same last name as them, to be their relatives, and therefore took them to their homes. However, the appellant learned that later, the population in Nazran having doubled after a couple of months, the increased pressure on the government's resources to provide food and other aid to the displaced Ingush and Chechens caused the attitude of the local populace to resent their presence.

After some two weeks in Nazran, the appellant left, having learned that his sister had taken his wife and child to live with her husband in Grozny. Upon his arrival in Grozny, the appellant went with his sister and reported his presence at her home to the local police. Having reunited with his family, the appellant learned a little of what had happened to them after he was knocked unconscious, although they were unable to tell him what had happened to his mother.

For several months, the appellant returned to Nazran whenever he received news that humanitarian aid was being delivered, to claim his allowance. The remainder of time he spent helping his brother-in-law AB, who was a mechanic, to fix cars.

The appellant and his family remained living with his sister and AB in Grozny until war broke out in Chechnya. In the beginning of 1995, the Russian military surrounded Grozny and air raids and bombing occurred in the town. It was in this context that the appellant stated that he and AB would nevertheless venture out during this time to search for the dead and wounded to bring them out of any further harm's way by carrying them to nearby basements. Others would be involved in tending to the wounded brought there. It was customary for Chechens to bury those who died in battle.

The appellant had been approached a number of times by Chechen freedom fighters to join in their cause. The appellant was aware that many young teenagers would join the freedom fighters in the mountains and fight. Many had lost their families during the war. The appellant, who was older, and seen to no longer have any ties to North Ossetia, was considered a prime candidate for recruitment. From his recent experiences, however, the appellant was all too aware of what could happen during a war, and thus did not want to take part. He feared for his family's future and did not identify himself with the Chechen call for independence. Having refused to do so, he was frequently threatened by freedom fighters and in some

cases told that if he did not join them, he would be "kill[ed] like a dog". Later, it became clear to the appellant that anyone who refused to fight for the Chechens was considered a traitor and risked facing the consequences, namely death. He recalled that a prominent Chechen commander officially swore on the Koran and declared in front of a crowd gathered at the city square, that a 'blood revenge' would be exacted on anyone who refused to fight and defend their country against 'the enemy'.

In the beginning of 1995, the appellant received his 'final' warning from a Chechen soldier, who reminded him of what the commander had proclaimed in the square. The appellant was told that he was betraying both his country and Allah, and that "if he was a man" he would fight. He was told that if the Chechens won, he would be rewarded, but that if they did not, he would die for a just cause, and by the wish of Allah.

Approximately two weeks later, while the appellant and AB were out searching for wounded, AB's home was bombed during an air raid. They returned home to find that the house had been completely destroyed. There was no sign that anyone had survived the blast. Not knowing whether their family had been inside the house at the time the bombing occurred, they searched for some time, to no avail. With no hope of finding their family alive, the appellant and AB decided to leave Grozny for Nazran, believing that it was safer there and that the Russian occupation along the Ingushetian/Ossetian border had ended.

Together they joined a column of people fleeing Grozny and, with the assistance of a guide, managed to avoid the Russian troops on patrol. They fled on foot, walking through the mountains, helping to carry the wounded. Eventually, after walking for a day or so, they reached a 'carriage town' or camp comprising small make-shift houses. The appellant claimed that they chose to remain in this camp merely to stay alive. Russian troops, in carrying out their campaign of "ethnic cleansing", bombed areas where ethnic Chechens were known to live. The camp in Nazran appeared, therefore, to be the safest option available at the time. There, they were provided with food and other humanitarian aid distributed by the United Nations and other international relief organisations, such as the International Red Cross.

Upon his arrival, the appellant and AB joined the queues of other displaced persons required to register their presence in Nazran. This registration process

was carried out by officials of the Territory of Ingushetia. AB registered his presence without problem. The appellant, however, having been identified on a supplementary "list" of names, was directed to join some 12 other Ingush or Chechens in a different room. The appellant understood this list to contain the names of those without relatives, and who were considered eligible and duty-bound to fight for the Chechen cause. The appellant stated that despite Ingushetia being a territory of the Russian Federation, it was historically part of the territory of the former Chechnya, and while its government did not officially have a military presence in the war, many volunteered to fight for the Chechens due to the close relationship which existed between the Chechens and Ingush historically.

