

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 70737/97

AT AUCKLAND

Before: C Parker (Member)

Representative for the Appellant: J L Sullivan

Date of Hearing: 10 March 1998

Date of Decision: 3 December 1998

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 People's Republic of China.

INTRODUCTION

At the close of the hearing, counsel was granted leave to make written submissions. Those submissions were received on 31 March 1998 and have been taken into account by the Authority in reaching its decision.

THE APPELLANT'S CASE

The appellant is a 33 year-old, divorced woman from D in Liaoning province. Her family members all live in this province and her immediate family - her parents and sister, as well as her ex-husband, her son and parents-in-law all live in D.

The appellant left school in 1981 having studied accountancy and found work, in this field, in a garment factory. In 1987 the appellant began working in the accounts department of the D Fisheries Company, which was the same work unit that employed her mother and father (who are now retired) as a cook and middle

manager respectively. By the time she left China, the appellant was earning approximately RMB 800-900 per month and received free child-care.

The appellant lived with her parents until she married. The appellant's husband, ZH, was employed in an electrical factory when the appellant met him. Her marriage was registered on 16 May 1986, but she did not live with her husband until after the wedding ceremony in 1987. Following this, she moved to accommodation which was owned by her husband's parents, which was approximately 30 minutes by public transport from the appellant's family's home. However, the address at which her hukou was registered was accommodation provided to her husband by his work unit and which he rented out without their knowledge.

The appellant's relationship with her husband was initially good but, in early 1988, her husband began to be violent towards her. He would hit the appellant mainly, but not exclusively, after having drunk alcohol. The appellant had become pregnant shortly after moving in with her husband and, due to beatings she received whilst pregnant, miscarried the baby. She was hospitalised for approximately 15 days. Her husband was warned by the doctor attending the appellant that he should not treat her violently while she was pregnant or she would have a further miscarriage. The appellant did not tell her parents about her husband's behaviour, initially, as she felt embarrassed by it and did not want them to worry about her.

In about 1989, the appellant's husband left his work in the factory and began work as a "bouncer" in a night-club. It was there that he made friends with many PSB officers who socialised at the club and associated with members of Triads.

Between 1989 and 1995, the appellant was beaten several times each week and also raped on a weekly basis. Her husband had sadistic tendencies and she explained that he would become sexually excited by causing her injury during sexual intercourse. The appellant was frequently beaten in front of her husband's friends when they came over to drink with him. He would try and force the appellant to drink and, if she refused, she would be hit in front of his friends and he would tell them that women had to be "taught a lesson and beaten into submission".

In about 1992, the appellant sustained a serious injury in the middle of her

forehead for which she required stitches. This injury was caused by her husband when he tied the appellant's arms behind her back and threw her on the bed to have sexual intercourse. She resisted and he held her by her hair, smashing her head against a windowpane. On another occasion, her husband burned her with hot candle wax and she needed medical treatment at hospital. On a further occasion, in approximately 1994, while having sexual intercourse her husband gashed her thigh with a knife. The appellant again required medical treatment and went to hospital as an out-patient, where her leg was bandaged.

At one stage during their marriage, the appellant's husband adopted a regular practice of pouring wine in the appellant's vagina, inserting a small liquor bottle and then forcing her to have sexual intercourse. The appellant sustained frequent injuries following this and was forced to see a gynaecologist on a regular basis for about a year, although she claimed that her husband engaged in this practice over a two or three year period during their marriage. The appellant described her husband as being "like an animal" who had no regard for her life or safety. She was terrified of him.

After he started working at the night-club, the appellant's husband brought other women home and had sexual intercourse with them, every month or every two months. The appellant would be made to sleep in her son's room and would feel great relief on these occasions that she would not be the victim of his sexual advances.

From the time the appellant's husband began work in the night-club as a bouncer, he demanded money from the appellant. She gave him approximately RMB100-200 every month which, she understood, he spent on drinking. He never contributed to the household expenses and it was the appellant's sole income which supported the family. When the appellant did not have money, she would go to her parents and borrow from them so that she could give money to her husband.

