

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO.71313/99

AT AUCKLAND

Before: A B Lawson (Chairperson)
S R Sage (Member)

Counsel for Appellant: Mr M Hine
Mr C Amery

Representative of NZIS: No appearance

Date of Hearing: 23 March 1999

Date of Decision: 8 July 1999

DECISION

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

INTRODUCTION

The appellant was born in 1972 in S a town of about 4000 people in the district of G-B (which is in the south of Tajikistan). Both his parents were born in the Ukraine. The family was of Russian ethnic origin and of the Orthodox Christian religion. His mother died when he was three years old and his father died in 1986. He had no siblings. When his father died the appellant, who was then about 13 years old, was cared for mostly by neighbours as he had no near relatives. His father owned a house which the appellant inherited, and in which he lived until

1998 when he made his decision to leave Tajikistan. The appellant completed his schooling in 1987 at the age of 15 and then undertook a course at a technical college where he qualified as an auto mechanic. About this time he was issued with a Soviet passport. From 1988 until 17 November 1998 the appellant was employed as a mechanic in an auto repair factory in his town.

On 17 November 1998, he was made redundant. After a short period living with and helping out a friend, doing odd jobs for him, the appellant decided to go to the capital to seek work. However, not finding work there, on or about 1 January 1999, he travelled to Moscow where he obtained employment in building construction work. After about three weeks in that employment, he decided to leave Russia altogether and then travelled to the port of K, where he was able to stow away on a Russian cargo ship sailing for England. He arrived in England at about the end of January 1999 and remained in London for approximately a week. Then, acting on the advice of acquaintances he had met in London, he decided to come to New Zealand. In order to achieve that object, he was referred to a Romanian agent who, for the sum of about US \$2000, provided him with a false Irish passport and air tickets for New Zealand. He arrived in New Zealand on 9 February 1999 and because he had been travelling on false documentation, he was detained in custody. He was later released on the application of his counsel. He made his application for refugee status upon arrival on 9 February 1999. He was interviewed by the RSB whilst still in custody on 15 February 1999. His application was declined on 18 February 1999. He then appealed to this Authority.

This appeal was first set down for hearing before the Authority on 12 March 1999. Upon application of counsel, an adjournment was granted to 23 March 1999 to enable counsel to prepare more extensively for the hearing and, in particular, to research the issue of the appellant's possible entitlement to Russian citizenship, an issue raised by the RSB in its decision. Just prior to the adjourned hearing date on 23 March 1999, counsel made a further request for an adjournment to enable the issue of citizenship to be further explored. However, the Authority indicated that the application would be dealt with at the commencement of the hearing. The application was accordingly renewed at that time and after discussion between the Authority and counsel, it was agreed that the hearing would proceed but leave was granted to enable counsel to provide within 21 days any further evidence, submissions or relevant country information. No such submissions or information were received within the period but counsel was granted further extensions of time. The Authority has now received further

submissions and material from counsel. All written submissions and country information material have now been considered by the Authority before reaching its decision.

THE BASIS FOR THE APPELLANT'S CLAIM

The appellant claimed that he feared persecution by reason of his race, (ethnic Russian) and/or religion (Russian Orthodox). The claim was that the native Tajiks, who are Muslim, persecuted the appellant by reason of his Russian origins and Christian religion. The appellant's claims can be conveniently described under the following topics.

Discrimination At Work

At its prime (in about 1990) the factory where the appellant worked employed a total of about 150 workers. However, by 1998, that figure had dropped to about 40, [which the Authority notes still included a few Russians]. The appellant claimed that the Tajik members of the workforce abused him physically and verbally on a regular basis, commencing about the beginning of 1998. He said that he was beaten by a particular fellow work-mate several times a week. This man also ridiculed his Russian origin and made it plain that Tajikistan was their country and the Russians should get out. It appeared that the beatings and the abuse took place after work when the appellant's fellow workers were affected by drink. It was a regular custom for the workers to start drinking towards the end of the work day and then they became argumentative and fought or assaulted the appellant and other Russian workers.