The appellant was confronted by men armed with machine-guns and dressed in camouflage gear, asking him to join them in their fight. The appellant did not offer any response and was subsequently released. However, throughout his time in Nazran, the appellant remained under pressure to take up arms with the freedom fighters. This pressure eased only in the wake of the subsequent cease-fire agreement between the Russian Federation authorities and the Chechens in August 1996.

At Nazran, both the appellant and AB were issued with certificates which could be used to evidence their identity and which were issued by the Department of Internal Affairs of the Ingushetian authorities. This certificate, dated 2 February 1995, declaring that the appellant had lost his passport, was valid for one year, to 2 February 1996. Neither the appellant nor AB, however, renewed these certificates upon their expiry. Both were also issued with "Forced Migrant Certificates". These certificates recognised their status as forced migrants and provided them with a further means of passport identification. It is relevant to record that both the appellant and AB submitted these original documents to the immigration authorities upon their arrival at Auckland airport. Subsequently, they were mislaid, however, resulting in the appellant's file holding only the original of the certificate dated 2 February 1995 but not his Forced Migrant Certificate, and AB with the original of his Forced Migrant Certificate, but not his identity certificate.

The appellant and AB remained in Nazran for some two years.

Believing that the situation would not improve and that they would be better received in Kazakhstan, the appellant and AB decided to leave Nazran for Kazakhstan in the beginning of 1997. This belief was premised on the fact that

there was a large Ingush and Chechen community in Kazakhstan, many who were descendants of those deported to Kazakhstan by Stalin in 1944 and who had chosen to remain there; the rumours which had circulated within the Nazran camp that the Kazakhstan government would provide the internally displaced Ingush and Chechens with legal status to remain there; and other forms of assistance. The appellant and AB were driven to Kazakhstan by a truck-driver from Almata, hiding for most of the journey to avoid detection at border checks until they crossed the border into Kazakhstan territory in January 1997. The entire journey from Nazran to Kazakhstan lasted approximately one week.

The appellant stated that although he was aware of regulations requiring new arrivals in Almata to register with the police within 72 hours of their arrival, he had been advised by the truck-driver to instead register at W, an Ingush Cultural Centre and refugee aid organisation based in Almata. Both duly registered at W, and were given temporary shelter, staying with a couple who worked at the centre. After two days, AB moved out to find alternative accommodation.

The appellant stated that they had arrived in Almata, only to find that the situation for internally displaced Chechens and Ingush was no better than in Nazran. The appellant, who was clearly identifiable as from the Caucasus region due to his dark complexion, encountered much hostility from both the general populace, and the authorities at large. He was often stopped by police patrolling the streets by car and once his origins were known, made to stand with his legs spread against the police car, with his hands held behind his back. The authorities, as a matter of practice, searched him for money or attempted to find out if he had relatives from whom money could be obtained in exchange for his release. On one occasion, he was arrested nine times on the way home, despite making it known to the police that he had duly registered his presence at W. For this reason, the appellant left the task of approaching the Kazakhstan authorities for assistance to AB.

AB gave evidence that despite his attempts over some three months, he was unable to explain their predicament to either the Kazakhstan authorities or any other embassies he approached in Almata. He was told to wait for a representative to see him, but no such person ever came. Finally, he was referred to the United Nations office in Froonze, now known as Bishkek, but his attempts at receiving an audience with any official there was equally fruitless.

At the same time, AB re-established links with AD, one of the wounded he had

helped carry from Grozny to Nazran in January 1995 and who had, prior to their arrival, returned to Almata. By April 1997, AB had formed the view that he and the appellant were left with no other alternative but to leave Kazakhstan. AD had lived in Australia for some six years and, in view of their problems in obtaining assistance, suggested that he and the appellant go to New Zealand. AD offered to help them with their travel arrangements and accordingly proceeded to obtain Kazakhstan passports, the relevant visas and airline tickets to New Zealand. The passports, while in the names of both the appellant and AB respectively, had been obtained on the black market. These “tourist passports” falsely declared that the appellant and AB had both been born in and were citizens of Kazakhstan. The passports obtained had a low ‘street-market’ value given that the Kazakhstan government had issued a decree that such passports were due to expire in July 1997 and that outward travel beyond that date would not be permitted. AD did not ask for money or any other payment in kind for this assistance. It was the appellant’s understanding that AD regarded both as having saved his life and therefore was more than willing to offer them assistance in return. The appellant told the Authority that he did not entirely trust that AD would deliver them what he had promised, but left it to AB, who was better acquainted with AD, to liaise with him.

