

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76508

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AT AUCKLAND

<u>Before:</u>	M A Roche (Chairperson) B A Dingle (Member)
<u>Representative for the Appellants:</u>	The appellants represented themselves
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	3 & 8 June 2010
<u>Date of Decision:</u>	19 October 2010

DECISION

[1] These are appeals against decisions 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 appellants, citizens of South Africa.

[2] The appellants in this appeal are a mother and her teenage son. They will be referred to as the appellant and the appellant's son respectively. They first arrived in New Zealand on 19 January 2009. They subsequently made two trips to Australia and returned to New Zealand for the final time on 1 December 2009. They claimed refugee status on 21 December 2009 and were interviewed by a refugee status officer on 18 January 2010. Their applications were declined in decisions dated 24 February 2010 leading to these appeals.

[3] The essential issues to be determined in these appeals are whether the appellants' accounts of being relentlessly targeted by criminals in South Africa, who robbed, assaulted and threatened them, are credible. It must also be

determined whether, if returned to South Africa, the appellants will be the victims of persistent criminal offending against which they cannot obtain police protection and, if so, whether the mistreatment they fear in South Africa, constitutes “being persecuted” for the purposes of the Refugee Convention.

[4] Because the appellant’s son is a minor, the appellant acted as his responsible adult at the hearing, pursuant to s141B of the Immigration Act 1987. The appeals were heard jointly, the evidence of each appellant being considered in respect of their own and the other appellant’s appeal.

THE APPELLANTS’ CASE

[5] What follows is a summary of the evidence the appellant gave at the hearing. An assessment of this evidence follows later in this decision.

[6] The appellant is an Afrikaans woman, aged in her late 40s. She is from Durban and has two siblings who remain there, a brother and a sister. Her remaining sibling, a sister, resides in Melbourne.

[7] In 1995, the appellant, a single mother, gave birth to her son. Approximately one year later, she purchased a ground-floor apartment in a good neighbourhood in Durban. For several years, the appellants were very happy with their apartment and their neighbourhood. However, during the 2000s, the neighbourhood rapidly deteriorated and became a dangerous place that was frequented by prostitutes and drug dealers.

[8] The appellants were burgled for the first time in the late 1990s, when the appellant’s son was still a pre-schooler. Some jewellery which had sentimental rather than monetary value was stolen. When called, the police attended the burglary scene. However, they delayed in sending a fingerprint collector to the apartment and when the person came approximately three days after the burglary, he advised the appellant that it was too late to collect fingerprints.

[9] The appellant did not make an insurance claim in respect of this burglary, or the burglaries that followed. She did, however, inform her insurance company when she was burgled because she thought it was her duty to do so. Over time, as the area deteriorated and the number of burglaries and other crimes committed in the area rose, the appellant’s insurance premiums became too expensive to keep up and she stopped her insurance.

[10] The appellant is unable to recall when she was burgled for the second time or when she began to be burgled frequently. She is unsure how many years passed between the first and second burglaries. However, at some stage, the appellant began to be regularly burgled. Occasionally, the burglars would break in when the appellants were out. At other times, the appellants would awake in the morning with dry mouths and realise that a stupefying agent had been placed on the windowsills of their open windows so that they could be robbed while they slept.

[11] The appellant had a close relationship with her brother who lived approximately half an hour away in Durban. After each burglary, the appellant's brother would come to her apartment and do work to strengthen the security defences she had against further burglaries, for example, welding bars on her windows. However, despite his efforts, it proved impossible to secure the apartment against burglaries as the burglars would always be able to prise the welded bars off the windowsills. The appellant had no choice but to leave the windows open at night because it was very hot in Durban and she could not afford an air-conditioning unit.

[12] The appellant complained to the police from time to time about the burglaries. Apart from their initial visit following the theft of her jewellery they did not assist her and did not come to her apartment to investigate the burglaries.

