

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76054

AT AUCKLAND

<u>Before:</u>	C M Treadwell (Member)
<u>Representative for the Appellant:</u>	K H Lowe
<u>Appearing for INZ:</u>	No Appearance
<u>Dates of Hearing:</u>	21 and 22 June 2007
<u>Date of Decision:</u>	9 July 2007

DECISION

[1] The appellant is a single man in his early 20s, from a small village near Guangzhou, in Guangdong province, China. He is presently in custody in New Zealand, having been detained as an overstayer, pending his removal.

[2] The essence of the appellant's claim is his assertion that he is at risk of serious harm at the hands of the Chinese authorities because of his adherence to a Daoist form of Buddhism, practised at a Taiwanese temple he and his family attended near Guangzhou.

[3] The central issue on this appeal is the question of the credibility of the appellant's account.

PRELIMINARY ISSUE – APPLICATION FOR INDEFINITE ADJOURNMENT

[4] Since the appeal hearing, the appellant's representative, Mr Lowe, has requested that this decision be deferred indefinitely. His application for a deferral has been an evolving one and it is appropriate to set out its development before turning to a consideration of the application.

[5] In the appeal hearing, the appellant referred several times to the fact that he is partially deaf to some degree in one ear. It was obvious throughout the hearing that his disability was not so great as to impair his comprehension of the questions being put to him through the interpreter and the Authority is satisfied that he amply understood not only the words but the meaning of what was being said. Indeed, the clear relevance of most of his answers to the questions permits of no other inference.

[6] It should be added that it was explained to the appellant at the beginning of the hearing that, if he did not understand a question, or if he needed something repeated to him, he was to say so immediately and it would either be restated or reformulated, as appropriate. He stated that he understood this and that he had no questions to ask about it. On the rare occasion during the hearing that he sought such repetition or clarification it was, of course, given.

[7] It should also be recorded that Mr Lowe raised no concerns during the hearing as to the appellant's ability to hear what was being said. Mr Lowe was clearly alive to any issue of comprehension and that it should be addressed immediately (he complained during the hearing, for example, about the interpreter) and he did not raise any concern at all, notwithstanding:

- (a) that he was aware that the appellant suffered some hearing loss;
- (b) that he could converse fluently with his client in Cantonese; and
- (c) that he took instructions from the appellant on several occasions during the hearing.

[8] On 29 June 2007, a week after the hearing, Mr Lowe sent what appeared to be an incomplete email to the Authority, stating (verbatim):

"We write to inform that [the appellant's] hearing problem is getting worse than ever, and can confirm that at the minute of writing – Yet we have not received any confirmation from... Mt Eden Prison that [the appellant] is having a medical check, despite request Friday last soon afterward the Appeal with your Authority – [the member] is awaiting a report from us therefore we write to inform that we are unable to confirm and we respectfully ask for a sick leave indefinite

Kind regards"

[9] The seemingly-unfinished nature of the letter was sufficiently confusing that, out of an abundance of caution, the Secretariat of the Authority sought Mr Lowe's confirmation that his email was complete.

[10] Mr Lowe's response, regrettably, did not address the enquiry. Instead, he stated, by email of 3 July 2007 (verbatim):

"Thank you for your kind Email in regard to [the appellant's] situation. – As I have not heard from the Mt Eden what is the steps taken into my requests to them relating [the appellant's] hearing problem.

I will contact you once when I heard from them."

[11] The Secretariat immediately responded, stating:

"You have misunderstood my email. The Authority has not agreed to any further time. It wishes to know if there is anything further you wish to say before it decides."

[12] At this point, the nature of Mr Lowe's request for a deferral of the decision changed significantly. By email of 4 July 2007, he relevantly stated (verbatim):

"In the meantime, I have not heard anything from The Mt Eden relating to my complaint regarding [the appellant's] hearing problem and ears aches which is required most urgently attention to prevent his ability of the appeal hearing last week and made it unjust and unfair to his appeal before your authority – **A miscarriage of justice to his case adding onto the interpreter's capability of interpreting.**

Therefore with all due respects, I write to ask for a sick leave indefinitely to [the appellant's] case within the principles of natural justice and fairness to the appellant. – And the United Nations for Refugee Status requirements. – As it is unsafe to made a final decision to [the appellant's] appeal – Due to his hearing situation and problems was surrounding during the Interviews with the Refugee Status Branch and his Appeal before your Authority."