The appellant remained in the marriage because she believed it to be in the interests of her son, who was born on 24 April 1989. She told her best friend and her sister about her difficulties in about 1989, largely because they had noticed bruising on her face and body. The appellant's sister told the appellant's parents who initially advised the appellant to "be patient" because of her child but, by the time he was aged two or three, they advised the appellant to divorce.

The appellant enlisted the help of relatives and the Chinese authorities to try and stop her husband's violent behaviour, to no avail. While she was pregnant with her son, the appellant started returning to her parents' home in order to escape her husband's violence. The appellant's husband would follow her there and take her home, warning her that if she ran home again, he would teach her an even more severe lesson. The appellant's parents would try speaking to the appellant's husband from time to time, but he would just hit the appellant more once they had left and, on one occasion in 1992 or 1993, the appellant's husband beat the appellant in front of her parents and assaulted various members of her family, including the appellant's brother-in-law. After this, the appellant's family were very afraid of him. The appellant, however, continued to escape to her parents' home from time to time, when the situation became too much to bear, and, from mid-1994, went there even more frequently. However, generally when the appellant saw her husband coming, she would leave her parents' home and return home with him, as she wanted to avoid him hitting her in front of her parents, because she knew this would "break their hearts". The appellant tried to talk to her husband's parents about his behaviour but they were unable to do anything and he sometimes beat her in front of them.

The appellant complained about her husband to the local street committee on several occasions and they warned him to desist from his behaviour, but he simply beat the appellant harder after having received these warnings. On one occasion, in about 1993, the appellant went to the local PSB office to complain about her husband. However, because of his friendly relationship with PSB officers, her husband was told of her complaints and beat her, warning her never to complain to the PSB again or he would kill her.

The appellant asked her husband about getting divorced on several occasions (it being easier to obtain a divorce with the agreement of the other party) but he always refused and subjected her to serious violence. However, in about May 1995, the appellant's husband came home drunk and dragged her away from the meal she was cooking for him and her son. He slapped the appellant in the face and she cried, inciting him to beat her further. She believes that she lost consciousness. She was covered in bruises and went to the court in that condition. The judge saw the appellant's injuries, and her divorce was granted approximately two months later, notwithstanding her husband's failure to consent. However, the appellant agreed that her husband could have custody of their son,

so as to easily secure the divorce. The appellant left her husband finally in July 1995, after the divorce was granted.

The appellant obtained a passport in June 1995, on the advice of her family, with the aim of leaving China and avoiding her ex-husband completely once her divorce was finalised. She was extended an invitation to visit Japan for business purposes, by a friend of her father as a favour to him, as he knew of the treatment to which the appellant had been subjected by her ex-husband.

The appellant arrived in Japan, on or about 3 August 1995. Some neighbours from D had advised the appellant where she might find employment and she found work, giving beauty treatments. The appellant kept in contact with her son by telephone whilst she was in Japan and occasionally spoke to her ex-husband during these telephone calls, in which he promised that if she returned, he would not hit her any more. The appellant was granted a 15-day tourist permit when she arrived in Japan and never approached the Japanese authorities for any further extension. In January 1997, the appellant was eventually picked up by the Japanese authorities and told to leave the country as her permit had expired. The appellant left Japan one week later and returned to China on 31 January 1997.

After the appellant returned from Japan, her ex-husband made more significant demands for funds and told the appellant that if she did not pay him, she would not be able to see her child. The appellant heard that her ex-husband had taken up gambling and she believed this was what fuelled his increased demands for money.

In February 1997, the appellant went to her ex-husband's home with the intention of seeing her son and took her sister with her for protection. The appellant saw her son on this occasion but was involved in a scuffle with her ex-husband when he tried to grab her handbag. The appellant's sister tried to fend him off and he hit her. The second time the appellant went to see her son, following her return from Japan, she went to her ex-husband's parents' home as she believed they would be looking after her son while her ex-husband was working at the night-club. However, her ex-husband was not at work on this occasion and he asked the appellant for money. The appellant told him she did not have any and he dragged her into another room and pushed his parents away in the course of doing so. He tore at the appellant's clothes and she called for her son, telling him to telephone her parents. At this point, her ex-husband tore off her top and the appellant ran

outside followed by her ex-husband, who chased her into the kitchen, where he gave her a hard shove, causing her to fall and hurt her leg. Her ex-husband then slapped the appellant several times on the face. The appellant was in great pain after this attack, and her son began crying. The appellant's leg was badly bruised and swollen and she was unable to stand unassisted. She remained in hospital for one week following this attack and produced a doctor's report dated 13 February 1997, confirming her hospitalisation. The appellant's leg still causes her pain, especially in cold wet weather. Following this incident, the appellant continued to see her son but at school.

