

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76545

AT AUCKLAND

<u>Before:</u>	S A Aitchison (Member)
<u>Representative for the Appellant:</u>	The appellant represented herself
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	21 July 2010
<u>Date of Decision:</u>	16 August 2010

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the grant of refugee status to the appellant, a national of Indonesia.

INTRODUCTION

[2] The appellant's claim is based upon an anticipation of being seriously harmed or killed by her former husband. The principal issues to be determined in this appeal are whether there is a real chance that the appellant will face serious harm upon return to Indonesia, and whether state protection would be available to her.

THE APPELLANT'S CASE

[3] What follows is a summary of the appellant's evidence in support of her claim. It will be assessed later in this decision.

[4] The appellant is a Chinese, Christian woman in her late-40s. She has three children and is divorced from her husband. She was born in "A" Town, Indonesia.

[5] The appellant left school, eight months shy of completing her high school education, and moved to Jakarta to work as a print setter at a printing company. There she met her future husband, AA, of the Indonesian Batak tribe, a driver of the same printing company.

[6] The appellant married AA in 1982. The ceremony was held at her mother's home and blessed by a Pentecostal Priest. While the appellant encouraged her husband to legally register their marriage he would not agree to do so.

[7] The same year they were married, the appellant and her husband began working at a large printing company, and lived in a company house in "A" Suburb, Jakarta. In 1984 a son, BB, was born to the couple. In 1985, a daughter, CC was born; and in 1991, the appellant gave birth to the youngest son, DD.

[8] In 1984, AA obtained a birth certificate for their firstborn, which recorded BB as born in wedlock to AA and the appellant. To obtain this he used a false marriage certificate. When the appellant discovered the false certificate she destroyed it. The appellant obtained birth certificates for her subsequent children in 2007 and 2008, which recorded them as her premarital children.

[9] In 1989, the appellant resigned from her employment at the printing company and began a small dressmaking business from home. Several years later she and her husband bought their first home in "B" Suburb, Jakarta. To purchase this home they entered into an agreement with the government bank. AA paid the initial deposit on the home, and only his name appeared on the purchase agreement. However, the appellant made all future payments on the home, financed through her dressmaking business.

[10] The appellant began experiencing difficulties with her husband early in their marriage. Prior to purchasing their home, AA would frequently bring girlfriends to their address, and they would stay there for weeks or months at a time. The appellant tried to be patient with AA, praying that God would change his character.

[11] In March 2003, AA became physically violent towards the appellant. She considered that the impetus for this violence, and that which followed over subsequent years, related to AA obtaining sole ownership of their home. On this occasion in March, the appellant attended the government bank with AA to pay the

final instalment on their home, and to obtain the certificate of ownership. Upon leaving the bank, the appellant asked AA if she could view the certificate. AA responded by kicking her in the leg and telling her that it was none of her business. The appellant since learnt that he had obtained the certificate of ownership solely in his own name.

[12] While AA had exhibited a degree of violence to the appellant prior to this time, she did not consider such incidents to be of particular concern, as spousal violence was common in Indonesia.

[13] In early 2005, AA again assaulted the appellant. On this occasion she had asked her daughter to make copies of the certificate of ownership, to protect her children's future interests in the property. When AA discovered that copies had been made he physically assaulted the appellant in their bedroom, slapping her twice on the head. He told the appellant that she had no business arranging for the certificate to be copied, and that the house belonged to him, not her.

[14] In approximately July/August 2005, AA attacked the appellant again by pulling her arm and burning it with a lighter. Simultaneously, AA asked her when she was leaving the house, reminding her that the house did not belong to her. To corroborate this account, the appellant demonstrated a scar on her right inner wrist to the Authority.

[15] Later that same year, the appellant was asleep one night in her daughter's bedroom. She awoke when her husband threw a mobile phone that hit her in the head. He further assaulted her by punching her in the head and one eye. She suffered bruising to her eye as a result. AA said nothing to the appellant at the time of the assault.

