

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO. 74602**

**AT WELLINGTON**

**Before:** D J Plunkett (Chairperson)  
M Hodgen (Member)  
G Pearson (Member)

**Counsel for Appellant:** J S Petris

**Appearing for NZIS:** No Appearance

**Date of Hearing:** 15, 16 September 2003

**Date of Decision:** 10 February 2004

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**DECISION DELIVERED BY G PEARSON**

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[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellant, a national of the Socialist Republic of Vietnam.

**INTRODUCTION**

[2] The appellant is a 29 year-old single man who arrived in New Zealand in August 2002, and made his application for refugee status on 11 September 2002. He had visited New Zealand several times previously as a member of the crew of a ship. Following an interview with a refugee status officer on 13 November 2002, and correspondence from his counsel, the appellant was advised of the decline of his application by letter from that officer on 3 March 2003, enclosing a decision of the same date. The appellant now appeals against that decision.

## **THE APPELLANT'S CASE**

[3] The following is a summary of the appellant's evidence. It is assessed later.

[4] The appellant originally came from a small village in Vietnam, where his parents still live. The appellant left the village to complete his final year of secondary school in Ho Chi Minh City in 1990. He has, for the most part, been based there since that time. However, the appellant has travelled due to his career as a seaman.

[5] Prior to the reunification of Vietnam in 1975, the appellant's father held positions in the South Vietnamese public service. He was also a member of a political party at that time. Following the collapse of South Vietnam in 1975 one of the appellant's uncles (who had been a soldier), and the appellant's grandfather, were required to go to re-education camps. The appellant's father was at risk of being required to attend a re-education camp. He avoided that, by providing inaccurate information for his official record.

[6] After reunification the appellant's parents worked as schoolteachers.

[7] The appellant's family did not have any political profile in post-reunification Vietnam. The appellant's parents had attempted to flee Vietnam in 1978, but they were not successful. The appellant has been interested in politics since the late 1980s, and his father held the opinion that the communist Government was unfair. The family listened to international radio broadcasts, which was illegal at the time (until 1986). The broadcasts, by the BBC and Voice of America, would express negative views regarding the Government in Vietnam. However, the appellant's father and other members of the family, kept their opinions within the family. It would have been dangerous to do otherwise.

[8] The appellant's schooling was routine.

[9] The appellant's mother came under pressure to resign from her teaching position in 1990. That was because her father was perceived as having some link with the old regime, though the appellant did not know what the link was. At the time, even a tenuous link was regarded as being grounds to require a teacher to resign.

[10] In the same year the appellant's mother joined the United Buddhist Association of Vietnam. This Association is not illegal and is tolerated by the Government of Vietnam, though not supported because it has promoted democratic reform. There was a small monastery in their village where she undertook the voluntary task of managing the monastery. It is a duty she is still performing. In 1990, one of the appellant's father's students who worked for the village community said the appellant's mother was being "followed" by the police. The appellant's mother has also been refused permission to have a monk come and study at the monastery.

[11] The appellant's mother has operated a stall, both before and after she resigned as a teacher. The authorities required her to pay more tax and subjected her to checks that did not apply to other stall holders.

[12] After completing secondary school in 1991 the appellant assisted his Aunt with her business in Ho Chi Minh City, and undertook short courses in English and information technology.

[13] In 1993 the appellant decided he wanted to leave Vietnam permanently. The appellant's family discussed the appellant's intention, and supported his decision. The appellant's brother has a similar intention, but has not yet had an opportunity to leave. The appellant wished to leave Vietnam, he says, due to the lack of freedom and fairness, and injustices suffered by citizens. The appellant said he and his family enjoyed a good life in Vietnam, he was not simply leaving for a better life. The appellant's father had inherited some wealth, which had not been lost in 1975. The wealth was, and is, in the form of property and gold. The wealth was not such that the family are, or were, very rich. However, they enjoy better than average means. The appellant's maternal family also had a degree of wealth, but it was confiscated after reunification.

[14] The appellant set about making plans to leave. In September 1994 the appellant obtained a "Seaman's Book", which is an international travel document for a crewmember on a vessel. That involved considerable expense, which is usual.