[13] The appellant was unable to relocate because, due to the deterioration in her neighbourhood, her apartment was worth very little and she could not afford to buy anything in a better area. The appellant's son was very frightened by the burglaries and tended to sleep in the same room as the appellant, rather than in his own room.

[14] In addition to the burglaries, the appellants were robbed twice while in their car. On one occasion, the assailant put a brick through the car window, then leant through the window and grabbed her handbag. On another occasion, the assailant used a spark plug to smash the window and grabbed her handbag. The appellant left her car and chased the robber on foot on this occasion and managed to retrieve her handbag. She complained to the police about this incident but, although they registered her complaint, they did not assist her because she had not lost any property.

[15] Several incidents occurred constituting "last straws" for the appellant. However, she is unable to place these incidents in time or in sequence. One of

these “last straw” incidents was the rape of the appellant by three burglars who were angry with her because she had not replaced her household possessions since the previous burglary. The appellant’s son was asleep when she was attacked and only found out about his mother’s rape after she disclosed it to him while in New Zealand. The appellant called the police after she was raped. However, although they said that they would come to the apartment, they did not. She did not attend her local police station to report the rape because it was full of men and she did not want to be anywhere near men at that time. She was in considerable pain after the rape and took several days off work. She was unable to recall when the rape incident occurred but believed that it took place on a Wednesday and that the date was 23 July. After this, she slept with a hammer next to her and carried it around with her while at home.

[16] One evening, the appellant became aware that burglars were attempting to enter her home through the bathroom window. She hit one of them with her hammer and the burglars retreated. She was not burgled again after this incident and had approximately one year of respite from burglaries before the appellants left their apartment in July 2008. One other serious incident that occurred was that the appellant was robbed in a carpark lift at her local shopping mall. She complained to the police about this robbery but was unable to get a registration for this complaint. The appellant is unable to recall whether this incident occurred before or after the rape.

[17] The series of events which caused the appellants to leave their apartment for good started one evening, in or around June 2008. The appellant heard shouting and, when she looked outside, saw someone being attacked. She shouted out the window that she was going to call the police. When this did not deter the attackers, she shouted that the police were coming. She and her son then looked out through the apartment gates and saw that the perpetrators had left the scene and that their victim, a youth aged approximately 17, was hurt. The appellants went outside and assisted the victim, keeping him warm and staying with him until the police arrived several hours later. When the police questioned the appellant about what had happened, she told them that she had been unable to see the attackers. She subsequently received a telephone call from a member of the victim’s family who told her that he had recovered and had returned to Johannesburg.

[18] Approximately one week after this incident, the appellant began to receive threatening telephone calls. The callers asked her whether she had seen who had

beaten up the boy. She told them that she had not and they told her that they knew who she was and that they would kill her if she said one word. They also made threats against her brother and her son. The appellant changed her simcard several times and only gave her telephone number to her family and her closest friend. However, despite changing her telephone number, the calls continued. She made a complaint to the police about these calls. Although the police recorded the complaint, they did not provide her with assistance and told her to “suck it up”.

[19] In July 2008, the appellants moved in with the appellant’s best friend. The friend lived in a better area of Durban, and also had both a dog and a husband and was not bothered by burglars.

[20] When the appellants moved in with the friend, they left the majority of their belongings behind in the apartment. Shortly before they left for New Zealand, the appellant, with the assistance of her brother and her friend, cleared out the apartment, giving away most of her furniture and personal effects and putting very few items, such as family photographs, in storage with her brother.

[21] After arriving in New Zealand and subsequent to her RSB interview, the appellant learned that her brother had sold the apartment on her behalf for approximately R300,000.

[22] The appellant does not want to return to South Africa. She is very frightened of being subjected to further burglaries and attacks there and does not believe that the police are able to protect her. She also fears that her son will be unsafe, both at school and in general, and fears that she is unable to do anything about this.

The appellant’s son’s evidence

[23] What follows is a summary of the evidence given by the appellant’s son at the hearing. An assessment of this evidence follows later in this decision.

