

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 71979/2000

AT AUCKLAND

<u>Before:</u>	E M Aitken (Chairperson) C M Treadwell (Member)
<u>Counsel for Appellant:</u>	J Shadforth
<u>Appearing for NZIS:</u>	No appearance
<u>Date of Hearing:</u>	29 November 2000
<u>Date of Decision:</u>	2 May 2002

DECISION

[1] This is an appeal from a decision of a refugee status officer 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.

THE APPELLANT'S CASE

[2] The appellant grew up in the T district of what is now the Russian Federation, some three hours by road north-east of Moscow. She lived there until 1981. Her parents remain living there. Both worked as labourers on a state farm. Her father has recently retired but her mother continues in employment. The appellant's only sibling, a sister, also lives in T with her own family. The appellant and her family are Christian.

[3] In 1980, the appellant met her husband. He is a Muslim from the now autonomous Dagestan region who had travelled to the T district to obtain casual work during the harvest season. The appellant became pregnant and she and her

husband wished to marry. His mother travelled from Dagestan to T but refused to consent to the wedding as the appellant was not a Muslim. However, after the birth of the couple's first child, a daughter, the appellant and her husband travelled to the city of M in Dagestan. The journey took more than 48 hours. The appellant's family eventually gave their approval and the couple subsequently married. Thereafter they had two sons. The couple and their children have lived in Dagestan continuously since then, until the appellant came to New Zealand.

[4] The appellant and her husband lived with her in-laws until 1988. She arrived in Dagestan as a naïve young woman totally unaware of the implications of marrying into a Muslim family. As a consequence, she was surprised when, not long after her arrival in the family home, her father-in-law insisted on her covering her head and observing a very conservative dress code, including refraining from wearing trousers. The appellant however complied with the family's requests. Until the break up of the former USSR and the social changes that accompanied it, the faith of the appellant's in-laws played an insignificant role in her life. Atheism dominated social and educational life in the Dagestan region and the appellant's concessions to her husband's faith involved little more than those noted above.

[5] The appellant's husband worked initially at the local port and in a shop supplying vessels which docked there. The appellant looked after the couple's three children until she obtained employment in an electronics factory. In 1988, the factory built its own accommodation block and an apartment was then allocated to the appellant. When the factory subsequently closed, ownership of the apartments were transferred to the occupants and thus the appellant came to be the registered owner of her own apartment. She and her husband lived there until 1995 when he persuaded her to sell it and buy a home which provided better accommodation for the couple's growing children. The appellant resisted his request as the proposed property was adjacent to her in-laws from whom she had lived apart by that time for several years. However, due to the difficulties in her own marriage, and in particular her husband's persistent aggressive behaviour towards her, his will prevailed. The appellant was however able to insist that the new home be registered in her name only.

[6] The appellant having lost her factory employment, the family found it difficult to cope when her husband lost his job in 1994. The previous owners of the new property had grown roses commercially and the appellant took over the business when she bought the home, which provided the family with a modest

income. However in 1996, the appellant was persuaded by a friend to set up a clothing importing business. Using money advanced by her friend, and with the consent of her husband, the appellant flew with her friend to Korea where the two of them purchased quantities of cheap clothing. On return to Dagestan, these were sold for profit in the local market. It was immediately apparent to the appellant that this could provide the family with a reasonable income and thereafter, with the permission of her husband, she travelled almost every month to Korea returning with clothes to sell. Her husband's role in the business was to manage the money with the appellant herself doing all the buying, travelling and selling. The appellant continued to run this business until she left Dagestan in December 1998 in fear for her life.

[7] Explaining the circumstances of her flight, the appellant said that her marriage had been characterised by domestic violence which had become progressively more serious in its effects. Her husband regularly beat her, on her own estimate at least every week from very soon after they were married. Many of the blows were to her head which has left her with fractures and almost permanent headaches. In 1994 her arm was broken in several places as a result of a fall when her husband hit and pushed her in their home. On that occasion she had confronted him with her beliefs that he had taken a lover. His response was swift and violent. When he visited her in hospital, his lover accompanied him. It took three operations before her arm was repaired.

[8] Despite this incident being one of the most severe at that time, the appellant did not report the matter to the police. Her husband had forbidden her to go to the police and to do so, she believed, would simply make matters worse for her as she expected her husband to find out and to react violently towards her when he did. Further, she was aware from the experiences of other women that the police were highly unlikely to help her. In particular, one female friend had experienced a very violent beating from her drunken husband. She tried to report it to her local police station. She showed them the bruises but was told she must have two witnesses before the police would act. As it happened, two people had witnessed the incident, but they refused to accompany her to the police station. The police therefore did nothing. The appellant had no witnesses to her husband's violent behaviour and no faith that the police would assist her in any way.

[9] From about this time (early 1994) the violence towards the appellant

increased in both frequency and severity, corresponding with an increase in fervour with which her husband and his family embraced their Islamic faith. The rising Muslim fundamentalism in neighbouring Chechnya and in Dagestan itself was welcomed by the appellant's in-laws. Her father-in-law became an Imam at the local mosque and her brother-in-law subscribed to a fundamentalist group. The appellant knew him to have weapons concealed in the family home. The appellant herself was constantly harassed by the family, in particular her brother-in-law, to convert to Islam, a step she rejected not only because she had been baptised into the Orthodox Christian faith but because she did not adhere to the tenets of Islam, which included, she believed, the oppression of women.

[10] The appellant was also subjected to abuse and threats from her husband's brother and sister-in-law, primarily over her refusal to convert to Islam. As they became more fundamentalist, their threats became more severe and on one particular occasion, the appellant's sister-in-law warned her that, unless she converted, she would meet with "an accident".