Accordingly, on 10 June 1997, the appellant and AB left Almata for Dubai where they stayed two days before subsequently flying to Hong Kong. From Hong Kong, they took a flight to Tonga and subsequently, using a return airline ticket to Auckland, travelled to New Zealand. They arrived in New Zealand on 13 June 1997.

The appellant fears that if he returned to the Russian Federation he would be arbitrarily detained by the Russian authorities or be subject to discriminatory treatment amounting to persecution from the local populace at large, given his Chechen origins. As regards his return to both Chechnya and Nazran, Ingushetia, relying on the ground of imputed political opinion, the appellant fears that he would be persecuted for his refusal to fight for the Chechen independence freedom fighters during the Chechnya conflict. He claimed that there was a real chance he would be identified in both regions given, that his surname, which revealed his aristocratic family background, would be well-known in those regions.

Finally, it is appropriate to record that the Authority received comprehensive submissions, documentation, country information and casebook material in support of the appellant’s claim. All of this material has been considered by the

Authority in determining the appellant's appeal.

THE ISSUES

The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly 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, is unable or, owing to such fear, is unwilling to return to it."

In terms of Refugee Appeal No. 70074/96 (17 September 1996), the principal issues are:

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?

2. If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

Before considering the issues as framed, we first consider the issue of the appellant's credibility. The Authority had the opportunity of hearing the appellant's evidence over the course of some two days, and also extensive corroborative evidence from his brother-in-law, whose appeal was jointly considered by this Authority. The Authority found the evidence of both appellants to be compelling. The sheer detail of the evidence proffered and the frank and spontaneous manner in which it was delivered leaves the Authority with no doubt that the appellant's account is true.

We turn now to consider whether, objectively on the facts as found, there is a real chance that the appellant would be persecuted if returned to his country of nationality, the Russian Federation.
The Authority has carefully considered the appellant's case and is left with a real doubt as to whether or not this particular appellant could safely live in the Russian Federation due to his half-Chechen, half-Ingush ethnicity. Accordingly, the Authority is prepared to give him the benefit of that doubt in finding that his fear of

persecution is well-founded. In reaching this conclusion, the Authority has taken into account the following factors:

1. Country information shows that while there are no direct flights to Russia from Australasia, other possible air routes via Asia, North America or Western Europe all use Moscow or St. Petersburg as entry points in to the Russian Federation (see Uspensky *The Insider's Guide to Russia* (CFW Guidebooks 1993) 181; *Russia, the Republics and the Baltics*, (Fodors 1991) 14; "Getting To and Around Russia" *Official Site of the Russian National Tourist Office* – accessed from the Internet (www.russiatravel.com/rustsp01.html). Alternatively, it is also possible to fly into southern Russia (Sochi via the Black Sea from Turkey, Krasnodar, Mineralnye Vody, Vladikavkaz, Nalchik and Makhachkala) (*Russia, Ukraine and Belarus,* Lonely Planet Guide January 1996 updated November 1996) 625).

2. The brutal war in Chechnya has caused a backlash of state condoned hostility towards Chechen nationals and other people from the North Caucasus. People from this area have been subjected to arbitrary detention, torture, beatings, harassment and systematic job and housing discrimination. Ethnic minorities are also scapegoats for immigration and population displacement and for the continued economic hardship Russia is experiencing (Human Rights Watch *A review of the compliance of the Russian Federation with Council of Europe commitments and Other Human Rights Obligations on the First Anniversary of its Accession to the Council of Europe* (February 1997) 19-23; Human Rights Watch *Ethnic Discrimination in Southern Russia* (August 1998) 2). A negative, collective image of ethnic Caucasians has been born in the mind of many Slavs. A new term "individual of Caucasian nationality" has entered the vocabulary of post-Soviet Russia and is used to convey images of ethnic strife, crime, drug trafficking, wild free market capitalism, speculation and undeserving migrants. The media, which often demonises ethnic Caucasians, has been part of this process (Human Rights Watch *Ethnic Discrimination in Southern Russia* (August 1998) 3).
   The appellant, by his very physical appearance alone, would be readily identifiable as being from the Caucasus region. While the appellant, through no fault of his own, no longer has in his possession his Forced Migrant Certificate, he does retain possession of the identity certificate