In March 1997, the appellant's ex-husband demanded RMB40,000 from the appellant. The appellant informed him that she did not have such large sums of money but eventually relented and gave him RMB40,000 as she was afraid that if she did not her ex-husband would prevent her from seeing her child. The appellant mistakenly believed that by paying her ex-husband what he had demanded, she would have no further problems with him. However, he subsequently telephoned her, demanding RMB200,000. Shortly thereafter, associates of the appellant, who were members of a triad and who frequented the night-club where he worked, came to the appellant's family's home. They told the appellant that she must hand over the money or they would disfigure her face. The appellant was very frightened when she was threatened in this way as she believed that her husband would not have to pay triad members very much to cause her serious injury. The appellant moved to her sister's home but her husband telephoned her there, a few days later and she then went and stayed at various friends' houses. Before the appellant left China the appellant's ex-husband's triad associates went to the appellant's sister's home but did not find the appellant there.

The appellant decided to leave China and obtained a new passport because it was evident from her old passport that she had overstayed in Japan and she believed that she would not be granted a visa to go elsewhere if she attempted to travel on that passport. The passport the appellant used to travel to New Zealand was issued on 4 April 1997 and was obtained with the assistance of a friend of the appellant's sister, who worked at the local passport office. The appellant obtained a New Zealand visa with the assistance of an employee of the D Fishery Company, who was a former work-mate of the appellant. He was planning to attend a trade fair in New Zealand and arranged for the appellant to be named on the visa application, which the company submitted to the New Zealand Embassy.

Since arriving in New Zealand, the appellant has been in contact with her parents and her son by telephone on a regular basis. The appellant had learned from her parents that since she left China her ex-husband had arranged for people to telephone them all night long and on one occasion, at about 1am, three triad members visited the family home, saying they were looking for the appellant. The appellant's father told them that she was not there and invited them in to search the house to satisfy them that he was telling the truth. The triad members searched and when they were unable to find the appellant, told her father that if she did come back, they would find her and kill her. In order to protect her family from this harassment the appellant telephoned her ex-husband and told him that he should leave her parents alone and that she was in New Zealand. The appellant sent her ex-husband a letter, postmarked "Auckland", to prove that she was overseas and understands that her parents have not been bothered further.

The appellant believed that she would not be safe if she returned to D as she would be at risk of further violence and extortion from her ex-husband and his associates. She claimed that any complaint she made would be transferred to her local PSB and they would not protect her because of her ex-husband's influence.

The appellant stated that she was unable to relocate elsewhere in China to avoid her ex-husband and his associates. She would need to notify the PSB in her local area if she tried to transfer her household registration permanently and, because of her ex-husband's contacts with the PSB, he could easily discover her whereabouts and she would be at risk of further violence from him. The appellant claimed that she could not relocate temporarily as the local PSB in her new area would contact her former place of residence to verify her details which would place her at risk. The appellant was aware that large numbers of Chinese were going to urban areas in search of work and living without any household registration. However, the appellant understood that people who did not have household registration were reported in the newspapers and were unable to find work without official registration. The appellant further claimed that domestic violence was not taken seriously by the authorities in China and that, given her husband's contacts, she was unable to access state protection.

The appellant arrived in New Zealand on 30 May 1997. The trade exhibition which the appellant had obtained a visa to attend had already begun and she was questioned upon arrival by the New Zealand authorities at the airport, as there was

some doubt that she was genuinely intending to participate in the trade fair. However, it was only on 2 June 1997, after she had been in custody for several days, that she disclosed the basis of her refugee claim to her lawyer and it would appear that she had not come to New Zealand with the intention of claiming refugee status. The appellant was interviewed by the RSB on 17 September 1997. Her refugee claim was declined by letter dated 16 December 1997 and it is from this decision that the appellant now appeals.

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?