[13] It can be seen that the grounds upon which the deferral is sought have shifted. Initially, Mr Lowe simply wished to put a medical report before the Authority as to the appellant's deafness. By his email of 4 July 2007, however, the appellant's deafness had, for the first time, become a matter which – it is claimed – affected his ability to have a fair hearing before the Authority.

[14] The Authority reminds itself that only the highest standards of fairness are appropriate in the refugee context – see *Khalon v Attorney General* [1996] NZLR 458, at 463. With this firmly in mind, the assertion that the appellant's deafness affected his ability to have a fair appeal hearing is rejected. The Authority is satisfied that, after a hearing lasting a day and a half, the appellant fully understood everything which was put to him and his comprehension of the issues was not impaired by his partial hearing loss in any way.

[15] The request for a deferral of this decision was declined by the Authority by email dated 5 July 2007, for the following reasons:

- (a) The Authority accepts that the appellant is partially deaf and in pain and also that his condition is as a result of an injury. A medical report, however, would be unlikely to be able to offer any meaningful opinion as to how the injury occurred.
- (b) It is not appropriate for the Authority to grant indefinite adjournments, except in the most exceptional circumstances. Neither the interests of justice nor the duty of the Authority to determine refugee appeals expeditiously would be served by an indefinite delay and there is nothing on the facts of the present case to suggest such exceptional circumstances exist.

The interpreter

[16] As to Mr Lowe's concerns about the interpreting, the Authority is satisfied that they are unfounded, except in one sense. As the interpreter himself signalled at the beginning of the hearing, he is originally from Hong Kong and has been in New Zealand for 17 years. Although his Cantonese is fluent, he is conscious that he has imperfect knowledge of life and conditions on mainland China. In consequence, when occasional 'terms of art' peculiar to mainland China arose during the hearing, particular care was taken by the Authority and by the interpreter to ensure that the appellant and he both understood each other. The Authority is satisfied that the interpreter acted diligently and carefully in this regard and, where necessary, Mr Lowe was permitted to intercede to ensure that the interpreter and the appellant did not misunderstand each other. Mr Lowe did this on a number of occasions and the Authority is satisfied that the resulting discussion on each occasion avoided any risk of prejudice to the appellant.

[17] It can be added, for the sake of completeness, that Mr Lowe's assertions of a "miscarriage of justice" on either ground – the appellant's partial deafness or the interpreter – have not, in fact, been supported by reference to any particular passage of evidence or claimed misunderstanding by the appellant. They are vague and sweeping assertions of no weight.

BACKGROUND

[18] The narrative which follows is a summary of the evidence given by the

appellant at the appeal hearing. It is assessed later.

[19] According to the appellant, he is one of three children of a reasonably well-off couple from X village, near the town of Y, in Z District near Guangzhou. His father was a village security official on a committee to which the Neighbourhood Street Committees reported. His mother worked as a seamstress in a factory. They were both members of the Communist party. The family shared their home with one of the appellant's maternal uncles and a maternal aunt.

[20] The appellant's early life was uneventful, though bullying at school in his first year led to him dropping out. He did not return to school until 1997.

[21] In about 1992, however, his mother became aware of a Taiwanese Buddhist temple in the Z District. While the appellant initially described the temple as Buddhist, he has since qualified this, to say that it taught a Daoist form of Buddhism. The monks were Taiwanese and did not dress like Buddhist monks elsewhere, instead wearing grey uniforms with hats.

[22] Although the Taiwanese temple had been given official approval by the Guangzhou provincial government, the Z District local authorities were suspicious of it. They allowed it to function unhindered, so long as the attendees were limited to Taiwanese nationals. They were quick to react, however, if the local population went to worship there.

[23] Before long, the appellant's parents began attending the temple. From 1996 onwards, the appellant would often be taken to the temple by them. He describes it as an ordinary-looking building, of no particular design, with a sign at the front, identifying the premises. The appellant and his parents would travel by bus to the temple at least once or twice a week.

[24] At about the same time, his mother began to suffer mental health problems because of the pressure she was under from the local community and the authorities as a consequence of her attendance at the temple.