[15] In 1995 the appellant commenced a course at a marine polytechnic in Ho Chi Minh City. He studied fulltime until graduating in 1999. The course of study

required two periods gaining practical experience, each involved some two months at sea. The first sea experience was on a coastal vessel, the second involved travelling to Indonesia and Singapore. The training was directed to the appellant qualifying for a career as an officer on a ship.

[16] The appellant's father was subjected to a security check in 1999. The appellant said the authorities detected that his father's present file and his real life in the past were totally different; and that he had a connection with the "old Government". The consequence was that the authorities immediately asked him to resign from his position as a school principal, giving two reasons. The first reason was the false information in his file, and the second was that he was not a member of the Communist Party.

[17] The appellant's father when he was asked to resign was also banned from teaching, but given a position as an office worker at the school. The position however carries no importance or tenure. He continues in this role assisting other staff until his retirement. He is also being "followed" or "watched" by the local authorities and/or the police, in the sense that since the year 2000 the appellant's parents have been required to obtain permission from the local authorities to leave their village, and must carry travel documents and report to the local authority at their destination. Notification of the travel ban was given in a document, received in the post. No copy has been sent to New Zealand.

[18] There have been no further repercussions arising from the appellant's father's false record, either for him, or other members of the family. The appellant believes it is because apart from the discrepancy in his personal record, there was no sign of any anti-government sentiment or activity.

[19] The appellant is interested in politics as his father talked to him about it. His father was anti-communist, and in favour of freedom of speech, freedom from discrimination, and the freedom to engage in business. The appellant was never involved in any political or anti-Government activity while living in Vietnam. In the year 2000 the appellant began listening to broadcasts by Radio Free Asia. The reception was poor. It was not lawful to listen to these broadcasts in Vietnam. The appellant was particularly interested in broadcasts by persons who had been high ranking officers in the Vietnamese Post-Reunification Government, who had

dissented and now expressed those views. Those persons were promoting the cause of democracy, and reporting on the plight of ordinary people in Vietnam.

[20] From the time he graduated the appellant actively sought work as a seaman. In the interim he resumed assisting his aunt with her business. Approximately a year after graduating, in August 2000, the appellant obtained a position on a coastal vessel. He had to apply for police clearance, and obtained it without difficulty. The clearance was obtained from the police in his home village. The position on this ship carried an average salary, its main value was for the appellant to gain experience. The appellant was on the ship for six months, and he experienced no significant problems.

[21] After some six months of experience on the coastal vessel, the appellant sought work on an international vessel, with the express intention of using it as a means of leaving Vietnam permanently. This was in pursuit of the intention he had since 1993. The appellant sought freedom, to express political opinions, travel, and work. In addition, he was offended by impositions placed on the population by the authorities. The appellant informed his father of his plans.

[22] In February 2001, the appellant obtained work, through a Vietnamese company. He was interviewed by a Japanese company and accepted as a crewmember for one its ships. The Vietnamese company arranged crew members for the Japanese company. The appellant understood the Vietnamese Government owned the Vietnamese company. The Vietnamese company was accordingly well regarded by the Vietnamese authorities, and for that reason the appellant had no difficulty in obtaining a police clearance to take his position with the company and to work overseas. The appellant considers his clearance may have been assisted by the fact that he applied in Ho Chi Minh City, where the police did not personally know him and his family. The appellant did however have registered addresses with the police in Ho Chi Minh City.

[23] The appellant undertook training in preparation for joining an international vessel (between May and December 2001). During that time (October 2001) the appellant obtained an ordinary passport, which he held in addition to his "Seaman's Book". His "Seaman's Book" was renewed on 4 March 2002.

[24] In March 2002 the appellant flew from Ho Chi Minh City to Japan, transiting through Hong Kong, and joined one of the company's ships there. The appellant remained as a crewmember (rank of Able Seaman) of this ship until he left the vessel in New Zealand on 8 September 2002. The vessel was on a regular run between Japan and New Zealand, carrying cargo. The vessel would berth at three ports in New Zealand on each voyage. It was the fourth voyage when the appellant "jumped ship" on 8 September 2002.

[25] When the ship was in New Zealand ports the crew were free to leave the vessel and move about the city.

