REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 70770/98

AT AUCKLAND

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

Counsel for Appellant: D Ryken

Representative for NZIS: No Appearance

Date of Hearing: 6, 7, 20, and 24 April 1998

Date of Decision: 17 December 1998

DECISION

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

INTRODUCTION

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

A formal application for refugee status was similarly filed by CD with the RSB on 26 June 1997. CD was interviewed in respect of his application by the RSB on 24 September 1997. In a decision delivered by letter dated 23 January 1998, the RSB declined his application. By letter dated 2 February 1998 Mr Ryken, as CD's counsel, filed a notice of appeal on his behalf with the Authority on 5 February 1998.

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

By letter dated 13 March 1998, the Secretariat informed Mr Ryken that the Authority had directed that both appeals be heard together on 6 and 7 April 1998 respectively. On 6 April 1998, both appellants appeared before the Authority and confirmed to the Authority that they wished their appeals to be heard together by the Authority, with each other's evidence being given in support of one another's appeal claims. (See the Authority's decision Refugee Appeal No. 70739/98 (17 December 1998) determining CD's appeal.)

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

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

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

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

THE APPELLANT'S CASE

The appellant is a widower in his late 20s from Grozny, Chechnya. He is half-Russian and half-Chechen. The appellant's surname is Russian and he speaks Russian with no noticeable accent (according to the interpreter). The appellant considered that from his physical appearance, it was not possible to determine whether he was in particular ethnic Chechen or Russian.

The appellant's grandfather, who was ethnic Chechen, was one of several thousand Chechens deported by Stalin to Kazakhstan in 1944. However, he died before reaching Kazakhstan. The appellant's grandmother died two years later,

leaving the appellant's father an orphan. The appellant's father was subsequently adopted by an elderly Russian couple in Kazakhstan, and thereafter assumed their Russian surname. Following the death of his adoptive parents, the appellant's father returned as an adult to live in Grozny, Chechnya and subsequently married the appellant's mother, an ethnic Russian. Both of the appellant's parents died in January 1995 during the Chechnya war. As for the remainder of the appellant's living relatives, the appellant stated that he was aware he had relatives on his mother's side who lived in Siberia, but had never met or had contact with them.

The appellant's family had lived in Murmansk in the early 1970s but subsequently moved to live in Grozny, when the appellant's father was made redundant in 1987. That same year, the appellant completed his high school education and undertook correspondence studies with an arctic sea oil research institute in Murmansk, graduating in June 1988 as a mechanic specialising in oil-drilling. In 1988, the appellant was conscripted to serve his two years' compulsory military service, and was deployed to the Ukraine. Upon completion, he returned to live with his parents in Grozny to look for a job. Unsuccessful, he returned to Murmansk and obtained work as part of an oil and gas research expedition conducted by the arctic sea oil research institute.

In July 1992, the appellant married. His wife, a student from North Ossetia living in Grozny, remained, in his absence, living with his parents while the appellant worked in Murmansk. Periodically, the appellant returned to Grozny to visit his wife and family.

In late October 1992, the appellant received a radiogram from a friend informing him of the outbreak of the Ingush-Ossetian conflict in North Ossetia and requesting that he come urgently. The appellant applied for leave, knowing that his wife was visiting her family in North Ossetia at that time. The appellant tried to make arrangements to leave the islands but, in the winter conditions, experienced about a month's delay in obtaining helicopter transport to the nearest plateau. Once there, the appellant experienced further delays and it was not until December 1992 that he was able to travel to Murmansk. At the same time, the appellant received notification that his work would no longer be required. The appellant stated that the 20 or so non-Russians out of the thousand or more workers on the expedition were dismissed from their jobs at this time.

The appellant subsequently returned to Grozny and, upon his arrival, learned from

his wife that she, her sister-in-law and sister-in-law's child were taken hostage by Ossetians and held in Sputnik, a military base, for about a week. His wife's mother, who had remained in her house, had since gone missing and was presumed dead. The women were then taken to Nazran in Ingushetia where they were 'traded' for Ossetians living in Ingushetia who were to return to North Ossetia. Subsequently, the women were released by Russian troops and were able to make their way back to Grozny. CD, the appellant's brother-in-law, who had separately been taken hostage from his home by Ossetians, had also been detained at Sputnik and later transferred to Nazran, Ingushetia, from where he was similarly 'traded'. CD had learned that his sister, wife and child had sought refuge in Grozny, and similarly managed to make his way to Grozny to be reunited with them.