[16] The following morning AA forced her to leave the house. She went directly to the Police Station of "B" Suburb and told the officer on duty that she was there to report a beating she had received from her husband. The officer began recording her details, but when he discovered her residential address he advised her that the matter should be considered at a police station within the southern territory of "B" Suburb. The appellant did not know the precise location of this station, and stated that she did not have the money to travel there. She would be required to take public transport and change connections three times. In any event, she thought that reporting the matter would be fruitless as she was not a native Indonesian and would not obtain justice. Another reason why she did not

pursue the matter was because her daughter had told her that it would be embarrassing for her father to be involved in a criminal matter.

[17] When the appellant returned home AA had packed up her clothes and left them outside for her. The appellant went to stay with a friend and did not return again to live in the home with her husband.

[18] There were other instances of violence exhibited by AA towards the appellant during their marriage. Before the Authority, the appellant gave evidence of those instances that she could recall and that were prominent in her mind.

[19] The appellant rented a room in "C" Suburb of Jakarta and obtained work as head of an assembly line for a government garment exporter. While in their employ, she arranged for the company to transport her to and from work.

[20] A few months after leaving the house the appellant returned to visit her sick daughter, having been assured that AA was not home. During the appellant's visit, however, AA returned, and when he found her there he grasped her by the throat. While this did not affect her breathing, it caused her pain. AA held her neck until she agreed to leave the house.

[21] Three months after moving to the address in "C" Suburb, the appellant's daughter, having been expelled from the family home by AA, came to live with her.

[22] AA, who remained in the family home, never visited the appellant at her new address in "C" Suburb. The children never revealed this address to him. The appellant would, however, run into AA on the street in Jakarta, and when she did he would try to harm her.

[23] Approximately a year after AA forced the appellant to leave the family home, she arranged to meet her son at the Grand Mall in "B" Suburb. She was travelling there by motorbike when her husband came up behind her in his car, so close that she nearly hit the kerb. She considered that his intention was to cause her to fall off her motorbike and to hurt herself. The appellant managed to flee from AA by weaving in amongst cars on the road.

[24] In July 2006, the appellant travelled to "A" Suburb to extend the validity of her identity card. Returning from "A" Suburb, and passing through "D" Suburb, she noticed AA on the road, who purposefully knocked the mirror on her motorbike with his vehicle. This caused her to fall into a vegetable vendor's basket. She

suffered scratches and bleeding to her left elbow, and exhibited a scar to corroborate this event to the Authority. She did not report the matter to the police as she considered it to be a minor matter.

[25] On another occasion, a public transport driver and friend of AA knocked the appellant off her motorbike while turning at an intersection. The appellant had been waiting there, on her way to visit her cousin in "B" Suburb. She suffered a bruised leg as a result. She considered this act to be intentional. She did not report this incident as she considered that it was not serious enough and would be a fruitless enterprise.

[26] AA later approached the appellant's cousin and told him to stop the appellant from visiting with her cousin, but her cousin refused.

[27] With the help of a friend, who loaned the appellant money, the appellant obtained a work visa and travelled to the United States in September 2007.

[28] While AA never visited the appellant's mother while the appellant was in the country, he visited her once during the appellant's absence and asked her to encourage the appellant to return to Indonesia to take care of their children.

[29] In March 2009, upon learning that her youngest child was sick with Toxoplasmosis, the appellant left the United States and returned to Indonesia. Upon return, she did not live at any fixed address, and instead moved between "C" Suburb in Jakarta, where she stayed with her daughter, and "A" Town, where she stayed with her mother. She did not work during this time.

[30] Since her return, and prior to her departure for New Zealand, she has seen AA on one occasion. This occurred when she was travelling by motorbike to visit her cousin in "B" Suburb. She passed a bus transport stand where AA was waiting and he called out to her, "I'll kill you", and threw a stone, which missed her.

[31] She did not travel to "B" Suburb again. She felt traumatised and did not want to risk seeing AA. Soon after this incident, a cousin of AA's took the appellant to stay with her at her address in Jakarta. She remained at this address for approximately a month, up until the time she left for New Zealand.

[32] The appellant departed Indonesia on 8 May 2008 and arrived in New Zealand on 9 May 2008. She lodged her claim for refugee status with the RSB on 10 November 2009 and was interviewed by a refugee status officer on 13 January

2010. By decision dated 1 June 2010 the RSB declined the appellant's claim. The appellant duly appealed to this Authority.