Because the issue of relocation arises in this case, the decision of this Authority in Refugee Appeal No 523/92 (17 March 1995) requires two additional issues to be addressed:

- (a) Can the appellant genuinely access domestic protection which is meaningful?
- (b) Is it reasonable, in all the circumstances, to expect the appellant to relocate elsewhere in the country of nationality?

ASSESSMENT OF THE APPELLANT'S CASE

The appellant impressed the Authority as a credible witness. Although distressed while giving evidence, she was determined to explain to the Authority the nature of the treatment to which she had been subjected and did so, often illustrating her evidence with gestures to indicate where and how she had been beaten by her husband. The medical evidence which the appellant produced was consistent with her claims and a report from Dr SW Wong, MB, BS, MRC Psych., FRANZCP, consultant psychiatrist, dated 15 November 1997, corroborates the appellant's account.

There was only one minor discrepancy between the accounts the appellant gave to the RSB and to the Authority. This concerned her single visit to the PSB to complain about her husband's behaviour. To the RSB she claimed to have spoken to a female police officer and to the Authority, she claimed to have spoken to a male. When asked to account for this discrepancy, the appellant explained that she had initially spoken briefly to a male police officer and had then been questioned by a female. The Authority accepts the appellant's explanation for this apparent discrepancy, especially given the overall impression she gave of being a credible witness. Any implausibilities relating to the appellant's failure to leave a violent relationship for so many years the Authority accepts could well be accounted for by the "battered women syndrome" which frequently renders women unable to leave violent relationships, even where logic would otherwise dictate that they leave, and which is described to in the report of Dr Wong.

Having accepted the appellant's account as credible, the Authority now turns to the issues.

The Authority finds that the treatment which the appellant received whilst in China, including weekly beatings and regular sadistic rapes, amounts to persecution. We further find that there is a real chance that the appellant would face persecution of this nature at the hands of her husband and perhaps also Triad members, whom he appears to have recently enlisted as supporters, if she were now to return to D. The appellant attempted unsuccessfully to gain state protection following her complaints to the street committee and the PSB. Notwithstanding that she had divorced her husband, the appellant continued to be the victim of domestic violence and there is no evidence to suggest that, having failed to effectively access protection in her local area in the past, the appellant would now be able to do so. The Authority accepts that, were the appellant to complain about her ex-husband's behaviour at another PSB in D, there is a real chance her complaint

would be transferred to her local PSB where her ex-husband has influence.

Whilst the appellant has a well-founded fear of persecution in D, I find that she could genuinely access domestic protection which is meaningful if she were to relocate elsewhere in China and I further find that it would be reasonable for her to do so.

As far as the reasonableness of the appellant's relocation is concerned, the Authority notes that China is a vast country with a current population of approximately 1.2 billion. According to the Bureau of Democracy, Human Rights and Labour Report China: Profile of Asylum Claims and Country Conditions (14 April 1998) at page 34 states:

"The household registration document (hukoushu or hukoubu-a small booklet), has been of central importance to an individual and his family's well being, employment and housing, particularly in the more regimented early decades of the Communist regime. It records not only the official assessment as to the legitimate residence - differentiating rural and urban residents - but also the allocation of various services and products, such as schooling and clothing. With liberalization of the economy, increased privatisation, and the increased ability of individuals to decide how they want to earn a living, the importance of the household registration book has diminished, at least in the more advanced areas of southern and eastern China. In the 1990's citizens are more mobile and might retain their original "rural" or "urban" designation despite moving to a different kind of area...

The need for a supplemental work force in the areas of fastest economic growth has led to tolerance of a large itinerant population that does not comply with formal requirements to obtain permission to change residences. The lack of legal status for this itinerant population means restricted access to housing, social services, schooling, and many employment opportunities. Such persons must also pay a premium for these services. A second, mobile population of better-educated young skilled workers has taken advantage of Chinese economic pluralism to seek high paying employment far from home without official sanction. This population is often able to circumvent legal obstacles to obtaining housing and other services either through personal connections or bribes. Such a person might or might not have an identity card relating to current location and employment, relying entirely on the ability to pay cash or an employers intervention...

There is a burgeoning market in counterfeit identification documents (ID's). The China Daily reported in 1994 that during the previous three years over 800,000 ID's had been reported "lost" in Guangdong province alone. As most ID's are issued with 10 or 20 year validities, even legitimate ID's would carry out-of-date information."