[11] Despite the violence and the hostility, the appellant remained in Dagestan with her husband primarily because of her children who were then in their early teens. Increasingly, however, she considered whether she should leave her husband and attempted to raise with him the possibility of a separation. This suggestion was resoundingly rejected notwithstanding that around the same time the appellant's husband taunted her with his claim that he was considering taking a second wife. During an argument on this point her husband threatened to kill her. As he had attempted to strangle her on a previous occasion, and had stopped only when one of their children came into the room, the appellant had no doubt that he could carry out such a threat if he wished to do so. In considerable fear for her life, she finally approached the local police station to seek protection from her husband and assistance to leave him safely and return to her home district in Russia.

[12] The police were dismissive of her request. They refused to take any action, rejecting her claim with the suggestion that she come back when her husband had killed at which time they might do something about it.

[13] Towards the end of 1998, the appellant resolved to leave her husband permanently. She filed for divorce without notifying him, and made plans to leave Dagestan under the pretence of travelling to Korea following which she did not

intend to return to the family home. She confided in her daughter (then aged 17 years) who was the only family member who sympathised with the appellant and who herself was coming under increasing pressure from her Islamic family members.

[14] In November 1998 the appellant left the family home and travelled to Korea. As was normal practice, she did this by transiting through Moscow. On this occasion, however, she intended to stay there on her way back from Korea and had arranged to live with a friend in Moscow for a short period of time while she found alternative accommodation. For reasons the appellant is not aware, her husband became suspicious of her. As a consequence, the appellant subsequently learnt that he had contacted the government office responsible for internal affairs and was able to obtain the details of the flight on which she was due to return from Korea. He was waiting for her at the airport in Moscow on her arrival. He forced her to accompany him back to Dagestan and en-route took from her external passport, and her business and personal notebooks in which the addresses and contact details of her friends and colleagues were recorded. Once she returned to the family home, her husband forbade her to leave the house unless and until she converted to Islam.

[15] A prisoner in her own home, the appellant enlisted the support of her daughter who was able to obtain for her a new external passport and to persuade an extended family member to give her (the daughter) money under the pretext she needed it for study purposes. The appellant then gave it to her mother who used it to travel back to Korea. She arrived in Korea in early December 1998. On this occasion, her husband followed her and arrived in Korea two weeks later. The appellant learnt from colleagues in the markets that he made several enquiries of her but, despite offering money to anyone who could locate her, he was unsuccessful. He eventually left Korea and returned to his home in Dagestan where he turned his rage on his daughter accusing her of assisting her mother to flee. As a consequence, the appellant's daughter became extremely fearful and, a short while later, she escaped with the assistance of a family friend and joined her mother in Korea.

[16] Notwithstanding the distance from Dagestan, the appellant did not feel safe from her husband in Korea. Her fears were heightened when her husband somehow obtained the telephone number of the home in which she and her daughter were staying and made several obscene and abusive telephone calls.

Terrified he would return to Korea and locate them, the appellant resolved to leave the country. However due to a lack of money, and her uncertainty as to where she might end up, she arranged for her daughter to return to Russia alone while she herself found an agent who promised to take her out of Korea.

[17] The appellant's daughter returned to Russia but has never returned to her family home in Dagestan. Instead she moved in with the appellant's sister in T and has remained living there ever since. The appellant's husband has since visited the family home in T to search (unsuccessfully) for his daughter and has regularly telephoned the appellant's sister threatening to kill her if he ever discovers that she is sheltering his daughter. The appellant's daughter remains living in T where she is currently undergoing tertiary studies paid for by her grandparents. She has not registered in the area and has no internal passport or *propiska*. Without it, she has been unable to find work. The appellant's family continue to take precautions against her husband finding and abducting her daughter.

[18] As to how the appellant was able to travel from Korea to New Zealand, this was a matter upon which she has been extremely reluctant to give evidence. She remains demonstrably afraid of those who brought her here professing that they will kill her if she revealed their identity. The journey here was marred by violence during the course of which the appellant was raped and, after arriving in New Zealand, left on the streets of a large city until an officer of the Refugee and Migrant Service became aware of her circumstances. Thereafter her claim to refugee status was lodged.

[19] The appellant is firmly of the view that if she returns to her home in Dagestan, the authorities in the Russian Federation will be both unwilling and unable to protect her from any further violence inflicted by her husband. Her and her friends' attempts to seek police protection in the past were met with derision. She has tendered evidence to the Authority to the effect that domestic violence is rife within the Russian Federation and that women in her position cannot expect protection from it. She is in no doubt that if she returns to her home, her husband will continue to be violent towards her and, inevitably, that will be fatal.

[20] The appellant also fears that, having escaped from her husband and his family, it is now a "matter of honour" that the family take its revenge upon her given the loss of face that they have suffered as a result of her disobeying the

wishes of the family not only to convert to Islam but to remain in the family home.

[21] She also believes that her husband (and even her brother-in-law), will pursue her no matter where she goes within the Russian Federation. She does not believe that she will be able to survive with her young child (born in New Zealand in late 2000) in any part of Russia unless she complies with the *propiska* registration requirements. An application to transfer her internal passport to a new place of residence is a process which will involve contact with the authorities in her home city in Dagestan. Before her *propiska* can be transferred to a new place of residence, the authorities in Dagestan must satisfy themselves that she is no longer residing there. As she owns property and is registered as residing at her home, at the very least the authorities will be required to visit her family home and ascertain for themselves that she no longer resides there. Such a step would inevitably put her husband on notice not only that she has returned to Russia but that she is seeking to register in another place. Thereafter she believes he will have little or no difficulty in locating her.

[22] She bases her fears not only her husband's past conduct but also on the fact that he has travelled to T already in search of both the appellant and her daughter. As noted earlier, he continues to telephone and abuse the appellant's sister in T in search of her (the appellant).