[26] While on board the ship the appellant used a radio he had purchased in Japan to listen to the BBC, Radio Free Asia, and Voice of the Homeland. The last mentioned being a broadcast from California. The broadcasts had news and political commentary relating to Vietnam. The broadcasts criticised the Vietnamese Government. Some of the Vietnamese crew on the ship, like the appellant, agreed with the sentiments expressed in the radio broadcasts, others disagreed. A person who did not agree with the sentiments was the Chief Officer on board the ship. The Chief Officer was a member of the Vietnamese Communist Party, and head of the Vietnamese crew members.

[27] The appellant brought a substantial number of magazines published by the Free Vietnam Alliance ("FVA") on board the ship. The magazines were critical of the Vietnamese Government. The appellant obtained the magazines when he was in New Zealand, having established contact with people associated with the FVA. This first occurred on the second voyage. A number of the crew would read the magazines, but some read them surreptitiously.

[28] The Chief Officer told the appellant that his views and activities were not acceptable. He strongly opposed the appellant's conduct and threatened to inform the company, and the Vietnamese authorities when he went back to Vietnam. However, it was a Japanese ship, and the captain was Japanese. Accordingly, the authority of the Chief Officer was limited, and the appellant was "not very frightened" of his criticism. The appellant's lack of concern was first because the Chief Officer had limited authority on board the ship, and second because the appellant had already determined he would not be returning to Vietnam, so he continued to do what he thought was right. The appellant knew that if he did go

back to Vietnam he would have been punished. He would not have been permitted to be a crewmember of a ship again; and he would also suffer more serious punishment, including imprisonment. Other crewmembers were “very scared” by the Chief Officer’s threats to make reports to the Vietnamese authorities.

[29] On the second, third, and fourth voyages the appellant contacted persons associated with the FVA in Wellington. The appellant made his own decision to “jump ship”. He did that on the fourth voyage, as he was concerned there would only be two or three more voyages before a crew change. When there was a crew change the appellant would have to return to Vietnam. The appellant’s motivation at the time he left the ship was his desire to be free to express political opinions; and in addition he was at risk if he returned to Vietnam, due to the political opinions he had expressed on board the ship.

[30] The appellant was conscious that his actions could affect his family, but he considered any repercussions would primarily be directed against him. Furthermore, his family supported the action he was taking.

[31] A week after the appellant “jumped ship” in New Zealand a representative of the shipping company visited the appellant’s brother. He was requested to write a report about the appellant. He refused. He also refused to work for the company to repay the costs of the appellant leaving the ship. The appellant’s parents were also asked by the shipping company to pay its costs. The shipping company then sent a letter dated September 2001 addressed to the appellant’s father. A copy of the letter was produced. The letter refers to costs, and “requests that as soon as the family receives any news from [the appellant], they must immediately inform the company”. The family refused to meet the shipping company’s demands, and there have been no repercussions.

[32] From the time the appellant left the ship he has been in close contact with members of the Free Vietnamese Youth and Student Association (“the Association”), which is based in Wellington and is affiliated to the FVA. In February 2003 the appellant formally joined the Association as a member. The Association holds discussions on an irregular basis, has monthly meetings, circulates magazines, makes contact with Vietnamese crews on ships visiting New Zealand, and the leader of the group travels to maintain contact with the FVA

outside New Zealand. The association was referred to as both the Association and the FVA interchangeably throughout the appellant's evidence.

[33] The appellant attends a discussion group with members of the Association, when monthly meetings do not conflict with his work. He is on a roster to assist with distribution of FVA magazines to Association members; and has posted newsletters to friends and associates in Ho Chi Minh City. When posting those newsletters the appellant has put his name and New Zealand address on the envelope. He has done this twice, in May and August 2003. None of the addressees have had any problems because of the receipt of such documents (so far as he knows). Nor has anything been said to his family about this.

[34] The appellant has maintained regular contact with the ship he worked on, and given magazines and video tapes to crew members. The appellant is not allowed on board the ship, and meets with crew members at the Seamen's Club. The appellant has extended an invitation for crew members to attend Association meetings in Wellington.