When asked by the Authority for more detail, the appellant said that they would kick him and if he was carrying something they would push him. They would not let him pass them without a push and would also confront him in the changing rooms and grab his clothing and throw it about. It appeared however that the Tajikis also fought amongst themselves. The appellant had heard that on one occasion a Tajik had been stabbed, during a drunken brawl, and that they had applied vodka to the wound and then "everything was patched up". The appellant said he did fight back if he could but there was not much that he could do when he was set upon by two or three. He said it was worse when they were drinking.

As the appellant had apparently worked at this factory for about 9 years before these incidents occurred to him, the Authority asked what it was that had brought about a change of heart in about 1998. The appellant explained that previously there had been many workers and more Russians there, but by late 1997, most of them had left. He said that some of the Russians had gone to Russia to reside permanently with relatives and friends and some had gone to work "all over the place". When the Authority suggested that the Tajik workers had also decreased in numbers in this period, the appellant agreed but said that fewer Tajik workers left compared to the Russians.

The appellant was asked by the Authority if he had complained to his boss about his ill treatment and he said that he had done so when it had first started. He went to the boss about three times and his boss just said that "they" (the Tajiks) were "playing up" when they got drunk and it would go away, but the appellant said it never did. The appellant however conceded that his boss did his best to keep order as he was trying to protect himself from trouble as well. The police were never called but the boss once told them that if someone was killed, the police would have to be called to investigate a murder.

The appellant had suffered bruises and lacerations but there were no broken bones and he did not receive any medical treatment other than some self administered disinfectant and bandages. He said that the factory nurses office had been closed down in 1997 and there was no nurse available at the workplace after that time.

ABUSE ON WAY TO AND FROM WORK

The appellant walked to and from his work as there was no other form of transport. He could take a "short cut" of about 20 minutes but the "long way" took about 40 to 50 minutes. The appellant complained that practically every day if he took the short cut on his way home at about 5pm, Tajikistan women would be outside cooking and washing and their children would be outside with them. The mothers would point at him and say to their children "there's a Russian, what are you going to do?" The children would then pick up stones and sticks and throw them at him. If he tried to chase them or yell at them, the mothers would come out and scream at him and make it clear that he was not welcome. However, he said that in order to avoid this trouble he took the long way around to his work but if he was tired, he would tend to take the short cut. The problem with the short route was it was

nearer the centre of town and went through a settlement of Tajikis while the long route was on the outskirts.

REDUNDANCY

On 17 November 1998, the appellant lost his employment at the factory. The appellant said the management told him that it was part of a “redundancy programme” and said there was not enough work for everyone and as he was young and had no family or children, he would have to go. He received one week’s notice. He did not know what to do. When asked whether he looked for other employment, he said it was impossible to get anything in his town, everything was closed and they had huge unemployment. It was not worthwhile looking anywhere near where he lived. He was asked by the Authority if he considered going anywhere else to look for work but he said he wanted to stick with his friends and go somewhere else. The majority of the people were unemployed and there were no state unemployment benefits. His friends knew some people who were working in Afghanistan but he did not know any of them. Some people he knew went to China and several went to Russia. He simply worked around the house and helped his friend, who had a large family, with babysitting and collecting wood and fixing the roof and things of that sort. The appellant was asked if there were any other businesses in the town apart from the factory where he had worked. He said there was another factory but it also closed down and staff were made redundant. It closed down completely sometime in 1998, before he was himself made redundant, although the office may have remained open for a time the factory did not hire anybody anymore.