According to the US Department of State Country Reports on Human Rights Practices for 1997: China (March 1998)("The DOS report"):

"The effectiveness of the Government's identification card system used to control and restrict the location of individual residences, continued to erode. Estimates of

the “floating population” of economic migrants leaving their home areas to seek work elsewhere in the country, range from tens of millions to over 100 million. This group comprises not only migrant workers, but also includes a growing number of middle-class professionals attracted to large cities by better paying jobs in their fields. This itinerant population enjoys increased economic opportunities but lacks official residence status, which provides full access to social services and education. Unless such persons obtain resident status they must pay a premium for these services.”

In A Place To Call Home (October 12 1998) News Week, reforms to the Hukou system, which have very recently been announced in China, are described:

“Now Chairman Mao’s outdated hukou system is under attack. Economists argue that without mobilizing people in the countryside and opening the cities to the country’s best and brightest, China’s growth is in peril. Liberal-minded intellectuals object to restrictions that turn the peasantry into a vast underclass. In response, Beijing has finally begun to tinker with the hukou system. In a groundbreaking announcement, the State Council, or cabinet, recently called on local governments to allow children to assume the residency of either parent, grant urban residency to spouses of city dwellers, permit the elderly to move with their children and offer permanent residence to investors who buy property or start businesses. Though the reforms tackle only a few of the system’s many problems, Beijing’s revamp is just the beginning. “There will be significant changes before the year 2000” says Qiao Xiaochung, a population expert at the People’s University in Beijing.”

The country information, thus, confirms the continuing liberalisation of the household registration system which is being reformed in order to meet the demands of the market place. It appears that educated individuals with skills (such as the appellant) are voluntarily relocating within China for reasons of economic advancement, even if they are unable to benefit from the new reforms and transfer their household registration officially.

An individual wishing to relocate within China may do so on a permanent basis, by transferring their household registration, by obtaining temporary household registration or by becoming an unauthorised migrant. According to the report China: One Child Policy Update (January 1995) published by the Research Directorate, Documentation, Information and Research Branch Immigration and Refugee Board, Canada (“the DIRB”) transfer of Hukou from agricultural to urban status remains strictly controlled by the government and difficult to obtain. However, urban Hukou can be purchased with prices in the mid 1980s for Guangzhou and Shanghai ranging from 10,000 to 40,000 RMB. According to the Far Eastern Economic Review, China Business Times as many as three million permanent residence permits may have been sold so far in China with local officials earning bribes of 25 million RMB (304 (29) FER 10 March 1994, 28).

This DIRB report further describes registration as working somewhat erratically

where an individual moves on a temporary basis and narrates the views of Goldstein and Goldstein (1992) who reported that:

“If an individual plans to stay in an urban place for three days or more... temporary registration is officially required. This may be done at hotels, with a work unit, (if a person is on a short term work assignment) or at the Industrial and Commercial Bureau Office of free markets (for peasants coming to the city to sell their products). Others may register with the neighbourhood Security Office directly or simply drop a temporary registration form into boxes provided for that purpose in the neighbourhoods. A temporary registration is officially valid for only three months and must be renewed thereafter through reapplication to the proper authorities... although temporary residents are formally required to register at their destination, the enforcement of this provision is frequently lax, and people are often able to remain beyond their time limit as long as they do not become a “burden on the community”.

The report further states that:

“While the government at destination has no official jurisdiction over temporary migrants, the local government at origin is unable to keep track of where temporary migrants are. As a result temporary migrants constitute the special group that is largely free of government regulation.”

According to DIRB’s response to request for information CHN17392.E: China: Information on how a person can legally change his or her place of residence to a different village or city (16 May 1994):

“If a person temporarily changes his or her place of residence to a city for a period longer than three days but less than three months, he or she must register as a temporary resident with the local authorities. Those who reside in the place of temporary residence for less than three days are not required to register. These rules for governing registration of temporary residence apply only in urban areas; registration of temporary residence in the countryside is not necessary”.