[24] The appellant’s son is 14 years old and currently resides in Auckland with his mother, the appellant.

[25] The area where the son and his mother resided in Durban deteriorated over approximately three years and went from being a place where there was no litter and children played outside on the street, to being a place where you needed to wear shoes because there were needles and used condoms on the ground and

there were groups of prostitutes and drug dealers hanging around.

[26] The son recalls one early burglary at the apartment when he was aged about eight. He was awake but pretended to be asleep. Around this time he became too frightened to sleep alone in his room and slept in his mother's room, except if he fell asleep on the couch watching television on Saturday nights when he would sleep in the lounge.

[27] In the last year and a half that he and his mother resided in their apartment, they were burgled approximately nine or 10 times. His mother was very frightened by the first of these burglaries and he remembers that the police did not come. He recalls his uncle coming to fix the burglar bars which had been damaged. He also recalls that he slept through this burglary because the burglars had put something on the windowsills of the apartment that made him and his mother stay asleep.

[28] The appellant's son can only remember three or four of the burglaries clearly. He also remembers the police coming in response to the burglaries about three times but recalls that they were burgled many more times than the police came. He recalls electronic equipment, clothes and books being stolen. Sometimes his mother replaced the stolen items and sometimes she did not.

[29] The appellant's son remembers that they were robbed while in their car on two occasions and that on one of these occasions, his mother drove after the robber, trying to catch him. Her handbag was later located on a bus and returned to her.

[30] The appellant's son recalls the incident when his mother was robbed while in a lift at a shopping mall. She had got into the lift without him because he was going to race her by taking the stairs. She had been robbed when she got out of the lift but did not tell him this until later.

[31] In the year prior to their departure, the appellant's son recalls the incident when he and his mother heard someone being beaten upon their street and went out and assisted the injured victim by giving him a warm jersey to put on and bringing him water. They also telephoned his sister for him. They waited with him until the police arrived. The next day, the police came back to talk to them about the incident and one of the policemen gave him a police knife to use for his own protection.

[32] He and his mother had both found themselves too scared to continue living in South Africa and decided to leave. They applied for Australian residence but

were declined and so decided to try New Zealand. They had had a long-held plan that they would sell their apartment and spend their last month in South Africa staying with the appellant's friend. However, they had an electricity cut at their apartment and because of this, went and stayed with the friend earlier than had been planned. The apartment was put on the market for sale approximately three months before they left South Africa and sold within about two months. The appellant's son recalls clearing out the apartment with his mother, his uncle and some of his uncle's workers. His mother's friend did not assist them.

[33] The appellant's son does not wish to return to live in South Africa because there is too much crime there. The constant pressure to remain safe is too much for him to cope with and he wishes to remain in New Zealand and resume his education. At the time of the hearing, he had not attended school for approximately two years.

Documents

[34] The appellant filed a large number of documents with the RSB concerning her and her son's refugee claims which appear on their DOL files. These documents include information about crime in South Africa and letters from the appellant's brother and her friend AA detailing some of the appellant's claimed experiences in South Africa.

[35] At the conclusion of the hearing the appellant was invited to file various documents to corroborate her evidence including insurance records, the sale and purchase agreement for her apartment in Durban and bank account records showing her receipt of the proceeds of sale. No documents were filed by the appellant who was advised by letter dated 21 September 2010 that as there appeared to be no real prospect of any documents being filed in the near future, the Authority would proceed to determine the appeals on the evidence before it.

Withdrawal

[36] On 30 September 2010, the appellant telephoned the Secretariat and advised that she wished to withdraw her refugee claim. She was advised that any such withdrawal must be made in writing: Clause 21 Immigration (Refugee Processing) Regulations 1999. No such written withdrawal has been filed and the Authority has accordingly proceeded to determine the appeal.

THE ISSUES

[37] 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.