HOUSE BURNT DOWN

The appellant told the Authority that during his period of unemployment when he was spending most of his day time at his friend’s place, his house was burnt down. One day at about 2pm a neighbour ran to his friend’s house and told him that his house was on fire. The appellant did not think this was possible because it was made of stone. However, he ran home and found that the house was ablaze and there were several petrol cannisters lying around. There was no fire brigade in the town. He and his friends tried to put the fire out with water buckets and they managed to extinguish it. The appellant said that he suspected his house had been set on fire by a Tajik work mate who had been one of the “leaders of the pack” who had picked on him most often and who lived nearby. This man had

once told him they would “smoke him out”. It was put to the appellant by the Authority that if this fire had been started deliberately in the way claimed, it seemed curious that the arsonist would leave petrol cans lying out on the roadway or around the house instead of leaving them inside the house or throwing them in the fire. However, the appellant insisted that this was the way it was. He was asked if he reported the fire to the police and he said that he had done so. The policeman said that he could give him no help but gave him paper and told him to write a statement if he wished to lay a complaint of arson. The policeman said that he would have to show it to the suspect named, and he, the appellant, would have to deal with the suspect’s reaction. The policeman really warned him that the suspect might then take revenge on him. Consequently, nothing further was done about it. The appellant was able to salvage some of the contents of the property which he sold. He was then asked if he was able to sell the house (or what was left of it), he said “no”, he just left it to his friends as there were too many empty houses there which nobody wanted and which could not be sold.

APPELLANT LEAVES HOME TOWN

The appellant finally decided to try his luck elsewhere and on 21-22 December 1998 left his town. He first travelled to the capital of Tajikistan which took him about two days, hitching rides on the way. He met other Russians there and he thought he could get work and settle. However, there were not many Russians left there and they told him that “they” would shoot the Russians in the street and he was advised to go to Russia. He stayed only about 24 hours in the capital and then took a train to Tashkent and travelled further through Kazakhstan and finally arrived in Moscow on about 1 January 1999. He stayed in Moscow for three weeks and during that time, was able to obtain employment on construction sites which required heavy physical labour. He said he tried to find out about his “situation” i.e. meaning the situation of a man with no family, no papers and no motherland. He said he asked the police and they told him about half the people in Moscow had similar problems, i.e. they were without work and without papers. The police gave him a “friendly piece of advice”, by recommending that he not stay there long as they would have to stop him and check his ID. If he did not have any, they would have to put him in jail until such time that he could establish his identity. The appellant said he did not have any papers because all his documentation had been destroyed in the house fire. The Authority put to him that he could have obtained replacements for his destroyed documents, including his Soviet passport, and could have obtained copies of his birth certificate and other

important documents. He claimed that it was impossible to do that as all the relevant offices had closed down. It was put to him that he could have obtained them at the head offices such as in the capital. However, it was clear he had never applied nor made any effort to replace his papers and when he was pressed by the Authority on this, he claimed that it might take a year or more to get the necessary identification papers. It was also put to the appellant, by the Authority, that as he was a citizen of the former Soviet Union and had a Soviet passport, he would be entitled to reside in Russia. However he claimed that he did not think that was so and that he believed that he would have to reside there for five years before he could obtain any right. Whilst he was in Moscow, he said he was mixing with people who were giving him all sorts of advice and in the end, there appeared to be nothing left but for him to go to Europe. Accordingly, he took a train to the port city of K, here he was able to stow away on a cargo ship, and after a 5 day journey, arrived in England. He had with him about US \$3000. He did not know where the ship had berthed in England but he took a train to London and spent about one week there, during which time arrangements were made for him to obtain a false Irish passport and air tickets to New Zealand. He arrived in New Zealand with about US \$200 left over. The agent, who arranged all of this, was apparently from Romania.

The reasons why the appellant decided to leave London and come to New Zealand were then explored by the Authority. A somewhat bizarre account was given of his time in London and how he came to make the decision and the arrangements to come to New Zealand. However, for reasons which will be mentioned later, the Authority does not accept that the decision and the arrangements came about in the manner which the appellant related. However, the point is of no particular significance in the overall context of his claim. When asked why it was that New Zealand was chosen, he said he had been told that New Zealand accepted refugees and there was nothing he could do in the United Kingdom, the USA or Canada but New Zealand was the last place left still taking refugees.