dated 2 February 1995 which also confirms his Chechen-Ingush ethnicity and North Ossetian origins. This document has since expired, being valid for only one year. Effectively therefore, the appellant, if returned to the Russian Federation, would be returning without any valid identity documents. There is clear country information evidencing that the state authorities perpetrate discriminatory practices against non-ethnic Russians and, in particular, persons originating from the Caucasus, in such cities as Moscow, St. Petersburg and other urban areas. These have reportedly taken the form of searches, beatings, arrests and deportation (see for example, Amnesty International *Torture in Russia "This man-made Hell"* (April 1997) 18, 22-23) and harassment through discriminatory enforcement of residence requirements, arbitrary identity checks on the street as an attempt to extort bribes, invasive identification checks at persons' homes and even destruction of identity documents (see for example, *Human Rights Watch, Crime or Simply Punishment? Racist Attacks by Moscow Law Enforcement* (September 1995)*;* Human Rights Watch, *A Review of the Compliance of the Russian Federation of the Russian Federation with Council of Europe Commitments and Other Human Rights Obligations on the First Anniversary of its Accession to the Council of Europe* (February 1997) 19-23; Human Rights Watch, *Moscow: Open Season Closed City* (September 1997)). These practices are also known to extend elsewhere in the Russian Federation. Further, in both Krasnodar and Stavropol, Cossack units, some of whom openly profess anti-ethnic migrant ideologies, are authorised to accompany police on passport checks. Since February 1997, they had had permission to carry firearms although they remain subordinate to federal authorities. In the name of law enforcement, they sometimes commit abuses against the local population, particularly ethnic Caucasians (see Human Rights Watch, *Ethnic Discrimination in Southern Russia* (August 1998) 2-3, and generally, United States Department of State *Country Reports on Human Rights Practices for Russian Federation:1997* (March 1998); Human Rights Watch World Report for Russian Federation: 1997 (December 1997), 271-272). To similar effect, see also "Chechnya objects to Russian 'discrimination'" *BBC Summary of World Broadcasts* (1 April 1998)).

Country information shows that despite a USSR Constitutional Supervision Committee ruling in 1991 invalidating *propiska* restrictions as of 1 January 1992 on the basis that such laws violated freedom of movement rights, this decision was never put into effect in major urban centres or other areas

experiencing significant in-migration. Regional authorities in Moscow, St. Petersburg, Krasnodar and Stavropol and elsewhere adopted legislation reinstating the *propiska* system at a local level with the resultant effect of detentions, fines and physical expulsions for those without *propiskas* from these areas (see discussion in Human Rights Watch "*Russian Federation: Ethnic Discrimination in Southern Russia"* (August 1998) 18-19). Further changes were made as a result of a second landmark Constitutional Court ruling in 1996, and more changes liberalising their registration regimes will be required as a result of a recent Constitutional Court ruling in February 1998 (ibid). However, whether the local authorities will implement these new laws in practice is unclear (ibid, 20-21):

> "Despite these legal arguments, the propiska system continues in practice for a number of reasons. Above all certain areas want to shield themselves from the wave of refugees and internally displaced persons fleeing the numerous ethnic conflicts on the territory of the former Soviet Union. Even if locally legislated residence requirements are prima facie non discriminatory, they are often invoked in an arbitrary way to the detriment of "undesirable" people, such as some racial or ethnic minorities, and in favour of people of political rank and privilege. Finally, the system serves as a mechanism for eliciting government revenue and bribes for law enforcement officers and local officials. Thus there is no incentive to remove the regulations, there is indeed an actual incentive to continue to evoke them. […]
>
> […] In addition, whether local authorities will dutifully implement – or respect – the law remains unclear. One month after the ruling, Moscow Mayor Yuri Luzhkov, for example, announced on local television that he had instructed Moscow's police departments to continue to enforce the old, unconstitutional registration regulations. The Russian government did not respond to this blatant defiance of federal law. Moscow's rules of residence and visitor's permits are the most stringent in Russia, and Moscow police enforce them in a way that is so predatory and discriminatory (targeting people with dark skin) that the rules appear as mere pretexts for abuse, including extortion, beatings, invasion of privacy and destruction of identity documents."