[38] 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 APPELLANTS' CASE

Credibility

[39] Prior to determining the framed issues, it is necessary to make an assessment of the appellants' credibility.

[40] The evidence of the appellant was confused and internally contradictory. Her evidence was at times inconsistent with details she had provided at her RSB interview. Other aspects of her evidence were simply implausible. The appellant and her son contradicted each other at times.

[41] The Authority has carefully considered the evidence and, in particular, has considered whether the problems with the appellant's evidence may be attributed to psychological factors such as the presence of post-traumatic stress syndrome. However, the problems with the evidence concerning both the core and peripheral details of the appellant's account are such that the Authority determines that it is unable to rely on any part of it. Although the appellant and possibly her son may have been the victims of crime and suffered trauma in South Africa, the Authority is not in a position to make any determination of the facts. The appellants' failure to provide credible evidence concerning their experiences in South Africa, lead the Authority to reject their accounts in their entirety.

[42] The reasons for the Authority's assessment of the appellants' credibility follow:

Burglaries

[43] The appellant's evidence about the burglaries at her apartment was at variance with the account she provided to the RSB and with the son's evidence in respect of the timing of the burglaries. There was also variance between the evidence of the appellant and her son about the police response to the burglaries.

[44] In the appellant's refugee claim form she stated that she had been burgled 10 times and that "all this" started about four years previously (late 2005). At her RSB interview, the appellant gave a similar account and stated that the burglaries she experienced commenced in or around 2005 or 2006. In contrast, before the Authority, she stated that the first burglary occurred when her son was approximately four years old (around 1999) and that the second burglary followed three or four months later. When the discrepancies in her various accounts regarding the timing of the commencement of the burglaries were put to her, she stated that she was unable to remember when the burglaries started.

[45] The appellant's son's evidence that 9 or 10 burglaries took place in the last year and half in the apartment (February 2007-July 2008) contrasted with the appellant's evidence that the burglaries had ceased for almost a year before the incident where the youth was attacked in their street in June 2008. Although some variance in their recollections is understandable, there is a significant difference between the burglaries having ceased in the final year of their occupation of the apartment and being at their height during this same year.

[46] The appellant's son could not recall ever coming home to find that the apartment had been burgled. This contrasted with the appellant's evidence that some of the burglaries occurred while the appellants were absent from their apartment.

[47] The appellant's son gave evidence that he remembered the police coming to investigate the burglaries once or twice during the spate of the 9-10 burglaries that occurred during the appellants' final eighteen months in South Africa. This contrasted with his mother's evidence that the only time the police attended a burglary was when he was a pre-schooler.

[48] The appellant gave inconsistent and contrary evidence concerning police

complaints regarding the burglaries and concerning whether she made insurance claims in respect of the burglaries.

[49] First she gave evidence that that she had never claimed insurance in respect of the burglaries. Her evidence contrasted with the information she provided at her RSB interview when she told the refugee status officer that she had claimed insurance twice following burglaries and that one of these claims was in respect of rings and her mother's watch which was stolen. When this discrepancy was put to her she changed her evidence and said she did make claims in respect of the burglaries but that she did not receive anything. She also claimed that she reported each burglary to the insurance company because this was the right thing to do. She gave evidence that her insurance was eventually cancelled because of the high crime rate in her area but later changed this evidence and stated that she ceased to be insured because she stopped paying premiums.

[50] Her evidence to the Authority contrasted with the evidence she gave about the claimed rape which at the RSB interview she said was carried out because her insurance had been cancelled and the perpetrators were angry that she had not replaced her possessions. The clear implication of her statement to the RSB was that until then, her possessions were regularly replaced when stolen and that there was a link between the cancellation of her household insurance and her subsequent failure to have replaced her possessions.