[35] On 21 May 2003 the Socialist Republic of Vietnam opened an embassy in Wellington. The Association became aware of the event the day before, and organised a demonstration. The Association members did not know when the opening was to take place, and accordingly the appellant and eight others arrived at 9:00 am. At 4:30 pm the appellant saw a police car followed by two vehicles flying Vietnamese flags. The appellant and others in the group held placards, a banner, and a flag of the old regime in Vietnam. The appellant had a sign, which read "Religious Freedom for Vietnam"; and also a placard calling for the release of three religious leaders. Other banners had statements such as "The Vietnamese Communist Party Does not Represent the Vietnamese People", and "Human Rights for Vietnam".

[36] The cars carrying Vietnamese officials travelled past close enough for the occupants and the protesters to clearly see each other. The senior official attending the opening of the embassy was the Deputy Minister of Foreign Affairs in the Vietnamese Government. Representatives of other embassies also attended the opening and saw the protesters.



[37] Staff from the Vietnamese embassy later came down to the street, and watched the protesters for five or ten minutes, and read the messages on the banner and signs carefully.

[38] The protest was reported on the FVA website, which is based in Paris (accessible world-wide). The Vietnamese News Network (VNN), a Vietnamese dissident group based in California, interviewed the leader of the protest group, and the interview was broadcast on the *Voice of the Homeland* radio station from California. The VNN also has a website, where material was published.

[39] The appellant is not aware of any other publicity about the protest. Neither the appellant, nor colleagues were approached by the news media at the protest. The appellant produced photographs of the protest (taken by a member of the group), and reproductions of the FVA and VNN website material, including photographs. The reproductions of the FVA and VNN websites are not adequate to convey how much detail could be extracted from the websites. The appellant's image, along with those of the other demonstrators, is in the website materials, but the reproductions do not indicate there is sufficient resolution to identify any person shown in the images. The appellant is not named on the websites, or in any broadcast. The appellant confirmed that in addition to the nine protesters his counsel Mr Petris appears in the photographs. Mr Petris attended the protest, giving advice, and negotiating with police officers. The website materials (FVA and VNN) are in Vietnamese and no translations were provided.

[40] Since the appellant has been in New Zealand the police have been "watching" his father. The police have visited the appellant's parents at their home on three occasions in that period. All the visits were in June 2003, the first on 2 June, the second on 24 June, and the last on 26 June. The first visit was 12 days after the protest in Wellington. On the first visit the police officers asked about the appellant, and on the second visit they said that the appellant's parents should report the appellant's whereabouts. On the third visit the police said that the appellant had destroyed the friendship between Vietnam and New Zealand, and that he was involved in wrongful activities. They were told that if they knew anything they must report it to the police, or they would be held responsible. On both the second and third visit the police gave a document to the appellant's parents. A police notice requiring his family to disclose the appellant's whereabouts was delivered on the second visit. The document delivered on the

third visit (a police warning) stated the appellant (verbatim, from translation produced):

“has recently had reactionary acts against Vietnamese government, against the expectations of the Vietnamese people, and destroyed relationships between Vietnam and friend countries.

You have responsibility to declare to local government as soon as possible when you get information about [the appellant]. If you try to cover any information, you will be sentenced according to Vietnamese government laws.”

[41] The police have not visited other members of the appellant’s family. There have been no further repercussions for the appellant’s parents.

[42] The police in Vietnam have also visited the families of the other eight protesters. The appellant has no details, as the subject is personal and he has not discussed the issue in more detail.

[43] Counsel for the appellant produced written submissions dated 4 July 2003 prior to the hearing, and further submissions dated 19 September 2003 following the hearing. The following materials were produced:

- A document in the Vietnamese language, being a report from the Vietnam News Network (untranslated);
- A reproduction of certain articles of the Free Vietnam Alliance website (untranslated). This includes an image depicting the protest at the opening of the Vietnamese embassy in Wellington;
- An extract from an FVA magazine with an article referring to the demonstration at the opening of the Vietnamese embassy in Wellington (untranslated);
- A membership application, and a membership background for the Free Vietnamese Students Association, New Zealand (both untranslated);
- A notice dated September 2002, from a Maritime Company of Vietnam to the appellant’s father (translated);

- A notice dated 24 June 2003 from the “Head of Village Police”, addressed to the appellant’s father (translated);
- A notice dated 26 June 2003 from the Police Department in Vietnam addressed to the appellant’s parents (translated);
- Two photographic prints depicting the protest at the opening of the embassy;
- A copy of an article from the *Dominion Post*, the copy being dated 20 May 2003. The article reports that Vietnam is opening an embassy in Wellington, the following day.
- Copy of the Judgment in *TN v Refugee Status Appeals Authority CP212/00* (High Court, Wellington, 10 May 2001);
- Country information.