[23] Since her arrival in New Zealand, the appellant has contacted the Embassy of Russia and been advised that her marriage was dissolved in November 1998, in response to the application lodged by her prior to her departure.

[24] As noted, the appellant has tendered some country information which has been considered by the Authority in reaching its decision. Also tendered in evidence are two detailed psychiatric reports which the Authority has also considered in the determination of this appeal.

THE ISSUES

[25] 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."

[26] 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?

[27] Because the issue of internal protection arises in this case, the decision of this Authority in *Refugee Appeal No. 71684/99* (29 October 1999) requires a third and final issue to be addressed:

3. Can the appellant genuinely access domestic protection which is meaningful?

In particular:

- (a) In the proposed site of internal protection, is the real chance of persecution for a Convention reason eliminated?
- (b) Is the proposed site of internal protection one in which there is no real chance of persecution, or of other particularly serious harms of the kind that might give rise to the risk of return to the place of origin?
- (c) Do local conditions in the proposed site of internal protection meet the standard of protection prescribed by the Refugee Convention?

ASSESSMENT OF THE APPELLANT'S CASE

[28] The Authority unhesitatingly accepts the appellant as a credible witness. She presented her evidence in a manner devoid of any obvious embellishment or overstatement. She has given a consistent and detailed account since her arrival in New Zealand. The Authority accepts her as an honest and reliable witness whose descriptive narrative was consistent with country information and general literature on domestic violence.

[29] Against this background the Authority must assess whether or not the appellant meets the definition of the Refugee Convention in terms of the issues as framed above.

OBJECTIVELY, ON THE FACTS AS FOUND, IS THERE A REAL CHANCE OF THE APPELLANT BEING PERSECUTED IF SHE RETURNS TO HER HOME IN DAGESTAN?

[30] Adopting the formulation of Professor Hathaway in *The Law of Refugee Status* 1991 (Butterworths), at p104-105:

“Persecution may be defined as the sustained or systemic violation of basic or core human rights demonstrative of a failure of state protection.”

[31] From this definition, it can be seen that there are two elements to the persecution aspect of the refugee definition. First, there must be a risk of serious harm. Second, there must be an anticipated failure of state protection. Expressed another way, persecution equates to serious harm plus an absence of state protection (see *R v Immigration Appeal Tribunal; Ex Parte Shah* [1999] 2 AC 629, cited with approval in *Refugee Appeal No 71427/99* (16 August 2000)).

1. RISK OF SERIOUS HARM ON RETURN

The Authority is in no doubt that, prior to leaving Dagestan, the appellant was the victim of serious harm at the hands of her husband having been subjected to long term, significant, physical and mental abuse. At the time she first tried to escape, he was able to meet her incoming flight and thereafter escorted her home where he attempted to imprison her in her own home. When she managed to flee to Korea, he too made the relatively long journey to that country and instigated inquiries for her, offering monetary rewards. Even when unsuccessful in locating her physically, he was subsequently able to telephone her and did so repeatedly, threatening her with violence and ordering her return home.

At the end of 1998, the appellant was granted a divorce from her husband. She does not know when he became aware of it. If on or around the time the order was made, it clearly did not deter him from following her to Korea in an attempt to locate her, nor from telephoning both the appellant in Korea and her sister in T with threats of harm. The telephone calls to the

appellant's sister have continued up until the present time.

The appellant is unaware whether her husband has remarried but believes that, irrespective of this or any other facts, she remains at risk of serious and probably fatal harm at the hands of her husband or his family members if she returns to M. She reaches this view based on the past history of harm inflicted by her husband with the endorsement and support of his family, and in light of her husband's family's fundamentalist and misogynist religious beliefs. Further, the appellant believes that her husband and his family suffered a degree of public humiliation when the appellant fled in obvious defiance of their orders. If she were to return now, she is firmly of the belief that the family would take its revenge with the infliction of serious and even fatal harm "as a matter of honour".

It is accepted that the passage of time since her last contact with her former husband, and the existence of their divorce, may suggest that the chances of the appellant coming to serious harm at the hands of her former husband are less than they were when she left Russia. However, given the nature of domestic violence generally, particularly within the context of fundamentalist Islam, the Authority is not confident that these factors reduce such chance to less than a real one. The appellant is entitled to the benefit of the doubt we have in this regard. Accordingly, we conclude that there is a real chance that the appellant will come to serious harm at the hands of her former husband if she returns to her home town in Dagestan, or to her family's town of T.

The serious harm anticipated amounts to a breach (*inter alia*) of the appellant's right to be free from cruel, inhuman or degrading treatment or punishment (see Article 7 of the International Covenant on Civil and Political Rights (ICCPR)), her right to life (Article 6 of the ICCPR) and her right to security of person (Article 9 of the ICCPR).

2. AN ABSENCE OF STATE PROTECTION

An abundance of country information obtained by the Authority as a result of its own enquiries graphically illustrates an absence of state protection for the victims of domestic violence in the Russian Federation.

There is compelling evidence that “violence against women in Russia persists as a chronic and overwhelming problem” (see *Russia: Too Little Too Late: State Response to Violence Against Women*, New York: Human Rights Watch, December 1997 at p11, Human Rights Watch 1997 Report). In an article (*Program to support Crises Centres for Women in Russia (WCC)*) [2000], <http://www.irex.org.programs/wcc>, p1) published in the latter part of 2000 by the International and Exchanges Board (IREX) (an organisation selected under a foreign aid package to administer a program to support crises centres for Russian victims of domestic violence), the following observation was made:

“Unofficial statistics estimate that 70% of Russian women experience violence at some point in the lives. Available data indicates a serious increase in gender based violence in recent years; in 1993, a total of 331,815 criminal cases of violence against women was reported to the Ministry of the Interior; in 1994 official statistics reported 565,000 of such crimes, nearly a 70% increase. Statistics released by the chairperson of the Presidential Commission on Questions of Women, Family and Demographics in 1997 indicate that 30 to 40% of murders take place in families, the majority of victims being women and children. Furthermore, data compiled by the Department of Internal Affairs in 1997 reveal that each day, 36,000 beatings are committed in families. Finally, women’s rights experts estimate that only between 5 and 10% of domestic violence incidents are actually reported to state officials.”