The Authority also has doubts as to whether the appellant's status as a "forced migrant" would afford him any particular protection, should he come to the attention of the authorities, either at the airport in Moscow or elsewhere in the Russian Federation, if stopped by a law enforcement official seeking to verify his identity. As already mentioned, the appellant no longer has in his possession the Forced Migrant Certificate that evidenced such status, this having been mislaid since he handed it over to the immigration officials upon arrival at Auckland airport. In any event, on the face of the Forced Migrant Certificate known to have been issued to AB, which was submitted by counsel to be identical in substance and form bar personal identifiers to the one issued to the appellant, it would appear from

the regulations referred on the Certificate that the appellant's Forced Migrant status in Nazran would have lapsed once he left Ingushetia for Kazakhstan and that regulations required that he re-register as a Forced Migrant in his new place of residence, in order to be considered to be legally entitled to remain there. The Authority notes from an extract in Amnesty International *Russian Federation Failure to Protect Asylum Seekers "We don't want refugees here – go back to your own country"* (April 1997)*)* 11, 14 (*footnotes 22 and 27)* that an ordinance was issued by the Mayor of Moscow, Yury Lushkov, on 14 March 1996 "On the procedure for recognition of the status of refugees and forced migrants in Moscow city" which stipulated:

> "… that in order to obtain a residence permit for Moscow, forced migrants are required to have close relatives in Moscow who are registered and who provide a letter of agreement for the registration of forced migrants for no less than a year. The Act states that "Refugee status can be given to someone who has a residence permit for Moscow". It goes on to say that the Governmental Commission For Accommodation needs to be consulted by the migration service before a person is given status either of forced migrant or of refugee. in order to be recognised, In terms of the rights of residence without the need to comply with any propiska or equivalent residence permit requirement.

Moreover, there is clear country information to suggest that the Russian police officers do not recognise even asylum-seekers' identity cards issued by the UNHCR office in Moscow or other official documents which are then frequently destroyed. Non-CIS or Baltic states asylum-seekers and others of non-Slavic origin are often targeted by police due to their physical features through the legal right of police to make random identity checks, extortion, beatings and general intimidation. Once apprehended, they are usually fined for not having a residence permit and often detained in custody (see Amnesty International *Russian Federation Failure to Protect Asylum Seekers* supra, 15). While there is limited country information regarding the state's current treatment of Forced Migrants**,** as distinct from asylum-seekers, if nothing else, the above information is sufficient to cause the Authority to doubt whether the state would be any more tolerant towards such persons as the appellant.

Aside from the fact that the appellant has no other living relatives in the Russian Federation, let alone Moscow, it is the Authority's view that, cumulatively, such factors as the appellant's ethnicity, his physical features which clearly identify his Chechen origins, his lack of any valid identity

documents or *propiska*, and the known country information of the treatment towards such persons at the hands of the authorities, place him in a particularly vulnerable position to such an extent that there is a real, as distinct from a remote, chance that he would be subject to an identity and/or or residence permit check by law enforcement agencies, causing his Chechen origins, if not already apparent from his appearance, to become known. Further, the appellant's background as an internally-displaced person or "forced migrant", even if disclosed by the appellant to the officials, would likely serve to exacerbate rather than alleviate his already vulnerable position at the hands of the authorities. In such circumstances we find, for all of these reasons, that there is a real chance the appellant would be subject to the various arbitrary treatment referred above. There is also a real chance that the appellant would face discrimination from the local populace at large, in light of the xenophobia currently pervading Russian society against non-Slavic persons from the Caucasus.

Such treatment referred above would cumulatively amount to a sustained and systemic violation of the appellant's core human rights or the denial of human dignity in any key way amounting to persecution (see Refugee Appeal No. 2039/93 (12 February 1996) 15). These rights include his right to freedom of movement guaranteed in the Russian Federation Constitution and article 12 of the 1966 International Covenant on Civil and Political Rights (ICCPR), the right to liberty and security of person (ICCPR, article 9), and the right to freedom from arbitrary detention (ICCPR, article 9), the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (ICCPR, article 7).

In a response, dated 27 August 1998, to the Authority's country information request regarding the appellant's particular claim, the United Nations High Commissioner for Refugees headquarters, Geneva, appraises the situation as follows:

> "On the situation of ethnic Chechen in Russia, indeed there is a pattern of xenophobia and discrimination in Russia. Moreover, through local and regional decrees, local and regional authorities have imposed very strict limitations to freedom of movement and choice of place of residence (although at the federal level the right to freedom of movement and choice of residence is guaranteed by the Constitution). Based on these decrees, persons who do not hold a permanent residence permit are subject to fines, detention and police harassment. In view of the criteria imposed by the local authorities, permanent residence permits are in practice nearly impossible to obtain in most of the developed regions of Russia and in particular in Moscow.