## **THE ISSUES**

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

“...owing to a 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.”

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

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

[47] If the answer is yes, is there a Convention reason for that persecution?

## **ASSESSMENT OF THE APPELLANT'S CASE**

[48] The first issue for the Authority to address, prior to determining the principal issues, is to assess whether the appellant is a credible witness. The Authority did not find the appellant to be a credible witness in relation to key elements in his evidence.

[49] The Authority accepts as credible the appellant's evidence regarding his general family background and work history; and also his participation in political activities in New Zealand. The Authority expressly rejects the appellant's evidence in respect of:

- The appellant's claimed political interest and involvement prior to landing in New Zealand;
- The claimed police interest in his family as a result of his family background; and
- The claim that since he landed in New Zealand, the Vietnamese police have been interested in the appellant.

### **Claimed political involvement prior to landing in New Zealand**

[50] The Authority rejects the appellant's evidence that:

- He was interested in politics in Vietnam,
- He listened to foreign broadcasts, and distributed FVA materials on the ship when he worked aboard it; or indeed
- That he had any fear of persecution at the time he initially claimed refugee status.

[51] The appellant said in his evidence that at the time he arrived in New Zealand the greatest risk to him (if he went back to Vietnam) was facing serious charges because of activities on the ship. In particular, that he had circulated FVA material, and been threatened by the chief officer. The appellant did not refer to this, in either his application for refugee status, or the supporting statement. At

that time, he only referred to problems arising from his family background. His explanation was that he was new to the country and 'not himself'. If he had undertaken those activities and been threatened, this issue would have been prominent in his mind as a cause of risk, and it is implausible that he would not have mentioned it.

[52] The appellant told the refugee status officer he listened to dissident radio stations on board the ship, but said nothing of listening to such broadcasts in Vietnam. When giving evidence to this Authority he also claimed to have a history of listening to dissident radio broadcasts while he lived in Vietnam. The appellant's explanation was that he was not asked by the refugee status officer about listening to radio broadcasts in Vietnam. If the appellant did have a long history of listening to dissident radio broadcasts, it is not plausible he would relate only an account that indicated he did so only recently when seeking to establish his status as a refugee.

[53] The appellant claimed in his evidence to have had an interest in politics since he was young, and to have often spoken to his father about politics. The appellant said his father was anti-communist, thought communists were "not good", and favoured freedom of speech and freedom to do business. The appellant's evidence was vague. The appellant was not able to give any other details. Despite their many discussions, the appellant could not give any examples, or provide further details of what his father said. While the appellant claimed his father supported the old regime, the appellant had "no idea" of the difference between the old and existing regimes in Vietnam.

[54] The Authority accordingly disbelieves the appellant's claim that he had a fear of persecution causing him to make a refugee claim based on a history of political interest and activity. The Authority notes the appellant's evidence that he had the intention to leave Vietnam permanently since as early as 1993. Jumping ship and making a refugee claim had nothing to do with fear of persecution if returned to Vietnam. The Authority finds they were in furtherance of a plan he had since 1993 to live abroad.

**Claimed travel impositions on parents in Vietnam**

[55] The Authority rejects the appellant's evidence that his parents have been required to obtain consent to travel, and report their movements.

[56] The appellant produced numerous documents to the refugee status officer, and subsequently the Authority. The documents included a police notice (24 June 2003), a police warning (26 June 2003), and a shipping company request for the whereabouts of the appellant. The appellant initially said in evidence he had not produced a copy of a notice imposing travel restrictions on his parents, because the document was addressed to his parents. When the Authority pointed out that all the documents were addressed to his parents, he then claimed his parents were not given a copy. When asked why they had not asked for a copy of the document, he said it was because it did not have his name on it. When asked why not, given that it related to his case and all the other documents did have his name on them, he modified his evidence concerning what prompted the issue of the document. The appellant then said he thought it also related to his father's problems with the authorities (having previously said the requirement came about because of the appellant's FVA activities). This mobility in his evidence as to what prompted the document and why he does not have a copy shows this evidence to be false.