[51] The appellant's problematic evidence concerning insurance also touches on evidence she gave concerning complaints she made to the police. At her RSB interview, she claimed that the police refused to give her a reference number for the complaint she made about the robbery in the lift because she was not going to claim insurance because she was uninsured. In contrast, she gave evidence to the Authority that the police accepted her complaint and advised her that they would ring her later with a complaint number. She omitted to make any claim about a refusal by the police to supply her with a complaint number. When asked about the discrepancy she commented that the account she gave to the RSB was probably correct but did not explain why her evidence had been inconsistent with it.

[52] At the completion of the hearing, the appellant was invited to provide documents relating to her insurance policies and, in particular, to provide bank statements evidencing the premiums she paid in order to clarify the date on which she ceased to pay insurance premiums. Despite being given several months

following the hearing to file further documents, no bank statements or information from the insurance company was provided. In refugee cases it is often impossible or dangerous for an appellant to obtain corroborative documentary evidence and inappropriate for decision makers to draw any negative inference in such circumstances. In this case, however, there are no proper reasons before us as to why the appellant has been unable to produce bank and insurance records from South Africa and a negative inference is drawn.

[53] As detailed above, the appellant claimed variously that she never made insurance claims and that she did make claims but received no payments, that her insurance was cancelled by the company, that she herself cancelled her insurance because she could not afford it. The mobility of the appellant's evidence concerning the insurance claims is such that the Authority disbelieves it. The problematic and inconsistent evidence presented by the appellants about the timing, mode and police response to the burglaries, together with the mobile evidence about the insurance claims leads the Authority to reject that accounts of both the appellant and her son about the burglaries.

Death threats following incident with youth

[54] The appellant claims that after this incident which occurred in May or June 2008, she began to receive threatening telephone calls from the men who had attacked the youth in her street, who told her that if she released their details, they would kill her. She claims that she received these calls once or twice a week for the remainder of the time that she was in South Africa and that the calls continued despite the fact she changed her SIM card several times and only gave the new telephone numbers to her family and her best friend. She also claimed that these calls were the catalyst for her decision to move in with her friend in late July 2008.

[55] Had the appellant genuinely changed her SIM card more than once and only provided the new numbers to her best friend and to her family, it is highly implausible that criminals involved with the attack on the youth in July 2008 would have been able to obtain her new number and use it to make threatening telephone calls to her.

[56] In addition to the implausibility of the criminals somehow obtaining a series of new telephone numbers for her, the letter the appellant filed with the RSB from her friend, AA, with whom she stayed for several months in 2008, detailing the appellant's experiences in South Africa made no mention of the death threats.

This is despite the appellant giving evidence to the Authority that she discussed the threats with AA. Finally, the appellant's son gave evidence that the move to AA's home had long been planned as part of the appellant's departure plan from South Africa but that he and his mother moved there ahead of schedule because of a power cut they experienced.

[57] The appellant's evidence concerning these calls is disbelieved. Although the appellants may have provided some assistance to an injured youth in their street in June 2008, it is not accepted that this assistance had the consequences claimed (the calls) or that this event had any nexus to the appellant's decision to move to AA's house.

Sale of house

[58] At her RSB interview in January 2010 the appellant stated that she thought that her brother may have sold her apartment in South Africa on her behalf since she left South Africa but that she was not sure and that she had not received any money from the sale. She also stated that she did not have a mortgage on it. Before the Authority she claimed that since the RSB interview, she had found out that her brother had sold the home for R300,000 but that when it was sold it had debts on it. She stated that when she moved in with AA, she had no intention of leaving South Africa.

[59] Her evidence contrasted with that of her son who stated that the apartment was put up for sale about three months before he and his mother left South Africa and that it sold within two months. The appellant was recalled after her son gave this evidence and given the opportunity to comment on it. She stated that her son was incorrect and reiterated that the apartment was not put up for sale prior to her departure from South Africa.