The appellant was then asked to explain why it was that he had left Tajikistan. He said that he could not live there anymore and he would have been killed. The reason why he would be killed he said was because he was a Russian and a Christian. It was suggested to him that he could live in the northern part of the country where there were more Russians but he would not accept that. It was also suggested to him that he had the protection of the Tajikistan state. He said that in

his town, there was only one community policeman who was a Tajik and he could not have taken any action. It was put to the appellant by the Authority that neither he nor any of his friends had in fact come to any harm or been killed. To that the appellant responded that "they first threaten you and if you don't get out, you have nobody else but yourself to rely on". He has not been in touch with anyone in his home country since he arrived in New Zealand. The Authority then put to the appellant that the Authority had difficulty in concluding how the events that he described could amount to persecution in terms of the United Nations Convention. However, the appellant claimed that as far as he was concerned, what had happened to him amounted to persecution and he could not go back.

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

CREDIBILITY

The Authority has reservations about certain aspects of the appellant's allegations but is prepared to accept the general claim that he suffered discrimination at the hands of native Tajiks. It is also accepted that conditions in Tajikistan were very difficult economically at the time he described. Businesses and factories were closing, there was massive unemployment as a result and the appellant himself was made redundant (along with many others both of Russian and Tajik origin). In

other words, life in general was extremely difficult for him. However, the Authority notes that it was also difficult for other citizens of the country, particularly those living in small or isolated areas. There was no doubt considerable migration from these small areas to the main cities and for the Russians from there to Russia and elsewhere as people searched for employment and a better life. However, the Authority does not accept the claims that the appellant's life was at risk because of his Russian ethnicity or orthodox Christian beliefs.

The Authority is satisfied that there has been a considerable degree of embellishment, particularly in regard to the frequency of the harassment and discrimination suffered by him, both at work and on the streets of his town. The Authority also found it difficult to accept the story that his trip to England was quite as he described it, nor that his acquisition of the information which finally persuaded him to come to New Zealand was gained through fortuitous meetings with Russians under bridges where he slept for most of the time he was in London as he described it in evidence. Nor does the Authority accept that all the arrangements to come to New Zealand were made in London. However, such matters are of peripheral relevance only and it is possible the reason for his reluctance to be frank about them is because he did not wish to disclose the precise methods or identity of persons who made the arrangements for him. The difficulty with the appellant's claim, however, does not relate to matters of credibility, but to issues concerning persecution, relocation and state protection. To these matters, the Authority now turns:

Human Rights Watch April 1998, Vol 10, No 2 D at p.6 reports:

"TAJIK'S GEOGRAPHY, DEMOGRAPHY, AND ECONOMY

Tajikistan, a member of the Commonwealth of Independent States (CIS), declared its independence from the USSR on September 9, 1991. It became a member of the Conference on Security and Cooperation in Europe (renamed the Organization on Security and Cooperation in Europe, in 1994) in January 1992, and of the United Nations in March of the same year. Tajikistan covers a mostly mountainous land mass of 143,100 square kilometers, bordering China, Uzbekistan, Kyrgistan, and Afghanistan, with which it shares a border of more than 1,000 kilometers. According to the 1989 USSR census, the last census to be taken in the country, Tajikistan's population was 5.1 million. New studies estimate the country's current population at about 5.7 million, of which about 62 percent (3.5 million) are identified as Tajik, 23 percent (1.3 million) as Uzbek, 8 percent (456,000) as Russian, 1.4 percent (79,8000) as Tartar and 1.3 percent (74,100) as Krgyz. Tajik, the state language of Tajikistan since 1989, belongs to the western Iranian language group and is similar to the Persian spoken in Iran. Most Tajiks are Sunni Muslims, with the exception of Pamiris (see below), who are Ismaili Muslims.