The appellant's wife's family members lived with the appellant and his wife in Grozny, having been given a temporary *propiska* by the authorities to remain in Chechnya. Initially, around December 1994, the Russian military entered Grozny. No bombing or hostile warfare was carried out at the early stages of the war, despite the occupation of Russian tanks in the city streets. By the beginning of 1995, however, air raids and bombing occurred in the town. The appellant claimed that those who knew him well did not regard him with any hostility during the war, despite the fact that he was half-Russian. However, there were many people who were 'full of anger' during the war, and the appellant speculated that he was fortunate that he was not shot or similarly harmed during this time.

It was, nevertheless, an everyday part of the appellant's life to venture out with his brother-in-law, CD, during this time to search bombed areas for wounded, bringing them out of any further harm's way by carrying them to nearby basements. Others would be involved in tending to the wounded brought there.

In January 1995, while the appellant and CD were out searching for wounded, the appellant's home was bombed during an air raid. When they returned home, they were shocked to find that the house had been completely destroyed, and there were no signs that anyone had survived the blast. The appellant stated that ordinarily his family remained at home or hid underneath the basement during air raids, as this was considered the safest place to be at the time. After three to four weeks, having searched for survivors but to no avail, and without any hope of finding their family alive, the appellant and CD decided to leave Grozny for Nazran. They decided to return to Nazran, believing that they would be able to get

assistance there, and that it would be safer, the Russian military presence along the Ingushetian/Ossetian border having since been withdrawn.

The appellant and CD joined a column of people fleeing Grozny and, with the assistance of a guide, managed to avoid the Russian troops on patrol. They fled on foot, walking through the mountains, helping to carry the wounded. Eventually, after walking for a day or so, they reached a 'carriage town', or camp, comprising tents and small make-shift houses. The appellant claimed that they chose to remain in the camps merely to stay alive. Russian troops, in carrying out their campaign of "ethnic cleansing", bombed areas where ethnic Chechens were known to live. The camp in Nazran appeared to them to be the safest option available at that time. There, they were provided with food and other humanitarian aid distributed by the United Nations and other international relief organisations, such as the International Red Cross. The appellant estimated that some 400,000 people lived in camps set up in Nazran at that time.

Upon his arrival, the appellant and CD joined the queues of displaced persons required to register their presence in Nazran. This registration process was carried out by officials of the Territory of Ingushetia. The appellant registered his presence without problem. Both the appellant and CD were issued with certificates which could be used to evidence their identity and entitled them to receiving aid, and which were issued by the Department of Internal Affairs of the Ingushetian authorities. These certificates, dated 2 February 1995, declaring that the appellant and CD had lost their passports, were valid for one year, to 2 February 1996. Neither the appellant nor CD, however, renewed these certificates upon their expiry. Both were also issued with "Forced Migrant Certificates", which upon production of another document referred to as "Form 9", recognised their status as forced migrants and provided them with a further means of passport identification. It is relevant to record that both the appellant and CD submitted these original documents to the immigration authorities upon their arrival at Auckland airport. Subsequently they were mislaid, however, resulting in the appellant's file holding only the original of his Forced Migrant Certificate, and CD with the original of his identity document.

It became clear to the appellant, within two months of their arrival in Nazran, that the amount of humanitarian aid being distributed was 'unrealistic' and limited and that he would have to try to earn his living elsewhere. The appellant was able to assist Ingush as a car mechanic and therefore, unlike his brother-in-law, CD, was

not as heavily reliant on the aid.

In the summer of 1996, the appellant was travelling by car with a local Ingush man in between two camps within Nazran, when shots were fired at their car. The appellant speculated that Russian soldiers, whom they had driven past and who were laughing at them, had fired the shots. The car somersaulted a number of times, before coming to a halt. The appellant, who suffered a broken leg as a result of the car accident, received medical attention from a woman. The appellant stated that such occurrences were common at military posts and those identified as Chechen were regarded by the Russian military as 'less than human'.

The appellant had also received threats from a local Ingush in Nazran who had approached him at his workplace where he repaired cars. The local Ingush spoke to the appellant initially in Ingush, and the appellant responded in Russian. Upon realising that the appellant was Russian, the man began to threaten the appellant, telling him that he did not belong there and that he should be sent away and shot. Apart from this incident, the appellant managed to avoid any further confrontations during his time in Nazran.