This report continues:

“Despite these disturbing statistics there is virtually no domestic violence intervention system that provides adequate and gender sensitive legal and social services for abused women in Russia. Moreover, there is a systematic lack of responsiveness to battered women’s claims for state protection on the part of police, prosecutors and the courts. Domestic violence cases are rarely if ever even brought to Court as police and the legal system consistently blame the battered women for the abuse and often refuse to officially report domestic violence incidents.”

The only legal option available to victims of domestic violence is the Russian Criminal Code. Specifically, in neither the criminal, civil or family law of Russia is there any provision for protection orders nor for orders forcing violent spouses from the family home even where, as in this case, the wife and victim is registered as the sole owner of the property; Human Rights Watch Report, *op cit.* at page 45. Even the provisions in the Criminal Code have not escaped criticism in *Country Reports on Human Rights Practices for 1999: Russia, 2000*, Women’s International Network (WIN News) (April NEXIS) at page 1:

“There is a general lack of understanding of this issue in the legal community and there is no legal definition of domestic violence. Some forms of battering are addressed in the new Criminal Code but are defined too narrowly to apply to most cases. There is also a lack of national political will to consider these issues seriously. Thus far more than four dozen renditions of a national civil law to address domestic violence have failed to make any progress through the Duma.”

The attitude of police and prosecutors to complainants of domestic violence is also well documented and the appellant's evidence was echoed in the statements of many of the women interviewed in, for example, the Human Rights Watch Reports. The following passage, from *Russia: State Protection available to Female Victims of Domestic Violence, particularly in Omsk*, DIRB Response, RUS 34251.E, 28 April 2000, is illustrative of much of the country information:

“.... Independent research data says that only 5 to 10% of victims report to the police and only about 3% of such cases reach the court.... The process of reporting domestic and sexual abuse, instituting criminal cases and their investigation by investigating authorities, is filled with mass manifestations of prejudices, indifference to the rights and interests of the victim... in direct violation of law by the representatives of power.”

Police routinely refuse to respond to domestic violence and, when they do, they often make the process for filing a report very difficult, even where a victim presents substantial evidence (Human Rights Watch 1997 Report *op cit.* at page 42).

In recent years Russia has witnessed the emergence of a number of women's organisations which have been set up not only to assist victims of domestic violence in a practical sense but to endeavour to bring about changes to both the legal process and its enforcement. The Human Rights Watch 1997 Report (at page 46) notes the existence of two shelters for battered women, one in St. Petersburg and one in Western Siberia. These shelters are not however permanent housing solutions.

More recent initiatives have been described in *Russia: Update ... on the Recourse Available to Women who are Victims of Abuse, particularly in Sochi*, January 1997 to January 1999 (DIRB Response: RUS 30983.E 26 January 1999, thus:

“During the last several years, organisations in Russia have started to deal with domestic violence. Fourteen crisis centres have opened [a member of the executive committee of the International League of Women] said,

where women can get psychological, legal and medical help. These organisations ... are working to establish shelters for victims of domestic violence and to help women negotiate medical and legal institutions. The organisations run hot lines and support groups and try to educate young people. All the services of the centre are free, funded by foreign organisations. [An Executive Director of one of the centres] said:

“We have no government support at all. To our shame”.

As part of this movement programs are currently in place in, for example, Siberia, to develop a network of crisis centres, an activity funded by the Ford Foundation (*Siberian Women against Violence: From Establishing a Hot Line to Drafting a Regional Law on Domestic Violence*, 1999 Network of East West Women, May <http://www.rferl.org/welcome/english/releases/2001> (accessed 30 May 2001)).

However, the relatively recent emergence of these few initiatives has had no impact on the documented level of domestic violence which continues unabated. That such violence is often fatal is made clear by statistics which record that 14,000 Russian women die each year as a result of domestic killings, a figure which has remained static for approximately a decade; (*Russia: Update.... On the recourse available to women who are victims of abuse, particularly in Sochi (January 1997 – January 1999)* DIRB Response: RUS30983.E. 26 January 1999). It has been observed that 14,000 deaths in any one year is approximately 20 times as many deaths from the same cause as in the United States, a country with almost twice as large a population as Russia (*The feminiski are coming*, The Economist, August 12, 1995).

The Authority is thus satisfied that there is an absence of meaningful and effective state protection throughout the Russian Federation for victims of domestic violence. That absence is illustrated by the lack of adequate legal protections, and in the grossly inadequate enforcement of the only legal recourse available to women. It is also illustrated by the lack of government funded initiatives to provide even a temporary safe environment for women fleeing serious domestic harm, a problem made particularly acute by the chronic lack of housing throughout the Russian Federation.

CONCLUSION ON PERSECUTION

[32] The Authority is therefore satisfied that there is a real chance that the

appellant will face serious harm at the hands of her husband if she returns to Dagestan or to her family's town of T, in respect of which there is an absence of meaningful and effective state protection. It follows that the next issue for determination is whether either the serious harm or the absence of protection will occur by reason of any one of the five Convention grounds. This is in accordance with the Authority's jurisprudence that the nexus between the persecution feared and the Convention ground can arise either from the serious harm limb (in this case the non-state agent - the husband) or from the absence of state protection limb (for further discussion see *Refugee Appeal No. 71427/99* op cit. at paras 111 to 120 inclusive).