[60] At the conclusion of the hearing she was invited to provide a copy of the sale and purchase agreement for the apartment or bank records evidencing payment of the purchase price to clarify the apartment's sale date. Despite being given four months subsequent to the hearing to do so, she did not file any documentation clarifying the date of sale. The Authority prefers the appellant's son's evidence to that of the appellant. It finds that the appellants had a long held plan to migrate from South Africa and that their shift to AA's home and the sale of the apartment took place in accordance with this plan. The Authority specifically disbelieves the appellant that at the time of her RSB interview, she was unaware

whether or not the apartment was sold. The Authority finds that the appellant attempted to mislead both the Authority and the RSB on this point to convey a sense that the departure of the appellant and her son was an impulsive flight from danger rather than the execution of an organised plan to emigrate from South Africa.

Sexual assault

[61] The appellant has claimed that she was raped in her bedroom by three men while her son was asleep in his own bedroom. In the written response she supplied to the RSB following receipt of her interview report she stated that the rape occurred on 23 July 2008. Before the Authority she claimed that following this incident, she carried a hammer with her everywhere and that, after attacking one of her burglars with a hammer on an occasion subsequent to the rape, the burglaries stopped, giving her approximately one year of respite from such incidents before the youth was attacked in their street (in June 2008). This would mean that the rape took place in early or mid 2007.

[62] The appellant gave unequivocal evidence that the rape had occurred on Wednesday 23 July. When it was pointed out to her that this was a date in 2008 (and did not fit with the time frame she had given) she retracted her evidence of the date.

[63] The Authority does not accept that the appellant was sexually assaulted in her home as she has claimed. This finding is based on her mobile evidence about the date of this claimed attack together with her inability to place it within the sequence of other claimed events (the cessation of the burglaries, the attack on the youth, the attack in the lift). Also contributing to this finding is the appellant's unreliability as a witness in respect of other aspects of her evidence.

Carjacking incidents

[64] The appellant's evidence concerning the carjacking incidents were internally contradictory and contradicted by the son's evidence. The appellant gave evidence that she was twice robbed in her car. She claimed that the first such incident occurred when her son was aged about nine or ten and that she was alone in her car on this occasion. She claimed that on a second occasion, a thief smashed her car window with a spark plug and grabbed her handbag. She stated that her son was in the back seat at the time because he was small and that she left him and the car and chased after the thief and managed to retrieve her bag.

[65] In contrast, the son gave evidence that he recalled two occasions when he had been in the car when it had been robbed but was unable to recall any occasion when his mother had left the car and chased the robber on foot. He stated that on one of the occasions she wrestled with the robber through the car window and then chased him in the car. His evidence was in contrast to statements he made at his RSB interview that his mother had run after the thief on one occasion. When this discrepancy was put to him he stated that he was unable to remember saying that at the RSB and that it was incorrect.

[66] The variance between the appellant and her son's accounts and the inconsistency between the son's evidence and statements he made to the RSB cause us to find that the claims about the carjackings are untrue.

[67] The responsibility for establishing an appellant's refugee claim lies with the appellant, pursuant to sections 129P(1) and 129P(2) of the Immigration Act 1987 (as referred to in *Refugee Appeal No. 72668/01* (Minute No. 2) (5 April 2002) and in *Anguo Jiao v Refugee Status Appeals Authority* (CA 167/02, 31 July 2003, Keith J)).

[68] The appellant and her son clearly have fears for their safety in South Africa because of the prevalence of violent crime in that country. They may have suffered trauma in South Africa and may have been the victims of crime on one or more occasion. However they have not provided documentary evidence regarding their circumstances in South Africa which should be within their power to provide (insurance records and documents disclosing the date of sale of the apartment). Nor have they provided oral evidence upon which the Authority can rely except for the son's evidence about the long held plan to move from South Africa which we accept.

[69] As noted earlier in this decision, the Authority rejects the appellants' claims concerning the series of incidents that precipitated their departure from South Africa. However, their biographical circumstances are accepted and will be assessed against country information about South Africa in order to determine whether either of them have a well founded fear of being persecuted if returned there.

Objectively, on the facts as found, is there a real chance of either of the appellants being persecuted if returned to South Africa?