The poorest of the post-Soviet Central Asian republics, Tajikistan's economy has collapsed since the civil war. At the end of 1996, Tajikistan's gross domestic product was estimated to be at 40 percent of that of 1991, and the average monthly salary was about U.S.\$9.60. The World Bank estimates the country's unemployment rate at 40 percent, the highest in the CIS. According to the United Nations, all social services are in a virtual state of collapse, at least 70 percent of the country's medical supplies are provided by humanitarian organizations, and less than one-third of the population has access to clean drinking water. Inflation also ravages the country's devastated economy: in September 1997, the National Statistical Agency reported that consumer prices had risen by 222 percent since the beginning of the year.

Tajikistan's five regions differ in topography, economic development, culture, and in certain cases—in terms of religion, ethnicity and language. These differences play a critical role in internal politics and were crucial in determining loyalty in the civil war. Perhaps the most distinct region ethnically is Gorno Badakhshan, located southeast of Dushanbe. Set in the Pamir mountain range, the Gorno Badakhshan Autonomous Oblast is the least developed economically. The majority of its inhabitants are Ismaili Shiites, whereas most other Tajiks are Sunnis. Pamiris speak at least six different dialects of eastern Iranian, which are distinct from Tajik, and are thought to consider themselves as Pamiris, as distinct from Tajiks. The Garm valley, northeast of Dushanbe, is a mainly agricultural, mountainous region whose population is known for being the most religious in Tajikistan. The Leninabad oblast to the north, and Hissar, to the west of Dushanbe, are the most economically developed regions and have significant Uzbek communities. Khujand, the capital of Leninabad oblast, was traditionally the source of communist party elites.

To the south are the former Kulab and Kurgan Teppe oblasts, now joined together to form the Khatlon oblast. The current government is dominated by people either from Khulab, a region of mixed topography and economy, or of Kulabi origins. Kurgan Teppe, previously desert land, was irrigated for growing cotton and other crops in the 1940s and 1950s. The area was populated mostly through Stalin's policy of forced migration, under which a significant portion of Kurgan Teppe's population was transplanted from Garm and Gorno Badakhshan.

Leninabad Oblast

The northern Leninabad oblast, with Uzbekistan bordering all but its southernmost limit, is separated from the rest of Tajikistan by the formidable Hissar-Alai mountain range. The lone road linking Dushanbe to Khujand is closed for at least six months each year due to hazardous winter road conditions and a dangerous mountain pass at Anzob. Leninabad oblast is the most developed region in the country and is its industrial heartland. Major industries include textile manufacturing, mining, and processing of ores such as gold, silver and antimony. The oblast's population of two million, 33 percent of which is ethnic Uzbek, makes up over 30 percent of the country's population. Khujand has a population of 200,000 and is the second largest city after Dushanbe".

PERSECUTION

The Authority is satisfied that even if the allegations of ill-treatment at work and on the streets and the difficulties surrounding employment in his home country are accepted as true, nevertheless, it is the Authority's view that such difficulties and harassment or discrimination do not rise to the level of persecution. The fact of the matter is that until November 1998, the appellant was in full employment and

had been for the previous 10 years. This was despite the fact that he was of Russian origin and despite the fact that Tajikistan had become an independent state in October 1991. Furthermore, despite the upheavals which followed independence resulting in considerable violence and a short lived civil war, the appellant himself does not appear to have been affected in any way by such major events. Matters settled down with a peace deal finally signed between the warring factions in June 1997 i.e. prior to the appellant being made redundant and prior to his decision to leave the country. Apart from the discrimination and harassment referred to earlier in this decision, the appellant has suffered no physical harm, nor did he appear to suffer discrimination in his employment at the hands of the authorities or management. The decision to make him redundant, in the Authority's view, had nothing to do with his Russian ethnicity. It was because of the widespread economic crisis. Indeed, as he said himself, his boss told him that as he was single and had no family it was right that such a person should go before those who had family responsibilities.