[25] In 1996, the appellant's parents were arrested for the first time. The family was at the temple when police and local officials burst in and detained some 20 people. The appellant managed to escape. Outside, he saw his parents and others being taken away.

[26] The appellant's parents were detained for a week. When they returned home they told the appellant that they had been detained at the Z District local authority offices and had been accused of belonging to an illegal "cult".

[27] In spite of this incident, the temple remained open and the appellant and his parents continued attending worship there.

[28] In 1997, the appellant's parents were arrested again. Once again, they were detained at the temple, though the appellant was not present. The appellant's father was released after two days but his mother was held for two months at the local government offices in Z District.

[29] By this stage, the mental health of the appellant's mother had deteriorated markedly. She became increasingly argumentative and confrontational. On one occasion, the local authorities took her to a mental institution but she was discharged almost immediately.

[30] The appellant's parents were arrested for the third time in 1998. This time, they were detained at the Z District police station and, again, the appellant's father was held for a shorter time than his mother, who was detained for two or three months. Even so, he returned home bearing injuries from the mistreatment he had suffered in custody.

[31] Shortly after this third detention, the appellant's father passed away. The appellant blames the pressure and harassment for his father's death, though he concedes that he does not know what the actual cause of death was.

[32] The appellant's mother was arrested twice more in 1998 and was detained for approximately a month each time. Those were the last occasions on which she was detained. Thereafter, she attended the temple at a much reduced rate and tried to keep a low profile.

[33] The appellant, however, stepped up his rate of attendance at the temple. He and a friend, AA, from a neighbouring village would go to the temple together, attending three or four times a month.

[34] As a result of this, the appellant was arrested four times during the 1998 – 2000 period, twice in his own village and twice in neighbouring villages. On three occasions, he was held for two days at a police station. On the fourth occasion,

he was held for 10 hours. He was threatened and questioned on each occasion.

[35] On other occasions during 2000, the appellant managed to avoid being detained by escaping out the back of his house when government officials approached the house. On one occasion, he jumped from a height as he fled and struck his head on the ground, causing himself serious injury necessitating hospital care. He is still hard of hearing as a result of that incident.

[36] As a result of the antipathy towards him by the local officials, the appellant resolved to leave China. In 2002, his uncle BB visited China from New Zealand, where he had become a permanent resident. BB assisted the appellant to apply for a passport, which was issued to him without difficulty in mid-2002.

[37] It then took the appellant a further year to obtain a student visa. During that period, he continued not to have any further difficulties with the authorities because he refrained from going to the temple. He was even given a warning by village security officials at the time of his passport application that, if he wanted a visa, he should stop attending the temple.

[38] A visa was eventually issued and, on 24 April 2003, the appellant arrived in New Zealand. He did not lodge a claim to refugee status on arrival. Instead, after being met by relatives in Auckland, he attended a few days of the language course for which he had enrolled, before dropping out and beginning work on a relative's orchard.

[39] Since coming to New Zealand, the appellant has kept in touch with his family by telephone. They have told him that unknown persons called at the house some two or three months after his departure, asking for the appellant. Similar visits have been made to friends who were also temple attendees. Some attendees have been detained and abused. Others have committed suicide. Some have been murdered by the police.

[40] The appellant remained in New Zealand past the expiry of his student permit. He was not apprehended until early 2007, when he was spoken to by the police in connection with a traffic infringement. His unlawful status being discovered, he was taken into custody for the purpose of removing him from New Zealand.

[41] On 5 February 2007, while in custody, the appellant lodged the present claim for recognition as a refugee. He was interviewed by the Refugee Status Branch on 26 and 27 February and 6 March 2007 and was later advised by letter dated 27 April 2007 that his application had been declined.

[42] About six months after his arrival in New Zealand, the appellant began attending a Buddhist temple here. He did not attend one any earlier than that because, shortly after his arrival, he happened to meet by chance one CC, a woman whom he had met at the temple in Guangzhou. On learning that she was to be the manager of a new temple being built here, the appellant resolved to worship at her temple when it opened.