[57] Furthermore, the appellant initially said in his evidence that two documents were given to his parents by the police. When it was put to him that the travel restriction document would make three, he said he thought the other two documents related to him, but not this one. The appellant's explanation for the discrepancy was that the relevance of the travel restriction document to his own problems (compared with his father's background problems) "might" have only come to him while giving evidence. That is not credible. The restriction on travel he alleges started in 2000, and the document was said to have been given to his family three months before the hearing. He would therefore have thought about the issue and the document a great deal since then, and also thought about the consequences of returning to Vietnam. It is not plausible the link with him only occurred to him when he was giving evidence to the Authority, if it was a true account. As the Authority notes immediately above, there was considerable mobility as to the reasons given for what prompted the document.

[58] In addition, if as the appellant claims, his family were being “followed” or “watched” (by which he meant the travel restriction), then it is implausible he would put his family at risk by his political activities on the ship or in New Zealand. This is particularly so, given the appellant’s case that family members generally are harassed and punished for the perceived fault of other family members (and particularly so parents for the conduct of their children) by the regime in Vietnam. The appellant says he did it because what he was doing is right, and his father supports him. We find it is contrary to his character. He had never expressed any political views in the past or involved himself in anti-government activities because, he says, of the risk of punishment.

[59] This appellant is not a courageous, committed activist but an opportunist, whose connection with the Association and FVA was predominantly to further his refugee claim. The fact that he involved himself in activities in Wellington (the Authority disbelieving his claim to have been involved on the ship) shows that his family were not being “watched” and that there is no travel restriction on his family.

#### **Claimed police visits to parents in Vietnam**

[60] The Authority rejects the appellant’s evidence that the police visited his family on 2 June, 24 June and 26 June 2003 and issued three documents, including a warning.

[61] The Appellant’s case is that the Vietnamese authorities identified him within 12 days of the protest, and consequently visited his family making inquiries about him. Approximately three weeks later, the appellant claims they issued a warning alleging he had committed “reactionary acts against the Vietnamese government” and “destroyed the relationships between Vietnam and friend countries”. These are plainly serious charges, as the appellant contends.

[62] The appellant says the visits and the warning were triggered by the protest he attended in Wellington, and the Vietnamese authorities thereby discovering his involvement with the FVA.

[63] The appellant would have the Authority accept that within 12 days of a particularly modest demonstration, he had been identified from photographs on a

website (or possibly by an official at the embassy), and the address of his parents discovered, leading swiftly to the visit on 2 June. Moreover, that demonstration (and possibly his general involvement with the Association and FVA) led, he says, to the serious charges outlined in the warning served three weeks later.

[64] This is implausible:

- It was a peaceful, silent demonstration, involving only nine people in what is (in world terms) an insignificant capital city. The presence of a deputy minister and diplomats from other embassies may have led to embarrassment or irritation, for the Vietnamese officials at the embassy opening. However, the demonstration led to no publicity whatsoever in the public media, in New Zealand, or internationally. Publicity was confined to the websites of two international dissident groups. The Authority appreciates the Vietnamese Government is generally intolerant of political dissent, the sensitivity in any particular case is obviously affected by location, subject, the form of dissent, and other factors. But this protest, on any basis, was not significant.
- As for the appellant's involvement in the Association, it is highly unlikely the Vietnamese authorities know of the appellant's activities. It is accepted however, they might suspect some involvement due to the appellant's presence at the demonstration. The Association is affiliated to the FVA, which is an international dissident group, which has been declared illegal in Vietnam, but the appellant's role in the Association has been extremely modest. The appellant holds no office and has not been involved in any public activities or protests, beyond the one embassy protest. There is no reason to believe the Vietnamese authorities know of any of these activities or the appellant's membership, beyond knowledge of his presence at one minor demonstration. The appellant candidly admitted he did not know how the Vietnamese authorities could know of his membership of the Association or FVA.

[65] There is another reason the Authority does not accept that the Vietnam authorities went to see his parents in June 2003 or issued any documents.