THE NEXUS BETWEEN PERSECUTION AND THE CONVENTION GROUND

[33] The Authority leaves open the issue of whether there is a nexus between the serious harm that is likely to be meted by the appellant's husband (and possibly his family members) and any of the Convention grounds as it is able to reach a clear conclusion on the nexus issue when considering the absence of state protection for victims of domestic violence in Russia.

[34] When considering the reasons behind the lack of meaningful state protection for victims of domestic violence, it is helpful to have regard to the position of women generally in Russia. This is succinctly summarised in the Human Rights Watch 1997 Report (at page 8):

“With the collapse of the Soviet Union in 1991, the Russian Federation (“Russia”) has emerged as the largest, richest, most populous, and most powerful successor state to the former super power. In transitioning from one party rule and a command economy to a multi-party political system and a market economy, however, Russia has undergone substantial economic and political turmoil. While the effects of this instability and dislocation have been experienced throughout Russia, they have been particularly devastating for the lives of women in Russia. From the workplace and government to the streets and the home, Russian women are increasingly encountering discrimination, exclusion and violence. Although Russian women's groups have begun organising and demanding change, their voices unfortunately have largely fallen on deaf ears. In particular, the Russian government has failed to take measures to alleviate the severe situation, and in some cases has actually served to exacerbate it...”

[35] Even prior to the profound changes which took place in the Russian Federation a decade ago, the reality of women's lives in Russian society did not match the socialist rhetoric. As stated in *Russia: Neither Jobs nor Justice: State Discrimination Against Women in Russia*, Human Rights Watch, Women's Rights Projects, March 1995, pages 4-5:

“Although equality between the sexes was an essential tenet of the Bolshevik Revolution, and the Soviet Constitution guaranteed equal rights for women and men, Soviet women’s actual experience in no way resembled sexual equality. The Soviet state often sacrificed its commitment to women’s equality in the work place in the name of other government policies and priorities. Women were pushed into the labour force when economic expansion was a national priority, such as during the industrialisation in the 1930s and the war and reconstruction during the 1940s. As workers, however, women were denied access to high pay, prestigious occupations and high level positions. During periods of economic reform, on the other hand (eg after the 1965 Kosygin Reforms and in the context of current reforms), women were and are encouraged to focus on their responsibilities to home and family rather than on their work outside the home. In the 1970s, the Soviet government, trying to increase low birth rates, promised women a financial bonus for the birth of their first, second and third child, and taxed childless couples.

Despite the government’s shifting position regarding women’s role in the work place, state policy and social norms consistently reinforced motherhood as women’s primary contribution to Soviet society. In 1981 the 26 congress of the Communist Party decided “that reinforcement of the traditional maternal role was needed for the betterment of the state”. This emphasis on women’s “biological destiny” as mothers shaped women’s legal status and undermined efforts to pursue social equality for women. Women struggled under what became known as the “double burden” of working outside the home as well as shouldering most if not all child care and household management responsibilities....

In Today’s Russia...[m]any Russian women and men spurn the principle of sexual equality as empty Soviet rhetoric. They justify sex discrimination and the differential treatment of women in terms of discarding the legacies of the Soviet era and asserting Russian traditions. After years of state regulation of every aspect of their lives, many Russians regard with suspicion the notion that the state should play a role in protecting women’s rights in the work place or should intervene in an abusive, domestic relationship...

[36] Turning from the general position of women in Russia to the specific, as has been graphically illustrated earlier in this decision, women suffer a disproportionate degree of serious violence in their homes. The country information already referred to in this decision is replete with examples of state officials from police to prosecutors to parliamentarians expressing prejudicial and discriminatory views justifying the absence of state protection for women victims of domestic and sexual violence. Their explanations in the vast majority of cases are repetitions of myths and stereotypes of women which bear little resemblance to reality. Implicit in their disregard for domestic violence particularly is the assumption that men are entitled to beat their women and that those women are not entitled to protection, either inside or outside the home.

[37] The available country information also illustrates the precarious position of women in the workplace in Russia, commencing with a definitive publication by the Human Rights Watch Project issued in March 1995 (*Russia: Neither Jobs Nor Justice op cit.* at page 8) in which the following passage appears:

“Women in Russia face widespread employment discrimination that is practised, condoned and tolerated by the government. Women have been fired in disproportionate numbers by government industries, agencies and ministries that are streamlining their work forces or trying to privatise their operation.... In contrast to men, women remain chronically unemployed upon losing their jobs. Official statistics indicate that, across Russia, two out of three unemployed Russians are women. In many regions, over 85% of the unemployed are women.

Women’s disproportionately high representation amongst the unemployed is attributable in significant part to government practices that openly discriminate against women. In numerous instances, employers, many of them government enterprises, have fired women in large numbers and retained male employees. In a number of recorded cases where government enterprises conducted mass dismissals, they fired significantly more women than men. In May 1993, 90% of the workers fired by government enterprises in the Alexandrov region were women. The workers were fired not only from the female dominated textile industry, but also from machine building plants where men and women make up equal percentages of the work force.... Government and private employers, openly expressing their preference for hiring men, advertise job vacancies for men only and deny positions to women because of their sex. Women interviewed by Human Rights Watch report that discrimination is on the rise and the government is doing virtually nothing to stop it.”