> The Russian Constitutional Court repeatedly reiterated that such decrees were contradicting the Constitution, but with no success so far.
>
> In practice, persons from the Caucasus (as well as foreigners, in particular asylum seekers from non CIS countries, such as Afghanistan, Angola, Somalia etc.) are the favourite targets of police, checking whether they have a residence permit.
>
> We have read the Helsinki Watch report which is referred to in the Memorandum of the Refugee Status Appeals Authority and the information it contains do concur with our assessment of the situation.
>
> In December 1997, UNHCR the Council of Europe and the OSCE organized a joint conference in Kyiv on freedom of movement and choice of place of residence in the countries of the CIS aimed at drawing the attention of the authorities of the highly detrimental effect the current practices were having on the situation of IDPs [internally displaced persons] and refugees.
>
> In conclusion, on the first question
>
> -yes there is a pattern of xenophobia amongst the local population and discrimination by the local authorities towards persons referred to as "of Caucasian nationality" in parts of Russia other than the North- Caucasus. ...
>
> I am also forwarding the memorandum to RO Moscow for updated information on returnability to Ingushetia (as mentioned in the Memorandum, return to North Ossetia of ethnic Ingush is at present excluded) and feasibility of return to Chechnya.
>
> 3) In conclusion, IC's story do reflect well the characteristics and complexity of displacement in Russia. As far as the question of returnability to Ingushetia and Chechnya are concerned, RO Moscow shall come up with updated information."

4. It is therefore implicit from the Authority's findings above, that the Authority is also satisfied that the appellant could not safely negotiate his way back to his former places of residence, whether it be his former home village in North Ossetia, Ingushetia or Chechnya. To do so would necessitate him having to travel through territory where there is a real chance that the appellant would be persecuted by both state and non-state agents, given the known country information regarding the treatment of dark-skinned people from the Caucasus region and the fact that the residence permit system still prevails in the Russian Federation.

   Moreover, in a supplementary response from UNHCR headquarters, dated 17 September 1998, it is clear that even if the appellant could safely reach North Ossetia, there is a real chance that he would be persecuted by local Ossetians given the continued hostilities in the Prigorodny District and that the appellant, even if allowed to return to Nazran, would have no real prospects for integration:

> "Wish to note that both stories sound credible.
>
> (First Applicant [i.e. the appellant]) In addition to what already stated by [UNHCR HQ], ROM would like to point out that the situation in Prigorodny District is extremely volatile. You may see from the attached messages that tensions between Ingushetia and North Ossetia have recently increased. On 12-13 September Ossetian extremists burnt down 40 new build houses for (ethnic Ingush) returnees in the village of Kurtat, 9 houses in the village of Dachnoe and over 150 wagons used as temporary shelter by returnees in other villages of the Prigorodny District. Against this background we would strongly recommend not to return ethnic Ingush to Prigorodny area for the time being. [Note: attached messages enclosed from UNHCR Monitors are dated 15 September 1998 and 14 September 1998 respectively and confirm the information cited].
>
> While the IC could return to Ingushetia, where as ethnic Ingush he would not face discrimination or persecution, it has to be noted that he would be living there as internally displaced without real prospects for integration, as the Ingush authorities insists that Prigorodny IDPs [internally displaced persons] should in the long run repatriate and not settle in Ingushetia."

It is appropriate to record that the Authority has some reservations as to whether or not there would be a real chance that the appellant would be persecuted if returned to Chechnya, due to his clan affiliation and for his failure to support the Chechen freedom-fighters during the Chechnya conflict, or indeed were he to return to Ingushetia. In any event, the Authority finds it is unnecessary to make a specific finding in this regard given that it is willing to accept the inherent dangers that the appellant would face in order to reach such areas (i.e. his travelling through territory where the Authority is satisfied there is a real chance he would be persecuted for the reasons already stated).

Accordingly, for the foregoing reasons, the Authority finds that there is a real chance that the appellant would face treatment which cumulatively would amount to persecution were he to return to the Russian Federation. Such persecution would be for reason of race. Accordingly, the appellant does have a well-founded fear of persecution for one of the five Convention grounds in terms of the Refugee Convention.

CONCLUSION

For the reasons stated, the Authority finds that the appellant is a refugee within the meaning of article 1(A)(2) of the Refugee Convention and its 1961 Protocol. Refugee status is granted. The appeal is allowed.

Chairperson