[66] The appellant was asked whether any of the eight others present had any problems in Vietnam. He said the police had visited their families. Yet, the appellant could not tell the Authority if any of the family members had been arrested or imprisoned, or if any arrest warrants or court summonses had been issued against anyone. If the claim that his family had been visited was true, and documents had been issued by the police, the appellant would be determined to know if any harm had befallen the families of any of his colleagues, as indeed would his family. He would also want to know what official action had been taken in Vietnam against his colleagues. Such information would be a pointer to what might happen to him or his family and it is implausible that he or his family did not make any enquiries.

#### **Conclusion regarding the appellant's credibility**

[67] The Authority finds that the appellant's family have had no significant problems since the end of the war in 1975.

[68] The Authority does accept the appellant's mother was forced to resign from teaching in 1990, and his father in 1999.

[69] The Authority disbelieves the claims that a travel restriction has been placed on the appellant's parents, and that they have been "followed" or "watched".

[70] The Authority does not believe the appellant had any political interest before he came to New Zealand. The Authority rejects the claims that the appellant listened to foreign broadcasts in Vietnam, and that he listened to broadcasts and distributed FVA literature while working on the ship.

[71] The Authority does accept the appellant participated in the Association activities in Wellington in the way he described, including attending and participating in a protest at the opening of the Vietnamese embassy in New Zealand.

[72] The Authority does not believe the appellant's evidence of the Vietnamese authorities reaction to his attendance at the embassy protest. The Authority

rejects the authenticity of the police documents. The Authority does accept the authenticity of the shipping company document.

### **Well-foundedness**

#### **Consequences of “Ship Jumping”**

[73] The next issue is whether the appellant has a well-founded fear of persecution. The first issue is the potential penalty for “ship jumping”.

[74] The Authority accepts that the shipping company sent the appellant’s father a notice dated September 2002. The notice claimed that costs of “tens of thousands of US dollars” had been lost due to the appellant, and requested that the appellant’s family inform the company of his whereabouts as soon as they received news.

[75] The likely consequences for “ship jumping” by a Vietnamese national were discussed in *Refugee Appeal No. 70655/97* (21 May 1998). The appellant on returning to Vietnam may be fined by the company, and face possible re-education without detention, or even imprisonment for a short period.

[76] However, there is no reason to believe the penalty would be at the higher end of the scale as the appellant has no political history of any note. The Authority disbelieves the claims as to the family’s recent problems, and of official reaction to his activities in New Zealand. The family has successfully resisted attempts by the shipping company to obtain compensation from them.

[77] In any event, the imposition of a penalty in this case for ship jumping would not be for a Convention reason.

Remaining abroad illegally

[78] Counsel said the appellant remaining abroad illegally was not an issue in this case. The Authority agrees.

**Association and FVA activities and one public protest.**

[79] The appellant had no problems in Vietnam prior to leaving. The appellant has a clean record, as does his family. His family's problems are largely historical and in any event minor. The claim that travel restrictions have been imposed is rejected as false. The appellant's family successfully resisted a State shipping company's efforts to obtain compensation.

[80] Before leaving Vietnam, the appellant got police clearances to work on the ships, both coastal and international. He accepted that if he was known as anti-government, he would never have been allowed to work on a ship. He got a police clearance for his general passport. This shows that, at the time he left to join the ship which ultimately came to New Zealand, he was of no interest to the Vietnamese authorities. He joined the ship in Japan, flying from Ho Chi Minh City to Japan, via Hong Kong. He reported no difficulty leaving the Ho Chi Minh City airport.

[81] The Authority accepts that speaking generally the Vietnamese authorities are intolerant of political dissent and its human rights record poor; United States Department of State, *Country Reports on Human Rights Practices 2001*, (4 March 2002) (see particularly introductory paragraphs, sections 1d, 1e, 2a, 2b, 3). This information was referred to in the RSB decision, and acknowledged in the hearing before this Authority.

[82] However, it is appropriate to refer to the experience of the United Nations High Commissioner for Refugees concerning returnees who involve themselves in demonstrations abroad. *Refugee Appeal No. 71740/99* (31 August 2000) at p.7 observed:

"Nor can the Authority accept that the Vietnamese government would have any interest in an individual whose contribution to the democracy and human rights in Vietnam has been, frankly, as insignificant as that of the appellant. The Authority refers to the experience of the United Nations High Commissioner for Refugees

(UNHCR) as recorded in DIRB *Vietnam: Information on the treatment of returnees* VNM27680.EX (12 September 1997) 9. As to the treatment of returnees to Vietnam, counsel refers to the following passage from a report of the Department of Foreign Affairs and Trade set out in the decision of the Australian Refugee Review Tribunal in *N98/26242* (5 July 1999) 11 declining the grant of refugee status to a Vietnamese claimant:

‘The attitude of the Vietnamese government would depend on the nature of the activities in which the person was involved. It would take a serious view of anti-government military activity, and of anti-government civil activity directed to the overthrow of the government through international links and lobbying efforts. Members of such groups who have returned to Vietnam have been arrested. It would be less concerned about participation in demonstrations.