[33] The appellant carried photocopies of her Name Change Certificate, Family Card and Birth Certificate with her to New Zealand. Later, she arranged for a friend to bring the originals of these documents to New Zealand. These were posted to her in Tauranga from Auckland, but got lost in the post and have never arrived. The appellant is concerned that her passport expires in November 2010 and that she will need the originals of these missing documents to apply for passport renewal. She is concerned that she will also need a citizenship card to make the application, as this is a requirement for Chinese in Indonesia. She stated that in 2005 she was declined a passport in Indonesia without a copy of her citizenship certificate.

[34] Approximately a month prior to the hearing before the Authority, the appellant received a text from one of her children advising that their father had contacted them, asking them to talk the appellant into coming back to Indonesia to take care of them.

[35] The appellant considers that should she be required to return to Indonesia, AA will learn of her whereabouts. He has family throughout Indonesia, many of whom have positions in the police force. They are present, for example, in Jakarta, Medan, Madado and Surabaya. Furthermore, AA's deceased father held a rank in the military.

[36] She does not consider that it is safe for her to live in Jakarta. She does not wish to live in "B" Town where her youngest child is studying, and considers that were she to live with her mother in "A" Town she would be unable to obtain work. While she has two sisters in Indonesia, she has not been on speaking terms with them for years. More than anything, she wants to forget her bad experiences in Indonesia and have a fresh start.

Documents filed

[37] Subsequent to the hearing the appellant filed submissions with the Authority dated 31 July 2010.

THE ISSUES

[38] The Inclusion Clause in Article 1A(2) of the Refugee Convention 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

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

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

[40] Prior to determining the identified issues, it is necessary to make an assessment of the appellant's credibility.

CREDIBILITY

[41] The appellant was clearly distressed providing evidence to the Authority, involving a history of violence at the hands of her husband. Her distress caused the delivery of her evidence to appear, at times, inconsistent and confused; however, upon clarification by the Authority, the apparent discrepancies in her evidence were readily explained.

[42] The Authority accepts the appellant's credibility.

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

[43] The "being persecuted" element of the refugee definition is interpreted by the Authority as the sustained or systemic violation of basic or core human rights

such as to be demonstrative of a failure of state protection; See J C Hathaway, *The Law of Refugee Status* (Butterworths, Toronto, 1991) p104-108, as adopted in *Refugee Appeal No 2039/93* (12 February 1996) at [15]. As such, the concept of persecution is a construct of two essential elements, namely, the risk of serious harm, defined by core norms of international human rights law, and a failure of state protection.

[44] When assessing the standard of state protection, the Authority must consider whether the protection available from the state will reduce the risk of serious harm to below the level of well-foundedness – or, as interpreted in New Zealand, to below the level of a real chance of serious harm; see *Refugee Appeal No 71427/99* (16 August 2000) at [66]; *Refugee Appeal No 75692* (3 March 2006).

[45] The appellant's case is based on an anticipation of being seriously harmed or killed by her former husband, AA. Should either form of harm occur, it would be a violation of her right to life and her right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; see Articles 6 and 7, International Covenant on Civil and Political Rights, 1966. Such harm constitutes persecution.

[46] The Authority must consider whether there is a real chance of such harm occurring. In the past, the appellant has experienced acts of violence and harassment at the hands of AA. Whilst living with him she was kicked, slapped to the head, and her arm was burnt with a lighter. Following her separation from AA she received further assaults from her husband upon chance encounters. Upon her return to the family home to visit her sick daughter, he gripped her by the neck. He also made several attempts to assault her whilst she was riding her motorbike on the streets of Jakarta. On one such occasion, she fell from her motorbike and injured her elbow.

[47] While past events can provide an indication of what is likely to happen in the future, the well-founded fear requirement calls for an objective forward-looking assessment of risk.

[48] Upon being expelled from the family home by AA, the appellant has continued to live in Jakarta, excepting some time spent in "A" Town with her mother, and time spent in the United States. With AA living in "B" Suburb, the appellant has on a number of occasions experienced chance meetings with AA, whereupon he has subjected her to further harm or threats of harm.

[49] It is relevant that AA has never visited the appellant at her home residence, either in Jakarta, or “A” Town. This fact may reduce the likelihood of harm to the appellant. While it appears that AA’s interest in the appellant has not entirely dissipated – he having contacted one of her children since her arrival in New Zealand to advise her to return to Indonesia – this interest appears to concern her taking care of her children back home.