[43] The appellant also told the Authority that he has concern that his return to China might cause difficulties for his younger brother. According to the appellant, his brother's birth was not officially registered at the time, because of China's 'one child family' policy and the appellant is concerned that the authorities will take the opportunity to punish his brother as a means of getting at the appellant.

[44] As to his own difficulties, the appellant points to the mistreatment of Falun Gong adherents by the Chinese government and its classification of Falun Gong as a "cult". He believes that he will suffer a similar fate to Falun Gong worshippers because the Chinese authorities also regard the Taiwanese temple as a cult.

Evidence of Father Tom Laffey

[45] Father Laffey is a Christian minister who attended the first day of the appeal hearing. The appellant did not, however, call him as a witness. Father Laffey's evidence is contained in two documents – an undated letter he wrote to the Minister of Immigration on the appellant's behalf (see p195 of the file) and a statement dated 14 June 2007, submitted to the Authority.

[46] In summary, Father Laffey wrote to the Minister to express his concern at aspects of the Refugee Status Branch interview and pointing out that all religions are subject to varying degrees of repression in China.

[47] As to his statement, Father Laffey asserts therein that, in his experience, there is nothing unusual in an illegal 'underground' Taiwanese Buddhist temple operating in Guangdong Province. He points out that underground Catholic churches have been operating in China for many years, notwithstanding that

worshippers are detained and punished if caught. He states that the Chinese authorities will view the appellant as influenced by Taiwan and therefore a dangerous man.

Documents and submissions

[48] The appellant also submits:

- (a) A letter dated 13 June 2007 from one DD, a Chinese individual resident in New Zealand, asserting that he has recently visited China and, while there, saw the appellant's mother and siblings. He was told by them that the authorities are still "very keen to locate" the appellant and the family are living under surveillance often being questioned.
- (b) A letter dated 16 February 2007, from a Chinese individual, EE, offering the appellant work in his Chinese restaurant in New Zealand;
- (c) A letter dated 16 February 2007 from CC, the manager of the Chinese temple in New Zealand, asserting that the appellant has "since his arrival" attended the temple and confirming that, having a Taiwanese head temple, it was "unable to have an open practice temple in China as a rule".
- (d) A further letter, dated 6 July 2007, from the manager of the Chinese temple in New Zealand, this time relevantly asserting (verbatim):

"The Temple is pleased to affirm that [the appellant] has been a support of the Temple, he is generous and compassionate person always reedy to help those who are less fortunate and particular of its religious. [The appellant's] problem with the Chinese Authority in China - especially we can confirm that his hearing problem caused by the escape of arrest from the Chinese Authority previous incident when he was in China last. – from our knowledge from Guangzhou City.

....

We understand the Chinese Authority made some treat to his family and himself from time to time - [the appellant] and family "face difficulties" when he returned back to China .

He will face persecution over his religion believe when his return – Please refer it to the support matrials available with your Authority for confirmation."

- (e) A copy of the biodata page of the appellant's passport; and
- (f) A copy of the biodata page of his uncle BB's passport.

[49] The Authority has been provided with a copy of the Refugee Status Branch file in respect of the appellant's application.

[50] The submissions and documents have been read and are taken into account herein.

THE ISSUES

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

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

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

- (g) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (h) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

[53] Before returning to the issues raised by the Convention, it is necessary to address the question of the credibility of the appellant's account.

[54] It is on this issue that the appeal turns. Put simply, the appellant's account is disbelieved. In reaching that conclusion, the following factors are taken into account.

Family attendance at the temple

[55] The claim that the appellant and his parents attended a Taiwanese Daoist-Buddhist temple near Guangzhou is surprising enough. His claim that the temple was established well before his mother began attending there in 1992, however, is so far-fetched as to be unbelievable. The claim needs to be viewed in context. In the period from mid-1989 to the mid-1990s, China was riven by the largest and most brutal crackdown on dissent since the Cultural Revolution – the aftermath of the ‘June 4’ country-wide demonstrations which had commenced in Tiananmen Square in Beijing. Thousands were arrested and tens of thousands fled into hiding. As to the post-‘June 4’ crackdown on dissidents in China, see generally, for example, the United States Department of State *Country Reports on Human Rights Practices: China* for the years 1990 – 1995.