There is a reference, in the DIRB’s response to information request CHN19713.E: China: Information on the current status of the hukou (household registration booklet in Guangdong province and its special economic zones (SEZ) (3 February 1995), to an article from the South China Morning Post (8 December 1994) which states that, as of January 1995, city residents from an inland province will be able to apply for jobs and the right to reside in coastal regions by presenting their identity cards to the authorities. The same report indicates that these residents will no longer be required to return to the place where they registered their household to file an application for a household registration transfer, and that the new measures would also apply to people who want to study in other provinces.

As far as the appellant herself is concerned, the recent reforms mean that, prima

facie, it is not now necessary for the appellant to notify her local PSB in D of her intention to move to a new area. Accordingly, it appears the appellant could transfer her household registration within China, without the PSB in D being aware of her new place of residence, especially if she were to register on a temporary basis. However, the Authority acknowledges that practices may vary throughout China, given that the household registration system is administered on a local level and the appellant may not wish to even approach a PSB for fear that her ex-husband might become aware of her intention to settle in another area.

If this were the case, the appellant could relocate, like the millions of other Chinese referred to in the above references, as an unauthorised migrant, given that she is an intelligent, well-educated, well-groomed woman with skills which would assist her in finding employment in the private sector in China. She has supported herself and her family since her marriage (her ex-husband's income never having been contributed to the household) and is, therefore, used to living independently. The appellant left China twice and has lived and worked in Japan and New Zealand where, despite unfamiliar culture and language in both countries, she was able to support herself. Given this background the Authority finds it reasonable for the appellant to relocate, even unofficially, in China.

The Authority specifically raised the issue of relocation and sought counsel's submissions after drawing his attention to country information which indicated that the importance of the hukou system in regulating the lives of Chinese citizens is diminishing. On the issue of relocation, counsel has submitted, inter alia, that the appellant is:

“unable to access effective protection in another part of her country of origin, due to the hukou system and her ex-husband's unique affiliation with the police, which would allow him to find her wherever she tries to relocate”.

The Authority has considered all counsel's submissions but considers he has not produced country information to rebut the Authority's suggestion, which was expressed at the hearing, namely, that relocation might be reasonable in the appellant's case. The country information which has very recently emerged merely serves to confirm the trend of liberalisation of the hukou system and increasing unauthorised migration, which was already very apparent at the time of the Authority's hearing from the available country information (such as the DOS report). Having considered the procedures which govern permanent and temporary household registration and the large ‘floating population’ (possibly over

100 million unofficial migrants), I believe the appellant could relocate without a real chance of alerting her ex-husband to her whereabouts.

On the issue of reasonableness, counsel has further submitted that the appellant may, as a single woman, find herself in a dangerous position and draws the Authority's attention to a Human Rights Brief Women in China (October 1993) published by the DIRB which quotes, at p.23 of the Beijing Evening News, that young rural women migrants are frequently subjected to sexual assault. The only other specific reference to the vulnerability of women migrants, in the extensive country information (on both domestic violence and relocation) which was perused by the Authority before reaching its decision, was in the Amnesty International Report Women in China Imprisoned and Abused for Dissent (June 1995) which states:

"Migrant women are frequently characterized in the Chinese press as without morals and the main source of prostitution. In 1994 a migrant woman who tried to bring a case of gang rape in Beijing was instead accused of prostitution and detained for 15 days by the police. She was assisted by a female lawyer in pursuing compensation for unlawful detention, but was advised that her case would not succeed as the police had not issued her with a 'release certificate' which was deemed necessary proof of detention."

The Authority believes that if there were an identified risk for migrant women, over and above the vulnerability which women generally experience within society, the Authority would have expected it to have been referred to in other country information. The Authority has noted this information but in the light of the very large numbers of migrants in China, we do not accept that the appellant would necessarily be at risk as a single woman. Whilst the Authority does not discount the fact that a single woman, away from her home area, might experience sexual discrimination and harassment, the Authority finds that the mere possibility of such treatment does not make it unreasonable for the appellant to relocate.

In summary, the Authority finds that, given the current economic climate and the large numbers of internal migrants (both official and unofficial) in China, it is reasonable for the appellant to relocate. Given the size of China and that the appellant may relocate without notifying the PSB in D (by relocating unofficially if she wishes) the Authority finds that the appellant could, by the act of relocation, avoid being troubled by her ex-husband and his cohorts.