[50] The Authority cannot preclude that should the appellant continue to live and work in the near vicinity of AA, as she has in the past in Jakarta, she will continue to have chance encounters with AA, and may, thereupon, be subject to further assaults or attempted assaults. The Authority does not consider, however, that in all the circumstances, the risk of harm the appellant faces at the hands of AA constitutes a sustained or systemic breach of her core human rights. At most, having divorced her husband, the appellant has experienced instances of minor assault upon chance encounters with him. There is no real chance of her being persecuted at the hands of AA should she return to Indonesia.

[51] In any event, even had the Authority been satisfied that the threat faced by the appellant constituted persecution, the appellant has not established that she would be unable to obtain protection from the Indonesian state against AA.

[52] It is a well-established principle of refugee law that nations should be presumed capable of protecting their citizens. Clear and convincing evidence is required to demonstrate a state’s inability to protect its citizens; see *Refugee Appeal No 523/92* (17 March 1995). This principle has particular application where a refugee claimant comes from an open democratic society such as Indonesia with a developed legal system, which makes serious efforts to protect its citizens from harm.

[53] The appellant has made one attempt in the past to invoke the protection of the Indonesian state against AA. She reported to the Police Station in “B” Suburb and told the officer on duty that she wanted to report a recent beating that she had received at the hands of her husband. The officer began recording her details, but upon learning her residential address advised her that, as a matter of jurisdiction, she needed to make her complaint to another police station in the southern territory of “B” Suburb. She failed to do so. She expressed to the Authority a lack of confidence in the Indonesian police, claiming that she would not receive justice on account of not being a native Indonesian. The Authority notes, however, that the appellant did not present any evidence that the officer whom she approached

to lay a complaint, refused to either record her complaint or to take action on the matter. To the contrary, he simply alerted her to a matter of jurisdiction. The Authority does not accept the appellant's explanation that she could not afford the bus trip to the recommended police station. The cost of a bus trip within the territory of "B" Suburb would not be excessive. The appellant operated her own business from home at the time, and gave evidence that she was the sole person contributing payments to the family home.

[54] According to country information, domestic violence is both prevalent and underreported in Indonesia. Social stigma prevents many women from reporting spousal abuse; see Immigration and Refugee Board of Canada, *IDN102179.E Indonesia: Protection, Services and Legal Recourse Available to Women Who are Victims of Domestic Violence (2005-2006)*, 15 February 2007 ("Immigration and Refugee Board Report"); United States Department of State *Country Reports on Human Rights Practices 2009 – Indonesia*, 11 March 2010 ("Department of State Report").

[55] To address the problem of domestic violence, the Indonesian Government established in 1998, The National Commission on Violence Against Women (*Komisi Nasional Kekerasan Terhadap Perempuan*) ("Commission"). This Commission aims to provide services to women survivors of violence through:

- (a) increasing public understanding through publications and strategic dialogue;
- (b) creating a conducive environment for the elimination of all forms of violence against women by advocating legal and policy reform, and
- (c) strengthening capacities for the prevention of violence against women and dealing with its consequences; See Asian Development Bank 2006 *Indonesia: Country Gender Assessment*, July 2006, p. 57.

[56] In June 2004, on a regional level, the Foreign Ministers of the ASEAN countries signed a Declaration on the Elimination of Violence against Women. The aims of this Declaration are to strengthen regional cooperation, collaboration and coordination for the purpose of eliminating violence against women in the region, including collecting and disseminating data, promoting holistic and integrated approaches to eliminating violence against women, and formulating and amending domestic laws to prevent such violence; see www.aseansec.org/16189.htm.

[57] Later in 2004, one of the major achievements of the Commission was advocating for Law 23/2004 on Elimination of Domestic Violence, which was

enacted in September of that year. This law defines domestic violence to include acts committed against a person causing physical, sexual, or psychological distress or suffering, or domestic neglect, and accords rights to victims that include police protection, medical services, counselling services and legal aid; See Asian Development Bank 2006 *Indonesia : Country Gender Assessment*, July 2006, p60. In 2006, a further government regulation was produced as part of the implementation of the law on domestic violence; see “Crucial issues related to the implementation of the CEDAW Convention in Indonesia” *An Independent Report prepared by the National Commission on Violence Against Women Presented on the Occasion of Indonesia’s Combined Fourth and Fifth Periodic Reports to the CEDAW Committee*, Jakarta, 19 July 2007 (“National Commission Report”).