[56] The notion that, in the midst of such turmoil, permission would have been given by the Guangdong Province authorities for the establishment of a Taiwanese temple is implausible. When this was put to the appellant, he could not explain it, except to say that it had happened.

[57] The appellant claims that his father was a member of the Village Security Committee, supervising the numerous Neighbourhood Street Committees which monitor the activities of everyone in the community. While it is accepted that a Village Security Committee is lowly-ranked in the state security apparatus on a national scale, it is one of the cornerstones of both party loyalty and popular repression – certainly in the early to mid-1990s, when the ‘June 4’ crackdown was at its height. That the appellant’s father would have been permitted to continue in such a role during the 1990s, if he and his wife were so transgressing the law that they were being detained and mistreated on a regular basis, is incomprehensible. Again, when asked to explain how this could have been, the appellant could offer no explanation.

Appellant’s post-1998 attendance at the temple

[58] The appellant claimed to the Authority that, after his father’s death in 1998, he and a friend, AA, from a neighbouring village began to attend the temple more often. Asked to quantify “more often”, he claimed that they would go to the temple three to four times a month – which is, of course, hardly an increase on the weekly (or more) visits he says he had thereto made with his parents. Further, asked to

name his friend, the appellant was clearly taken aback at the unexpected question and prevaricated. After being asked for the fourth time to provide the name, the appellant proffered a common Chinese family name. Pressed further, he said that he did not know the man's first name.

[59] Asked how he could have attended a temple with the man on a regular basis for several years, without ever learning his first name, the appellant claimed that only family names were used at the temple. That is specious. There is no sensible reason why family names only would have been used and it ignores his evidence that the appellant and the other man travelled together clandestinely for a considerable distance to their shared purpose, worship at the temple, every week. To have failed to have learned the man's first name in those circumstances is implausible.

Death of the appellant's father

[60] From the outset of his refugee claim, the appellant has attributed the death of his father in 1998 to the difficulties the family were experiencing as a result of their attendance at the temple. When pressed by the Authority for detail, however, he was unable even to state the cause of his father's death, let alone where it happened or in what circumstances. His portrayal of his father's death as an event reinforcing his claim to refugee status is cynical.

[61] Further, in spite of almost a decade having passed, the appellant professes never to have asked his mother or relatives how his father died. If he genuinely believed that the Chinese authorities were responsible, even indirectly, it is implausible that he has not made the slightest effort to find out whether such belief is, in fact, warranted.

Existence of the temple

[62] The appellant's explanation for the astonishing willingness of the Chinese authorities to have permitted a temple to be established by Taiwanese monks, teaching a Daoist version of Buddhism (Daoism itself having been virtually extinguished by the Chinese as "cultist") is that the provincial government did not mind, so long as the monks confined their teaching to other Taiwanese and did not permit local people to attend. That explanation is disingenuous. China's relationship with Taiwan remains fragile at best – and is frequently hostile. It is

only within the last 12 months that tentative commercial airline flights between the two have been introduced – such is the suspicion and antipathy with which Taiwan is still regarded. To suppose that, 15 years ago or more, at the height of the post-‘June 4’ suppression of dissent, the Guangdong provincial government would have permitted a Taiwanese religious institution to be established, is beyond belief.

[63] Added to this, of course, is the sheer implausibility of the appellant’s subsequent assertion that the temple was raided because locals were being allowed to attend yet, he claims, it still remained open and continues to exist there today, a decade and a half later.

Arrests of his parents

[64] To the Refugee Status Branch, the appellant gave a very different account of the arrests of his parents over the years. In summary, he told the refugee status officer that his mother and father had each been arrested twice in total, with each arrest lasting two days – though he added that his mother had been absent for a month on another occasion, at which time it was *possible* that she had been arrested a third time.

[65] Asked to explain why the account given by him on appeal had inflated his parents’ troubles dramatically, with his father being detained three times and his mother five times – her detentions lasting as much as two to three months – the appellant resorted to blaming the interpreter at his Refugee Status Branch interview (in fact, the same interpreter as at the appeal hearing). That explanation is not accepted. The appellant has been represented throughout by Mr Lowe – himself a Cantonese speaker – and has been given numerous opportunities, in his application form, in his written statement and at the Refugee Status Branch interview, to give a full account. He was then given the opportunity to correct any mistakes in the interview report. He did not do so. If there were mistakes of such magnitude, the appellant cannot have been unaware of them, yet he failed to correct the interview report. The strong impression is that he has further embellished his account, following its lack of success at first instance.