The appellant and CD remained in Nazran for some two years. During that time, the appellant estimated that the refugee population in Nazran totalled some 400,000 to 500,000 people.

In the beginning of 1997, believing that the situation would not improve and that they would be better received in Kazakhstan, the appellant and CD decided to leave Nazran for Kazakhstan. This belief was premised on the fact that there was a large Ingush and Chechen community in Kazakhstan, many of whom were descendants of those deported to Kazakhstan by Stalin in 1944 choosing to remain there, and the rumours which had circulated within the Nazran camp that the Kazakhstan government would provide the internally displaced Ingush and Chechens with legal status to remain there and other forms of assistance. The appellant also planned to seek out friends living in Uzbekistan. However, to do so necessitated him travelling to Kazakhstan first.

The appellant and CD were driven to Kazakhstan by a truck-driver from Almata, hiding for most of the journey to avoid detection at border checks until they crossed the border into Kazakhstan territory in January 1997. The entire journey from Nazran to Almata, Kazakhstan lasted approximately one week. Upon their

arrival in Almata, their driver brought them home to stay with his family for three days. The driver subsequently advised them to register their presence at the W centre, an Ingush-Cultural Centre and refugee aid organisation based in Almata. By registering, the W centre acted as guarantors for both the appellant and CD with the Kazakhstan authorities. The appellant and CD were introduced to a couple working at the centre, who provided allowed them to stay in their home.

The appellant, however, left after two days and subsequently went with another Chechen acquaintance, by train to Tashkent. Although the appellant had purchased a ticket, in the absence of a passport he hid on the train whenever identity checks were being made. Having alighted upon their arrival at the train terminal in Tashkent, they were almost immediately stopped by police. They were taken to the police station where they were subject to thorough body searches. Initially the police demanded that they pay them bribes, and asked whether they had any guarantors. Realising that they had neither sufficient money nor guarantors from whom they could extract money, the police then demanded that the appellant and his acquaintance show certificates evidencing the purchase of the modest amount of Uzbekistan currency found in their possession. The appellant stated that it was clear from the police officers' demeanour that this demand was merely being used as a pretext for their continued detention. After some 12 hours, the appellant and the other Chechen acquaintance were taken back to the Tashkent train station and put on a train bound for Almata, and told not to return.

Thereafter, the appellant remained living in Almata with a local Ingush family. In light of his experiences with the Tashkent police, the appellant sought to avoid being similarly detained by the Kazakhstan authorities, and therefore refrained from walking about the city alone. On six or seven occasions, the appellant was stopped by the Kazakhstan authorities but was subsequently allowed to continue on his way, given the guarantee provided by the local Ingush family with whom he was staying. On one occasion he was taken to the police station where he was detained for approximately one hour before being released. However, the appellant's brother-in-law, CD who, due to his dark complexion, was recognisable as being Chechen, was frequently stopped by the authorities on the street and required to account for his presence in Kazakhstan. CD gave evidence to the Authority that he was arrested by officials on one day as many as nine times, while walking down the street.

In such circumstances, he relied on the appellant, who did not suffer any such harassment, to undertake enquiries with the relevant authorities as to how they could obtain some form of permanent and legal status to live in Kazakhstan or elsewhere. The appellant stated that despite his attempts over some three months, he was unable to explain his predicament to either the Kazakhstan authorities or any other embassies he approached in Almata. The appellant was told to wait for a representative to see him, but no such person came. Finally, the appellant was referred to the United Nations office based in Froonze, now known as Bishkek, but his attempts at receiving an audience with any official there was equally fruitless.

The appellant had at the same time re-established links with AD, one of the wounded he had helped carry from Grozny to Nazran in January 1995 and who had, prior to the appellant's arrival, returned to Almata. By April 1997, the appellant had formed the view that he and CD were left with no other alternative but to leave Kazakhstan. The appellant told the Authority that they had reached the point where they could no longer go on living in such circumstances and wanted to go somewhere where they could lead "a normal life". AD, who had lived in Australia previously for some six years, told the appellant that while he had no means of helping them travel to Australia, he could nevertheless help arrange for them to travel to New Zealand. AD did not ask for money or any other payment in kind for this assistance. It was the appellant's understanding that AD regarded both as having saved his life and he was therefore more than willing to help them in any way he could.