The Authority does not accept that the destruction by fire of his stone house could amount to either persecution or that it was necessarily the result of ethnic hatred. The Tajik policeman to whom he reported the matter was sympathetic. Obviously it would be difficult to prosecute any one or do anything unless there was some independent evidence - mere suspicion was not enough. Furthermore, whether the house was burnt down or not, as houses in his town were unsaleable, once he decided to leave he would have had to leave it behind him or give it away. In the end, he simply left what remained of his property to his friend. Although he suspected that one of his Tajik work-mates was responsible, there was insufficient evidence upon which a conclusion could be made that the house was burnt down by reason of his race or religion.

The Authority concludes that all of the appellant's difficulties stem basically from the economic problems which have befallen Tajikistan in recent times. The principal reason for the exodus of Russians, and indeed, other ethnic groups from Tajikistan, has been economic which in turn has exacerbated social and ethnic tensions. These are problems shared by large sections of the population and do not amount to persecution for a Convention reason.

STATE PROTECTION

Even if the Authority accepted that there was persecution of the appellant by Tajik fellow citizens and that such persecution was by reason of his race and/or religion, the Authority would find that the presumption of state protection applies in his case. The Authority notes that he complained to his employer about the problems he suffered at work and his employer was sympathetic. The employer had warned all workers that they should not misconduct themselves or fight amongst themselves at work. He had warned them all that if there was an incident of any seriousness, such as someone being stabbed, the police would have to be brought in. It is clear the employer's words and warnings were not directed at one ethnic group alone.

When the appellant's house was burnt down, the appellant complained to the police about it. Although nothing could be done, he was advised by the local policeman that it would be best to leave things as they were rather than aggravate the situation by accusing a workmate without adequate evidence. Such advice in the circumstances would seem not unreasonable. The fact that these complaints were even made by the appellant to the authorities indicates that he held some expectation of state or police protection. Such an expectation is in accordance with the country information which is available in respect of Tajikistan. Law and order has not broken down in that country; no evidence was produced to rebut the presumption of state protection.

There is no evidence that Russian citizens in Tajikistan are persecuted by reason of their race or religion. See United States Department of State (DOS) Report, Tajikistan Country Report on Human Rights for 1998 (February 1999):

“Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language of Social Status

The Constitution provides for the rights and freedoms of every person regardless of nationality, race, sex, language, religious beliefs, political persuasion, social status, knowledge, and property. It also explicitly states that men and women have the same rights. In practice, however, there is discrimination as a result of cultural traditions and the lingering hostilities from the 1992 civil war.

Religious Minorities

Muslim leaders occasionally have expressed concern that minority religious groups undermine national unity.
Muslims have harassed non-Muslim women for not wearing traditional attire.

National/Racial/Ethnic Minorities

After the civil war, over 75,000.00 people of primarily Gharimi and Pamiri origin fled to Afghanistan to avoid reprisals by progovernment forces. Most of these persons

returned in 1994, 1995, and 1996, and many more returned after the June 1997 signing of the peace accords. All refugees in Afghanistan who wished to do so have returned. In general security for returning refugees was good, and the OSCE reported that the large inflow of returnees that began in the summer of 1997 suffered virtually no harassment.

With the exception of the trilingual (Tajik/Uzbek/Russian) school structure, Uzbek has no official status, although Uzbeks constitute nearly one-quarter of the population. The Government permits radio and television broadcasts in Russian and Uzbek, in addition to Tajik. In practice Russian is the language of interethnic communication and widely used in government. Ethnic Russians and related Russian speakers, for example, Ukrainians, make up less than 2 percent of the population. While the Government repeatedly has expressed its desire for the ethnic Russian and Slavic population to remain, economic conditions provide little incentive for them to do so, and some local Russians and other Slavs perceive an increase in negative social attitudes towards them. A Slavic university and exclusively ethnic Russian high school operate in Dushanbe with Russian as the language of instruction. An agreement ratified by the Russian Duma in December 1996 allows for dual Russian and Tajik citizenship.