[38] The claim made in this document - that discrimination is on the rise and the government is doing virtually nothing to stop it - is borne out by a number of other reports published since 1995. The Human Rights Watch 1997 Report noted that “the impact of joblessness is felt disproportionately by women”. Relevantly it went on to note (at page 9):

“Rising unemployment has been accompanied by a collapse in the purported official policy of women’s equality in employment rights. Although Article 19 of the Russian Constitution guarantees equal opportunities and equal rights to all citizens, government officials today publicly endorse discrimination against women. Former Minister of Labour Gennady Melikyan, for example, stated in a 1993 interview with CNN, “Why should we employ women when men are out of work? It is better that men work and women take care of children and do housework.” After making these statements, Minister Melikyan was promoted; after the merging of the Social Protection Ministry with the Ministry of Labour, President Yeltsen placed Melikyan at the helm.

The rhetoric of equality has been replaced by the rhetoric of “protection”. Labour legislation effective July 1, 1996, increased the number of jobs closed to women by creating tougher working standards that employers must observe regarding women between the ages of 15 and 49. Citing considerations of women’s health, and, more specifically reproductive functions, the law allows women currently employed in such positions to remain, but bans hiring women to fill new posts ...”

[39] The 1998 financial crises also resulted in women being fired first (*Country Reports on Human Rights Practices for 1999: Russia*, 2000 Women’s International Network, April, at page 2).

[40] Even when women are able to secure employment they still cannot expect equal treatment. In particular (from *Women and Labour Market Discrimination* 2001, Agence WPS, May (Nexis):

“Women’s wages averaged 70% of men’s in Soviet times. Things have changed in the new Russia: official statistics say women are now down to an average of only 56% of male earnings (independent studies put this at under 50%).... Economic decline has led to a dramatic decrease in the number of jobs, and rising unemployment. The proportion of Russian citizens age 15 to 72 who are employed has fallen from 66.7% to 52.9%; for women it is fallen from 60% to 47.6%.

At present around 30% of Russian women are unemployed, impoverished, alone, and requiring some specific form of state support. Many have no income other than payments from the state, and live far below the poverty line.”

[41] Women can also expect to endure systemic sexual harassment in the workplace. Many potential employers seek female employees who are receptive to sexual relations. Jobs are advertised with phrases such as “without complexes” (meaning the applicant should be willing to provide sexual favours); *Country Reports on Human Rights Practices - 2000: Russia*, Bureau of Democracy, Human Rights & Labor, February 2001, at p41). Other employers ask potential employees to agree to “VBO” - a Russian abbreviation for “possibility of close relations” (*Country Reports on Human Rights Practices, supra*, page 2; see also *Russia: The feminiski are coming*, *The Economist, supra*, at pp 50-51).

[42] The consequences of such prevalent discrimination against women obtaining employment are significant. Where they are unable to rely on their partner for financial support, as in the case of this appellant, they must compete for the shrinking number of available jobs expecting a less than equivalent pay to their male counterparts. For that pay, they may have to provide sexual favours to remain or face the risk of losing their jobs.

[43] Those who are unable to obtain employment are reliant on what is left of the social safety net provided for the unemployed in Russia. Turning again to the 1997 Human Rights Watch Report (*op cit.* at page 9 to 10):

“No longer able to rely on the government for the provision of jobs or salaries, Russian citizens face high inflation, a cessation of basic social services and a shrinking public sector Expenditure on social guarantees dropped from 4.4% [of the GDP] in 1990 to 0.6% in 1994. Consequentially, pensions and welfare payments, which have gone unpaid for months in some locals, do not keep pace with inflation and have been dramatically reduced. Child benefit payments for single mothers with children under the age of 6, for example, fell from 14% of the average monthly wage in 1992 to 6% of the monthly wage in March 1995.”

[44] Although there has been some economic growth since the 1998 crises with the growth of real incomes and therefore average wages, 6% of citizens continue to live below the official monthly subsistence level (*Women and Labour Market Discrimination*, 2001, Agence WPS, May).

[45] What is also apparent from a review of the relevant country information is the increasing risk faced by women, who have been unable to obtain employment or for other reasons are living on or below a poverty line, of being forced into sexual slavery. Trafficking is on the increase in many parts of the world, including Russia. There are no official statistics which might indicate the scale of such operations but observers in Russia note already that the police and judicial response is relaxed. See *The Reproductive Rights of Young Girls and Adolescents in Russia* (Part 4 of 6), 2000 Centre for Reproductive Law and Policy, (CRLP), September (NEXIS):

“Moreover there is documented proof of government complicity in the trafficking of girls and young women out of Russia. Most women being trafficked are unwitting participants who respond to advertisements while searching for legitimate work. These exploited women are commonly refused help by Russian consulate officials abroad. Debt bondage, forced prostitution, illegal confinement, physical and psychological violence, including sexual violence, and threats of reprisals against family members, are just some of the types of violations that sexual traffickers inflict...”;

[46] Commenting on this increasing trend, and helpful by way of a summary in this part of the decision, is the observation made in the article *In the Shadows: Trafficking and Women*, *The Economist*, (August 26 2000 at page 40 to 41):

“No amount of moralising, however, will have much effect unless a broader problem feeding the supply of women is confronted: the feminisation of poverty in Eastern Europe. Since the end of Communism, women have experienced a disproportionate share of hardship. Two thirds of Russia’s unemployed, for example, are women. Women have increasingly become bread winners for drunk or absent husband, even if they have been squeezed from the work place thanks to industrial restructuring. Lack of opportunity compels Eastern European women to take risks their peers in Western Europe would never contemplate.”

(See also *UK Home Office Report: Russia: Country Assessment*, October 2000 at paras 5.43 and 5.44.)

[47] Against this background, the Authority concludes that women in Russia are marginalised in most significant aspects of their lives and that there is a systematic lack of protection at all levels for Russian victims of domestic violence. There may be a number of reasons why the state has withheld effective protection from such

individuals. However, the evidence in respect of domestic violence referred to above, and the state's indifference to women in the areas of employment and trafficking, persuade the Authority that, at the very least, the gender of those seeking protection is a significant contributing factor. (For further discussion, see *The Michigan Guidelines on Nexus to a Convention Ground*, James C. Hathaway, <http://www.refugeecaselaw.org/Refugee/guidelines2001>.)