Country information

[70] Reports dealing with the level of crime in South Africa paint a bleak picture. The most recent United States Department of State's *Country Reports on Human Rights Practices: South Africa* (March 2010) (the DOS report) notes that in 2009, there were 300 deaths in police custody in addition to 612 other deaths as a result of other police action. The DOS report also notes the prevalence of incidents of vigilante violence and mob killings, especially in rural areas and townships, xenophobic attacks on foreign African migrants, and killings and other violent crimes perpetrated against white farmers.

[71] The DOS report comments that police struggled to address a violent crime rate that ranked highest in the world. Although the DOS report does not purport to report on the crime rate in South Africa generally it does note that the country has one of the highest incidences of rape in the world and that according to the South African Police Service (SAPS) annual report the number of sexual offences increased during 2009 to 71,500 reported cases from 63,818 reported cases in 2008. Statistics are given in the report for conviction rates in rape complaints. These are from a 2008 study that found that 4.1 percent of reported cases resulted in convictions. Specialist courts for sexual offences reported a 66.7 percent conviction rate while rates in other regional courts for sexual offences cases averaged less than fifty percent.

[72] The DOS report comments:

A poor security climate and societal attitudes condoning sexual violence against women contributed to the problem. A 2005 study by the Medical Research Council estimated that only one in nine rapes was reported to SAPS, as in the most cases the attackers were friends and family members of the victims, who were therefore afraid or reluctant to press charges. This estimate implied that over the year well over half a million women suffered sexual violence. The NGO Treatment Action campaign reported that one in three South African Women would be raped in her lifetime.

[72] For the purposes of refugee determination, "being persecuted" has been described as the sustained or systemic violation of basic or core human rights such as to be demonstrative of a failure of state protection; see *Refugee Appeal No 2039/93* (12 February 1996) and *Refugee Appeal No 74665/03* [2005] NZAR 60; [2005] INLR 68 at [36] to [125]. Put another way, it has been expressed as

comprising serious harm plus the failure of state protection; *Refugee Appeal No 71427* (17 August 2000).

[73] The Authority has consistently adopted the approach in the decision of *Chan v Minister of Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), which held that a fear of being persecuted will be well-founded when there is a real, as opposed to a remote or speculative, chance of such persecution occurring. This entails an objective assessment as to whether there is a real or substantial basis for the anticipation of being persecuted. Mere speculation will not suffice.

[73] Despite the high crime rate and difficulties with the police indicated in reports such as the DOS report, it is not established that either appellant is at risk of a sustained or systemic denial of basic or core human rights in South Africa. In particular, it is not established that either of them face a real chance of becoming the victim of a serious violent crime that would constitute a sustained or systemic denial of their human rights.

[74] Although the high crime rate and high incidence of rape in particular indicated by the DOS report is acknowledged, this must be seen in the context of the extract of the Medical Council Research study quoted above which states that in most cases the attackers were 'friends' and family members of the victims. The clear implication is that much of the sexual violence in South Africa occurs within a domestic context. The appellant is not likely to be attacked in such a context. She is a white middleclass woman with a long employment record and strong networks of family and friends. It is not established that her particular circumstances in South Africa would place her at a real, rather than a remote, risk of being subjected to rape or other forms of violence. Similarly, nothing in the appellant's son's profile indicates that he faces a real chance of suffering serious harm. As with his mother, the chance is speculative only and appropriately described as remote.

[75] It is acknowledged again that both appellants are genuinely fearful of crime in South Africa, however as noted above, the question of whether an appellant's fear is well founded is properly determined by objective rather than subjective criteria.

[76] The first issue framed for consideration is answered in the negative. It is therefore unnecessary to consider the second issue of Convention ground.

CONCLUSION

[77] The appellants are not refugees within the meaning of article 1A(2) of the Refugee Convention. Refugee status is declined. The appeals are dismissed.

"M A Roche"
M A Roche
Member