In the remote event of the appellant's ex-husband discovering her whereabouts the Authority finds that the appellant could genuinely access domestic protection

which is meaningful, outside her home area. In considering whether the appellant could genuinely access domestic protection which is meaningful, the Authority has considered the legal protection available to women who are the victims of domestic violence and it is clear from the country information that the Chinese authorities have taken some measures to address this problem.

Counsel, in his submissions, drew attention to the Women's Rights Law Reporter, volume 17, No. 3 Summer 1993 at page 291:

"Although progress has been made in terms of drafting laws protecting women, establishing organisations to work on woman's issues and raising public consciousness on gender equality, neither the government nor other social actors have implemented many specific measures to prevent domestic violence or to provide protection for battered women."

The available country information available confirms that domestic violence is acknowledged to be a problem in China and the authorities are taking steps to increase public awareness. The Authority has found some confirmation of the position put forward by counsel, namely, that there may be little in the way of civil remedies specifically intended to control domestic violence, such as domestic protection orders in the civil or family courts. However, country information confirms that men are prosecuted in the criminal courts for criminal offences such as battery, rape or indecent assault following assaults upon their wives.

According to the DOS report (1998):

"violence against women can be grounds for prosecution under the law... In recognition of the seriousness of spousal abuse, some localities have taken measures to address the problem. There is, however, no national spousal abuse law. In October, a national symposium on domestic violence was held in Beijing. While NGO's have taken action to increase awareness of domestic abuse, a severe shortage of funds has affected these efforts. In Shanghai a women's shelter was closed after 12 months because its funding ran out. In September a women's abuse hot-line in Beijing ceased operating because its grant had elapsed. However, other projects that addressed domestic abuse were established. In Shenzhen a hot line was started to respond to calls from battered woman. In Guangxi province, a radio station featured a call in talk show that addressed women's issues including domestic violence".

According to Women in China - Imprisoned and Abused for Dissent (June 1995) an Amnesty International report:

"Several provincial courts have given prison terms to men who, in some cases joined by relatives, raped wives who were in the middle of divorce proceedings or who attempted to leave arranged marriages".

According to this report, a legal case book states:

“If a husband forces a woman to have sex against her will only in order to satisfy the requirements of his sex life, rape is not a suitable definition. If the husband’s intentions are obscene or designed to humiliate etc where the circumstances are serious, this may be defined as the offences of humiliation or hooliganism”.

The report further states:

“The criminal law includes two separate crimes of battery, depending on whether or not parties are members of the same family. Comparison of the different penalties indicates that punishment for the battery within the family is less severe. Women’s issues experts in Shanghai, claim that the judicial authorities do not take domestic violence cases seriously and may refuse to certify a woman’s injuries.”

According to Christine Hall, Daughters of the Dragon: Women’s lives in Contemporary China London: Scarlet Press, 1997.

“... Chinese law is remarkably progressive in protecting women from marital violence. Chinese marriage law makes it a criminal offence for a husband to beat or torture his wife. Since the 1980s courts have convicted husbands for marital rape, something the courts in many Western countries are still hesitant or unwilling to consider”.

While the Authority has accepted that the PSB in the appellant's area may have been influenced by her ex-husband and failed to act upon a complaint against him made by the appellant, however, we do not accept that the influence of the appellant or his associates extends to PSB in other areas of China. Thus, if the appellant had cause to fear her ex-husband outside D, she would have a reasonable chance of being able to access genuine state protection. The appellant has already indicated an ability and willingness to complain to the authorities, having complained to the street committee on numerous occasions and to the PSB, in D, albeit unsuccessfully. Accordingly, the Authority finds that the appellant would not be reticent about complaining to the PSB if she feared her ex-husband elsewhere in China and the Authority believes that state protection would not be denied to the appellant by the local PSB in that area as a result of her husband’s connections with the PSB in D.

To summarise, the Authority finds that there is a real chance that the appellant would face persecution in her local area of D, but that she can genuinely access domestic protection which is meaningful elsewhere in China and it is reasonable to expect her to relocate. In the light of our findings upon relocation, the Authority

has not considered whether or not there is any Convention reason for the appellant's persecution and makes no finding on this issue.

CONCLUSION

For the above reasons, the Authority finds that 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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Member