[48] Accordingly, the Authority is satisfied that the appellant faces a real chance of persecution because she remains at risk of serious harm at the hands of her violent ex-husband and state protection from such violence is not available at least in part because of the ingrained social attitudes to women in the state of Russia. It could be said that the actions of the state in failing to provide protection to the victims of domestic violence have identified or even created a particular social group in Russian society. (See further *Refugee Appeal No. 71427/99* (16 August 2000) para 101). The appropriate Convention ground is therefore the appellant's membership of a particular social group, namely women.

CONCLUSION ON THE ISSUES OF WELL-FOUNDEDNESS AND CONVENTION GROUND

[49] For the reason set out above, Issues 1 and 2, as framed in paragraph [26], are therefore answered in the affirmative. However, given the size and the social and political conditions in the Russian Federation, the Authority must go on and consider whether an internal protection alternative exists for this appellant such that it can be said that she can obtain genuine and meaningful protection outside Dagestan and her home village of T.

INTERNAL PROTECTION ALTERNATIVE

[50] For ease of reference, the Authority notes that the final issue to be addressed is framed thus: Can the appellant genuinely access domestic protection which is meaningful? In particular:

- a) In the proposed site of internal protection, is the real chance of persecution for a Convention reason eliminated?
- b) Is the proposed site of internal protection one in which there is no real chance of persecution, or of other particularly serious harms of the kind that might give rise to the risk of return to the place of origin.

- c) Do local conditions in the proposed site of internal protection meet the standard of protection prescribed by the Refugee Convention?

(See *Refugee Appeal No. 71684/99* (29 October 1999).)

[51] While the Russian state's unwillingness or inability to protect domestic violence victims is nation-wide, New Zealand's obligations under the Refugee Convention are not triggered in the particular circumstances of this case if the threat of serious harm is absent. The primary issue therefore is whether it is likely that the appellant's husband can and would follow her to any proposed site of internal protection thereby putting her at risk of serious harm from which, as it is clearly demonstrated in the above discussion, the state is either unwilling or unable to protect her.

[52] Difficult as it can be for a decision maker in these circumstances to predict an individual or family group's behaviour, the Authority cannot, on the present facts, be satisfied that the appellant's husband or members of his family would not be likely to seek her out and harm her if they became aware both of her return to the Russian Federation and of her place of residence. Perpetrators of domestic violence do not always see separation, divorce, or even a relatively prolonged absence as a logical or appropriate end of the violence inflicted by them during an intimate relationship.

[53] This appellant was the victim of severe domestic violence over 17 years of her marriage. On both her efforts to flee, her ex-husband went to considerable lengths to try to locate her and to bring her home. On one of those occasions he was successful. He has clearly demonstrated he is capable of pursuit.

[54] It is the appellant's fear that, as a matter of honour, her ex-husband and his family will want to avenge her public act of defiance in fleeing. Having found the appellant to be a credible, sincere, and understated witness, we consider it appropriate to place some weight on her assessment of her ex-husband's likely conduct. Although we have some doubt as to whether her husband and/or his family members will seek her out (given the passage of time and the population and size of Russia), the appellant is entitled to the benefit of that doubt. Accordingly, we are satisfied that, not only is the appellant's ex-husband capable of pursuit, but he is also likely to pursue her if he becomes aware of her return to Russia and her place of residence.

[55] The issue therefore is whether there is a real chance that the appellant's ex-husband and/or his family will become aware that she has returned to the Russian Federation and to a precise location in it. In this respect, the "*propiska*" or internal registration system that operates within the Federation is significant.

[56] While the Russian Constitution enshrines the right to freedom of movement and the right to choose one's place of residence (Article 27(1)), this right is significantly curtailed by the registration system imposed in various forms throughout the Federation. All Russian citizens are required to carry an internal passport (Canadian Immigration and Refugee Board Documentation Centre 1998, RUS29376.EX *Russia: The Propiska (registration) System and Internal Passports* (page 1)). A system of registration at local government level has in recent years replaced the former *propiska* system but is regarded by many commentators as simply another form of the same system (see, for example, United Kingdom Home Office, "*Russia: Country Assessment*", October 2000 at paragraphs 6.16 to 6.27). Most regions have ignored recent rulings of the Constitutional court that the system of registration is unconstitutional and that the 1993 Federal Law "on the right of citizens of the Russian Federation to the freedom of movement, choice of place of stay and residence within the territory of the Russian Federation" should be enforced throughout the Federation. The *UNHCR Background Paper on Refugees and Asylum Seekers from the Russian Federation*, UNHCR CDR Geneva, November 2000, at page 25, describes the situation thus:

"Many regions of the Russian Federation have adopted their own legal Acts on issuing registration to newly arriving people, in spite of the provision of the law "on Freedom of Movement" that states that rules on registration are to be established only by the Federal authorities of the Russian Federation and not by its regional subjects. Such regional acts used to contain different restrictions to, or requirements for registration ... Through a number of interventions by the Constitutional Court such requirements were found to be abusive interpretations of the federal law and were declared unconstitutional. However, in spite of these positive developments, *little has changed at a practical level. The difficulties with obtaining registration are, in general, connected with arbitrary practices, while the local regulations themselves might be in accordance with the federal legislation.* The limited awareness by the population of their rights and the old Soviet mentality often still surviving inside Local Passport and Visa Services, prevent legislative reforms to have large effects at a practical level, often in spite of the goodwill by the government. Moreover, in some regions... regional legal acts contradicting the federal law still remain in force." (emphasis added)

[57] Despite a careful search of information available to the Authority, it is difficult to say with any certainty what process will be followed should the appellant

apply for registration in any particular area given the wide variations from region to region and city to city. It seems to be the general consensus, however, that certain requirements must be met, including the presentation of an identification document and, most specifically, evidence that the applicant has a legal place of residence; (UNHCR Background Paper, *supra* at para 4.6; DIRB Response RS32255.EX, *Russia: Situation of Minorities in Moscow, including information on residence registration issues*, 12 August 1999, at page 3 and 4). Registration also requires police approval and enquiries can be made to determine if an applicant has previous convictions or administrative violations. The consistent theme of the literature is that without evidence of permanent legal accommodation, there can be no permanent registration.