[58] Other measures to counteract violence in the country and provide support to victims include the establishment of crisis centres for abused women in government-run hospitals, and Non-Governmental Organisation (“NGO”) centres in the community; See Department of State Report. NGO centres include, but are not limited to, Solidaritas Perempuan, Mitra Perempuan, LBH-Apik and the International Catholic Migration Commission (ICMC); see Immigration and Refugee Board Report. The country also has a Women’s Legal Aid Foundation, which reportedly received 1,058 complaints of spousal abuse in 2009; See Department of State Report.

[59] The Indonesian government ratified the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW Convention”) in 1980. Reporting to the CEDAW Committee in 2007, the National Commission on Violence Against Women stated that some 22,512 cases of violence against women had been handled by 258 state and community organisations in 32 provinces in Indonesia in 2006. Seventy-four per cent of these cases concerned domestic violence. Reporting on the institutional framework in Indonesia for assisting and supporting women and children who are victims of violence, the National Commission recorded 73 civil society organisations, 26 hospitals, 57 special police desks, 33 religious courts, 39 courts, and 30 offices of general prosecutors; see National Commission Report.

[60] Although the country information outlined above indicates that domestic violence continues to be a widespread problem in Indonesia, the Authority does not accept that it is established that the Indonesian state is unwilling or unable to protect victims of violence. Each case depends upon its own facts. In the present

case, the appellant has presented herself to the state authorities on but one occasion to seek protection. She did not follow through her complaint of spousal violence when referred to another police station with jurisdiction to handle the matter.

[61] While it is accepted that many women, including the appellant, consider there to be a stigma attached to reporting violence against them, and may fail to do so on this basis, this does not illustrate that the state of Indonesia is unable or unwilling to provide protection from such violence.

[62] The appellant submits that her husband has many relatives in the police and presented evidence that one friend of her husband's had intentionally knocked her from her motorcycle. The Authority is unable to conclude from the evidence presented that any of these individuals have or would intentionally target the appellant in the future, or prevent her from obtaining necessary state protection. The appellant's submission presents but a remote and speculative possibility that does not reach the Convention standard.

[63] The appellant further submits that she will experience discrimination by being required as a woman of Chinese ethnicity to submit a citizenship certificate in order to renew her passport. Further, she submits that it will be an expensive process to obtain the originals for her lost documentation. During the hearing the Authority directed the appellant's attention to several reports that the presentation of a citizenship document is no longer mandated for Chinese Indonesians, and that in 2000 the President reversed the discriminatory decree that mandated its production; see "SBY Urges Chinese Indonesians to Vote" *Jakarta Globe*, 1 February 2009; Minority Rights Group International *World Directory of Minorities – Indonesia, Chinese*, June 2008.

[64] In response, the appellant claimed that in practice, this discrimination still exists against Chinese Indonesians. At the conclusion of the hearing before the Authority, however, she conceded that a citizenship certificate would not be a requirement to obtain a passport outside of Indonesia. The Authority considers that while there may be instances when certain bureaucrats insist on production of a citizenship certificate before issuing further documentation to Chinese Indonesians, such discrimination is not sufficient to amount to persecution; see "A historical, contemporary record of SBKRI" *The Jakarta Post* (19 October 2008). In addition, the appellant has a copy of her citizenship certificate back in Indonesia, and on her own admission, will not need such to renew her passport from New

Zealand. In any event, even if the production of a citizenship certificate were a requirement for Chinese Indonesians in order to obtain documentation such as passports, such a requirement is illustrative, rather, of discrimination, and does not, as such, reach the standard of persecution.

[65] The Authority finds that the appellant does not face a well-founded fear of being persecuted in Indonesia.

Is there a Convention reason for that persecution?

[66] The first framed issue is answered in the negative, the second issue does not fall for consideration.

CONCLUSION

[67] For the reasons mentioned above, the Authority finds 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.

"S A Aitchison"

S A Aitchison
Member