At the appellant's request, AD accordingly proceeded to obtain Kazakhstan passports, the relevant visas and airline tickets to facilitate their travel to New Zealand. The passports which he obtained on the black market, however, were not those being currently issued, but were "tourist" passports. These passports, while issued in both appellants' names, falsely declared that they had been born in, and were citizens of, Kazakhstan. The passports obtained had a low 'street-market' value given that the Kazakhstan government had issued a decree that such passports would expire in July 1997, and that outward travel beyond that date would not be permitted.

Accordingly, on 10 June 1997, the appellant and CD left Almata for Dubai where they stayed two to three days before subsequently flying to Hong Kong. From Hong Kong, they took a flight to Tonga and subsequently, using a return airline

ticket to Auckland, travelled to New Zealand. They arrived in New Zealand on 13 June 1997.

The appellant fears that if he returned to the Russian Federation, he would be arbitrarily detained by the Russian authorities given his Chechen origins. In this regard, the appellant stated that the fact that he had been issued with a Forced Migrant Certificate would be of no assistance to him, and that it was an absurdity to suggest that he would be returned by the authorities to live in Nazran. While not distinctively Chechen by appearance, the appellant's Chechen origins would be apparent to the Russian authorities from his identity documents, and once known to them, the appellant feared that he would be arbitrarily arrested, detained, and beaten and subject to false criminal charges. The appellant told the Authority that he had learned from friends in the Russian Federation that persons from Chechnya were still very much at risk of such treatment irrespective of wherever they lived in the Federation. The appellant similarly feared that he would also be persecuted by members of the local Russian population at large, given the deep-seated resentment against ethnic Chechens since the war in Chechnya.

THE ISSUES

The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

> "... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."

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

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

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

ASSESSMENT OF THE APPELLANT'S CASE

Before considering the issues as framed, we first consider the issue of the

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

We turn now to consider whether, objectively on the facts as found, there is a real chance that the appellant would be persecuted if returned to his country of nationality, the Russian Federation.

The Authority has carefully considered the appellant's case and is left with a real doubt as to whether or not this particular appellant could safely live in the Russian Federation due to his half-Russian, half-Chechen ethnic background. Accordingly, the Authority is prepared to give him the benefit of that doubt in finding that his fear of persecution is well-founded. In reaching this conclusion, the Authority has taken into account the following factors:

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

2. The brutal war in Chechnya has caused a backlash of state-condoned hostility towards Chechen nationals and other people from the North Caucasus. People from this area have been subjected to arbitrary detention, torture, beatings, harassment and systematic job and housing discrimination. Ethnic minorities are also scapegoats for immigration and population displacement and for the continued economic hardship Russia is

experiencing (Human Rights Watch *A review of the compliance of the Russian Federation with Council of Europe commitments and Other Human Rights Obligations on the First Anniversary of its Accession to the Council of Europe* (February 1997) 19-23; Human Rights Watch *Ethnic Discrimination in Southern Russia* (August 1998) 2). A negative, collective image of ethnic Caucasians has been born in the mind of many Slavs. A new term "individual of Caucasian nationality" has entered the vocabulary of post-Soviet Russia and is used to convey images of ethnic strife, crime, drug trafficking, wild free market capitalism, speculation and undeserving migrants. The media, which often demonises ethnic Caucasians, has been part of this process (Human Rights Watch *Ethnic Discrimination in Southern Russia* (August 1998) 3).

While the appellant does not, by his physical appearance, look particularly Caucasian, it is clear that the appellant's Chechen origins and status as an internally displaced person will be readily identifiable from such identity documents as his "Forced Migrant Certificate". There is clear country information evidencing that the state authorities perpetrate discriminatory practices against non-ethnic Russians, and in particular persons originating from the Caucasus, in such cities as Moscow, St. Petersburg and other urban areas. These have reportedly taken the form of searches, beatings, arrests and deportation (see for example, Amnesty International *Torture in Russia "This man-made Hell"* (April 1997) 18, 22-23) and harassment through discriminatory enforcement of residence requirements, arbitrary identity checks on the street as an attempt to extort bribes, invasive identification checks at persons' homes and even destruction of identity documents (see for example, *Human Rights Watch, Crime or Simply Punishment? Racist Attacks by Moscow Law Enforcement* (September 1995)*;* Human Rights Watch, *A Review of the Compliance of the Russian Federation of the Russian Federation with Council of Europe Commitments and Other Human Rights Obligations on the First Anniversary of its Accession to the Council of Europe* (February 1997) 19-23; Human Rights Watch, *Moscow: Open Season Closed City* (September 1997)). These practices are also known to extend elsewhere in the Russian Federation. Further, in both Krasnodar and Stavropol, Cossack units, some of whom openly profess anti-ethnic migrant ideologies, are authorised to accompany police on passport checks. Since February 1997 they had had permission to carry firearms although they remain subordinate to federal authorities. In