[58] The appellant's evidence is that if she attempts to register she will first have difficulty in providing evidence that she has a permanent place to reside. She is of course the registered owner of her home. However, any attempt by her to sell the property or transfer registration of that home to any state-provided accommodation, will immediately put her husband and his family members on notice that she has returned, given that they reside in the house. The appellant also believes that, before her registration or *propiska* is transferred from M to any new place of residence, the local authorities in M will check the family registration and satisfy themselves that the appellant in fact no longer resides there. She believes this is the primary process by which her husband and his family will become aware she has both returned to the Russian Federation and is seeking registration in a new region. She also believes that the requirement that a police check be undertaken will also provide a further trigger for her return to Russia and application for a residence permit to come to the notice of her ex-husband and his family members.

[59] The appellant expressed real concerns as to her ability to obtain permanent accommodation. Country information sources already referred to in this decision leave us in no doubt that there is a chronic and severe housing shortage throughout Russia. Without being able to access her only capital asset (the family home) and without money, the appellant faces significant obstacles in this regard. The obvious choices of a place to reside are in T with her own family members, or in the city of Moscow, where a friend has in the past provided her with temporary shelter and protection from her husband. However, the appellant fears returning to either of these locations for those very reasons – in other words because her husband has already made enquiries of her there in the past.

[60] Even assuming the appellant can obtain permanent accommodation and thereafter applies to register in a new region, the Authority acknowledges the difficulties in determining whether there is a real chance that, through that registration process, her ex-husband will become aware of her new place of residence. On the one hand, given the arbitrary and various ways in which registration processes are administered throughout the Federation, the chances of any direct contact being made with the appellant's ex-husband are potentially remote. On the other hand, the registration office in M (which the Authority accepts will be contacted if the appellant seeks to register anywhere) may be one of the offices which still rigorously checks the *bona fides* of any application to transfer. In such circumstances, there is a real chance that the appellant's husband will be made aware of her application to transfer her registration. Once aware, it would be relatively easy for him to find the appellant: after all, the purpose of the *propiska* (now registration) system is to enable the state (and other interested parties) to locate its citizens.

[61] Once again the Authority has substantial doubt in this area and, in accordance with our jurisprudence, the appellant is entitled to the benefit of that doubt. Accordingly, the Authority concludes that there is a real chance that, during the course of the registration process, the appellant's ex-husband will become aware not only that she has returned to the Federation but also of her location. In such circumstances, the Authority cannot conclude that there is a proposed site of internal protection free from Convention-related harm if the appellant seeks permanent registration.

[62] There remains therefore the consideration of whether the appellant can avail herself of an internal protection alternative by avoiding registration. Certainly the Authority is satisfied that if she does not register then there is either no or only a remote chance of her ex-husband locating her in the future. Thus in the absence of registration, the Authority must conclude that, in the proposed site of internal protection the appellant would be free of the Convention-related harm.

[63] Country information makes it clear that, in the absence of registration, citizens of the Russian Federation face a substantial deprivation of rights in the social, civil and economic areas of their lives (UNHCR *Background Paper (op cit.)* at para 4.6). Specifically, without registration the appellant would be unable to access free medical services, education facilities for either herself or her children,

a pension, unemployment benefit and a benefit for her children. In particular, she would be unable to obtain state accommodation and state employment. She would therefore be totally reliant on her ability to access employment in the private sector and on family support. Given the systemic discrimination against women seeking employment in both the public and private sector (as illustrated above) and the feminisation of poverty in the Russian Federation, the Authority is of the view that the appellant would either be unable to find employment in the private sector or will be forced into employment situations such as prostitution, or employment predicated on the provision of sexual favours. The situation exposes her quite clearly to serious harm and is in breach of her rights (*inter alia*) to be free from degrading treatment or punishment (Article 7 of the ICCPR) and her right to equal protection before the law (Article 26 of the ICCPR).

[64] In this area the Authority has no doubts and concludes that, if the appellant is unable to obtain permanent registration within the Russian Federation, or must choose not to register to be free of Convention-related harm, she will expose herself to other forms of serious harm.

CONCLUSION ON THE INTERNAL PROTECTION ALTERNATIVE

[65] The Authority is satisfied that, if the appellant seeks registration (assuming she can find permanent accommodation), there is a real chance that both her return to the Russian Federation and her subsequent place of permanent residence (or to her home village of T) will come to the notice of her ex-husband thereby putting her at risk of Convention-related harms in any proposed site of international protection. The Authority is also satisfied that if the appellant is required to return to the Russian Federation and live without permanent registration (either through fear of her ex-husband or an inability to secure permanent accommodation), she will expose herself to other forms of serious harm. In such circumstances, the Authority must conclude that the internal protection alternative is not available to this appellant. Accordingly she meets the requirements of the refugee definition.

CONCLUSION

[66] The appellant is a refugee within the meaning of Article of 1A(2) of the Refugee Convention 1951. Refugee status is granted. This appeal is allowed.

.....
E M Aitken
Chairperson