There is substantial underrepresentation of the Uzbek minority in official positions. Uzbek language newspapers, television broadcasts, and schools have declined significantly in number since 1992. Since the signing of the peace treaty in 1997, there have been multiple murders of ethnic Uzbeks in the Parij district. As a result of these attacks, more than 100 ethnic Uzbek families have moved to other locations in the district where Uzbeks predominate or to neighboring CIS countries. In an effort to reduce ethnic tensions, the local government has organized meetings to ease conflicts. A number of suspects for the murders of Uzbeks in July were arrested”.

There is of course considerable country information dealing with ethnic tensions and discrimination affecting not only Russians but other minorities, notably the Uzbeks who obviously suffer much more than others. However, the Russian population which has been the subject of a continuing exodus to Russia, has suffered if anything less than other minorities. Indeed, the State has shown its willingness to offer protection by active encouragement to the Russians to remain in the country to help prevent further deterioration of the economy.

Whilst the Authority understands the hardships and economic gloom faced by the appellant, it is satisfied that there is no persecution by the State nor is there a real chance of such persecution in the future. The discriminatory activities of Tajiks towards minorities, including the Russians, whilst taking place, are not condoned by the authorities and it cannot be held, on the evidence, that the authorities are unable or unwilling to provide its citizens protection. Whilst the protection may not be adequate in the eyes of the appellant and may well fall short of the standards of some western democratic countries, nevertheless, this Authority cannot accept it is so low as to overcome the presumption.

RELOCATION/RUSSIAN CITIZENSHIP

In its decision declining the appellant's application, the RSB concluded that he was eligible for Russian citizenship pursuant to Article 19 of the Russian Federation Citizenship Act 1992 and thus held dual citizenship. Counsel were given leave to address this issue further following the hearing of the appeal. Careful and helpful submissions have been received from counsel and the Authority has now had an opportunity to consider them. It is correct, as counsel points out, that as the appellant was not resident in Russia in 1992 when the abovementioned Citizenship Act came into force, he would not automatically qualify for Russian citizenship. It does appear, however, that the appellant could apply for such citizenship but before doing so he would need to have resided in Russia for some qualifying period. The qualifying period according to counsel's research could be up to 3 years. Article 19(3) of the Act, however, does provide for the reduction or waiver of the residence period to persons who were "past citizens of the former USSR". Article 18(d) provides by way of registration, Russian Federation Citizenship shall be acquired by:-

"former USSR citizens who reside on the territory of other states that were within the former USSR and who came to reside on the territory of the Russian Federation after February 6, 1992 where they, until December 31 of the year 2000 declare their intention to acquire Russian Federation citizenship".

However, neither Article 18 nor Article 19 grant a right of entry to a person such as the appellant so they may then acquire some form of residency. Nor does there appear to be an agreement between the Russian Federation and Tajikistan, giving each other's nationals the right to reside in the other country.

Counsel has pointed out that difficulties could be encountered in practice in acquiring the right of residence in Russia. The Authority, however, believes some of the practical difficulties may apply only to Moscow and other main centres or more desirable areas. In the circumstances the Authority has concluded that, as the appellant's appeal must fail on the other grounds mentioned, it would be more appropriate to leave the issue of Russian citizenship undecided. The Authority, however, does observe that the appellant made no real effort to enquire about, much less attempt to, acquire any right to residence or citizenship in the Russian Federation. In this regard, the Authority believes he was influenced by the lack of employment and other opportunities for him in the Russia Federation rather than because he entertained any persecution concerns.

The Authority recognises that the Leninabad region in the North has a much larger number of Russians and is seen by many Russians as the safest place in Tajikistan (see Fright and Flight : Former Soviet Asia: Tajikistan Russians in the Former Republics, by Paul Kolstoe, Hurst & Co, London, Ch-8, pp. 200-1, 209-14). Whilst it would be a logical place for relocation within the country, the Authority has decided that it should make no finding upon the issue of relocation.

CONCLUSION

The Authority concludes that the appellant has no Convention ground entitling him to refugee status. There is no real chance that the appellant would be persecuted if he returned to Tajikistan. Accordingly, the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

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Chairperson