Ordinary Vietnamese citizens who participate in demonstrations are not likely to experience serious problems on return to Vietnam.’”

[83] The appellant’s conduct is modest, and would not excite serious interest even if, in the highly unlikely event, the sum total of his activities is known. It would be extravagant to elevate his activities, in particular the one public demonstration, to the level of “anti-government civil activity directed to the overthrow of the government through international links and lobbying efforts”.

[84] The appellant is not an office bearer or leader of any sort, he has no profile in the FVA. He has been involved in one public protest, which generated no media publicity in New Zealand or internationally (other than publication by dissident groups). The appellant has no history of political activism in Vietnam.

[85] The Authority has considered *Refugee Appeal No. 72668/01 & 71932/00* and is mindful of the comments of Chisholm J, in *TN v Refugee Status Appeals Authority CP212/00* (High Court, Wellington, 10 May 2001). The decision in the *TN* case was a judicial review proceeding, which remitted the proceedings back to this Authority for reconsideration. *Refugee Appeal No. 72668/01* is the reconsideration of that matter.

[86] Both of the proceedings referred to in the preceding paragraph were in part concerned with a protest at the APEC heads of state meeting. The Prime Minister of Vietnam, President of the United States, and other world leaders attended the meeting. The event was the subject of international media attention including CNN/Reuters and others. It was a singular protest in which refugee claimants participated. In addition to the international media coverage, the Vietnamese security authorities filmed the protest. The appellants in those cases were at

much greater risk both of identification, and suffering serious harm. The Vietnamese authorities would have been sensitive at this internationally significant event, involving their Prime Minister and would have been severely embarrassed by the publicity. In *Refugee Appeal No. 72668/01* there was also publication of the name of the appellant in that case in a newspaper.

[87] Family members have suffered no problems (as the Authority finds) as a result of the appellant's participation in the protest, or involvement with the Association or FVA. The appellant accepted that if one family member has a problem then all have to suffer and that if the children have a problem the parents will suffer. He was sure about this. Yet his family have suffered no problems as a result of his activities.

[88] The appellant has no well-founded fear of persecution arising from his political involvement in New Zealand.

### **GOOD FAITH**

[89] The Authority is mindful of opportunistic conduct in New Zealand being used cynically to create *sur place* refugee claims, which raises the issue of bad faith (*Refugee Appeal No.2254/94* (21 September 1994)). At the Authority's invitation, the subject was addressed in the final submissions presented by the appellant's counsel. The issue arises due to the complete absence of political interest or activism of the appellant prior to his arrival in New Zealand, coupled with his admission that he had formed the intention to reside overseas from as early as 1993. The Authority is not confident that such issues do not arise in connection with the appellant's activities at the embassy protest. However, it is not necessary for the Authority to resolve whether there is an absence of good faith in connection with the embassy protest. The Authority is not satisfied that the event was one in respect of which the Vietnamese authorities had the opportunity to identify the appellant, or would have been interested, even if they did. As any fear of persecution he harbours is not well founded, no determination needs to be made on this issue.

**ROLE OF COUNSEL**

[90] The Authority notes with concern the presence of counsel in photographs of the protest put in evidence. Counsel has represented many Vietnamese asylum seekers connected with the Association or FVA. He has been intimately connected with the activities of the Association and the FVA in New Zealand. Counsel's photograph and name have appeared in documentation produced to this Authority in other claims involving Vietnamese asylum seekers. Counsel should consider how appropriate it is for him to represent clients in asylum claims when he personally participates in some of the very activities on which their claims are based and is potentially a witness himself.

**CONCLUSION**

[91] For the above reasons, the Authority finds the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

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G Pearson  
Member