the name of law enforcement, they sometimes commit abuses against the local population, particularly ethnic Caucasians (see Human Rights Watch, *Ethnic Discrimination in Southern Russia* (August 1998) 2-3, and generally, United States Department of State *Country Reports on Human Rights Practices for Russian Federation: 1997* (March 1998); Human Rights Watch World Report for Russian Federation: 1997 (December 1997), 271-272). To similar effect see also "Chechnya objects to Russian 'discrimination'" *BBC Summary of World Broadcasts* (1 April 1998)).

Country information shows that despite a USSR Constitutional Supervision Committee ruling in 1991 invalidating *propiska* restrictions as of 1 January 1992 on the basis that such laws violated freedom of movement rights, this decision was never put into effect in major urban centres or other areas experiencing significant in-migration. Regional authorities in Moscow, St. Petersburg, Krasnodar and Stavropol and elsewhere adopted legislation reinstating the *propiska* system at a local level with the resultant effect of detentions, fines, and physical expulsions for those without *propiskas* from these areas (see discussion in Human Rights Watch "*Russian Federation: Ethnic Discrimination in Southern Russia"* (August 1998) 18-19). Further changes were made as a result of a second landmark Constitutional Court ruling in 1996, and more changes liberalising their registration regimes will be required as a result of a recent Constitutional Court ruling in February 1998 (ibid). However, whether the local authorities will implement these new laws in practice is unclear (ibid, 20-21):

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

> invasion of privacy and destruction of identity documents."

The Authority also has doubts as to whether the appellant's status as a "forced migrant" would afford him any particular protection should he come to the attention of the authorities, either at the airport in Moscow or elsewhere in the Russian Federation, if stopped by a law enforcement official seeking to verify his identity. Material aspects of the appellant's Forced Migrant Certificate submitted relevantly state:

> "[at bottom] Holder of current document can exercise rights and obligations that are in the Act of the Russian Federation about forced migrants and also other laws and acts of the Russian Federation."

Under the "special notes" section of the Certificate, the appellant's place of residence in Grozny is detailed. A pro-forma printed statement details the following:

> "Extracts from Act over the Procedure over the Recognition…of Persons to be Forced Migrants.
> Registration of the Territory of the Russian Federation.
>
> This Certificate of Forced Migrants is issued to persons that are recognised as a Forced Migrant who is over 18 years of age. This Certificate is to be used for passport identification or any other identification when asked for documents as substantiating that ones identity as above. Re-registration of Forced Migrants is carried out once a year by the local agency of the Immigration Service or by any other authority which is in the [ ], or any other local authority or law enforcement agency.
>
> Citizens already registered in the Certificate of Forced Migrants should be noticed which is signed by the authorised person and the stamp of the agency which carried out the re-registration. If the holder moves or changes their place of residence from this Territory or other Territory of another subject of the Russian Federation, the Forced Migrant is released from the registration.
>
> Upon arrival to the new place of residence, Forced Migrants within two weeks duration has to register in the office of the Immigration Service. Registration of citizens and re-registration in the territorial Immigration Office is carried out respectively after their registration in the police stations or any other station of Internal Affairs and their re-re-registration."

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

1996 “On the procedure for recognition of the status of refugees and forced migrants in Moscow city” which stipulated:

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

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

Aside from the fact that the appellant has no other living relatives in the Russian Federation, let alone Moscow, it is the Authority’s view that, cumulatively, such factors as the appellant’s mixed ethnicity, his Chechen origins, the lapse of his Forced Migrant status and need to re-register to be entitled to a propiska, and the known country information of the treatment towards such persons at the hands of the authorities, places him in a particularly vulnerable position to such an extent that there is a real, as distinct from a remote, chance that he would be subject to an identity and/or or residence permit check by law enforcement agencies, and that in doing so, his Chechen origins would, if not through his appearance, become known through such enquiries being made. Further, the appellant’s background as an internally displaced person or “forced migrant” is a cumulative factor which would serve to exacerbate his already vulnerable

position at the hands of the authorities. In such circumstances we find for all of these reasons that there is a real chance the appellant would be subject to the various arbitrary treatment referred above. There is also a real chance that the appellant would face discrimination from the local populace at large in light of the xenophobia currently pervading Russian society against non-Slavic persons from the Caucasus. Such treatment would cumulatively amount to a sustained and systemic violation of the appellant's core human rights or the denial of human dignity in any key way amounting to persecution (see Refugee Appeal No. 2039/93 (12 February 1996) 15). These rights include his right to freedom of movement guaranteed in the Russian Federation Constitution and article 12 of the 1966 International Covenant on Civil and Political Rights (ICCPR), and the right to liberty and security of person and freedom from arbitrary arrest and detention (ICCPR, article 9), the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (ICCPR, article 7).

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

> "On the situation of ethnic Chechen in Russia, indeed there is a pattern of xenophobia and discrimination in Russia. Moreover, through local and regional decrees, local and regional authorities have imposed very strict limitations to freedom of movement and choice of place of residence (although at the federal level the right to freedom of movement and choice of residence is guaranteed by the Constitution). Based on these decrees, persons who do not hold a permanent residence permit are subject to fines, detention and police harassment. In view of the criteria imposed by the local authorities, permanent residence permits are in practice nearly impossible to obtain in most of the developed regions of Russia and in particular in Moscow.
>
> The Russian Constitutional Court repeatedly reiterated that such decrees were contradicting the Constitution, but with no success so far.
>
> In practice, persons from the Caucasus (as well as foreigners, in particular asylum seekers from non CIS countries, such as Afghanistan, Angola, Somalia etc.) are the favourite targets of police, checking whether they have a residence permit.
>
> We have read the Helsinki Watch report which is referred to in the Memorandum of the Refugee Status Appeals Authority and the information it contains do concur with our assessment of the situation.
>
> In December 1997, UNHCR the Council of Europe and the OSCE organized a joint conference in Kyiv on freedom of movement and choice of place of residence in the countries of the CIS aimed at drawing the attention of the authorities of the highly detrimental effect the current practices were having on

> the situation of IDPs [internally displaced persons] and refugees.
>
> In conclusion, on the first question
>
> -yes there is a pattern of xenophobia amongst the local population and discrimination by the local authorities towards persons referred to as "of Caucasian nationality" in parts of Russia other than the North-Caucasus."

4. It is therefore implicit from the Authority's findings above that the Authority is also satisfied that the appellant could not safely negotiate his way back to his former residence in Grozny, Chechnya. To do so would require him having to travel across territory where there is a real chance that the appellant would be persecuted by state agents given the known country information regarding the treatment of persons identified as being from the Caucasus region (with or without valid identity documentation) and the fact that the residence permit system still prevails in the Russian Federation.

   Even assuming that the appellant could safely negotiate his way from the airport to Chechnya, the Authority finds that there is a real chance the appellant would through his ethnic origins and language be perceived to be an ethnic Russian. In the context of continued tensions between Russia and Chechnya, which are said to likely remain for years to come in the wake of Chechnya's unresolved legal status following the Khasavyurt agreement to postpone that decision until 31 December 2001, the Authority is prepared to afford the appellant the benefit of the doubt and find there is a real chance he is also at risk of persecution there (see Human Rights Watch/Helsinki *Russia/Chechnya A Legacy of Abuse* (January 1997) 1, 22). In a supplementary response dated 17 September 1998 from UNHCR headquarters in Geneva, with respect to the specific circumstances of the appellant's Russian heritage and his former residence in Chechnya:

> "Under no circumstances should ethnic Russians or individuals who could be identified as such be returned to Chechnya. They would be subject to violence by the population and would not be able to receive any protection from the authorities (who are tolerating violent acts against Russians). As it seems that the applicant only speaks Russian (i.e. does not speak Ingush or Chechen) he would be clearly under threat if returned there."

Accordingly, the Authority finds that there is a real chance that the appellant would be persecuted upon his return irrespective of wherever he lived in the Russian Federation. Such persecution would be for reasons of his race, both real and imputed.

<u>CONCLUSION</u>

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

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Chairperson