[66] As to his mother’s arrests, the appellant initially told the Authority that she *had* suffered further arrests after 1998. It was only when pressed for detail that he appeared to realise that this conflicted with his previous evidence and he quickly retracted it. Asked then to account for the fact that she had, on his evidence,

continued to attend the temple for many years after 1998 yet had suffered no further problems with the authorities, the appellant claimed that she had avoided trouble by reducing her attendances at the temple and going there more discreetly. That explanation is at odds with the appellant's own account of his mother becoming more irascible and confrontational as her mental health deteriorated and, in any event, does not sensibly explain how she could have avoided the village authorities becoming aware of her continued attendance at the temple over many years, particularly as the appellant (living at the same house) claims that his own attendances frequently brought him to the attention of the village authorities.

Arrests of the appellant

[67] As to the appellant's own detentions after 1998, he told the Refugee Status Branch that he was detained on only one occasion. It had occurred, he told the refugee status officer, in a neighbouring village and, after being detained in the police station there for 10 hours, he had been transferred to the authorities in his own village where he was detained a further two hours.

[68] To the Authority, the appellant initially inflated this aspect of his account to three arrests, two of which had occurred in neighbouring villages and one in his own village. On each occasion, he was held for two days. Reminded of his earlier evidence, the appellant simply added it to the mix, claiming for the first time that he had, in fact, be detained on *four* occasions since 1998. Asked to explain these changes in his evidence, he simply professed not to understand the Authority's concern.

[69] The shifting nature of the appellant's evidence was also present in his account of his treatment during the detentions. At first, he told the Authority that his captors would "usually assault and threaten us". When asked to describe the assaults, however, it dawned on the appellant that his failure to ever mention such assaults before might be problematic and he simply reversed his evidence, stating instead that he had *not* been assaulted but his captors wanted to assault him and threatened him. He avoided the Authority's query as to why he had just stated the precise opposite.

[70] It will be recalled that the appellant claimed that he was regularly chased by the authorities after 2000. This had its zenith in his claim to have jumped from the first floor of his house to street level, suffering the head injury which has, so he

says, left him partially deaf. The implausibility of this evidence is the surprising assertion that, notwithstanding that he had been knocked unconscious, his pursuers supposedly took no steps to take him into custody, simply allowing the family to take him to hospital for treatment – even after which there was no attempt made to detain him. It is implausible that officials who were so actively pursuing the appellant that they would call multiple times at his home, hoping to seize him, would forego the opportunity to take him into custody when they had the chance. Again, the appellant has no sensible explanation for this.

Passport

[71] The appellant cannot explain the surprising fact that the Chinese authorities would issue a passport to a person of such interest. Pressed on the point, he was compelled to concede that the Guangzhou passport office would have sought his personal file (*dang an*) from the local authorities in his village and that, further, it would also have been scrutinised by the local council in the nearest large town, before being transferred to the Public Security Bureau in Guangzhou. Asked to explain why his *dang an* would omit his many years of defiant attendance at a “cultist” temple and his arrests, the appellant conceded that it would include such information but retreated into the claim that his uncle had helped with the application for the passport and he might have done something.

[72] That uncle is a New Zealand resident. If he had been involved in any way in circumventing the usual passport controls, there is no doubt that the appellant would have been quick to produce him as a witness, or at least to submit a statement by him. Mr Lowe went so far as to indicate, in a letter to the Refugee Status Branch (see p 193 of the file), that the uncle would be providing a letter, but it is not on the file, was not referred to by the refugee status officer in the list of documents submitted to him and was never referred to by the appellant or Mr Lowe again. At the appeal hearing, Mr Lowe was asked twice if he was able to produce the letter. His equivocal replies and the continuing absence of the letter, which he has never submitted, are unsatisfactory in the extreme and tend to suggest that the letter does not exist.

Suicide and murder of temple attendees

[73] Towards the end of the appeal hearing, the appellant likened attendees at the temple to Falun Gong practitioners, in terms of their victimisation by the Chinese authorities. He went so far as to say that, like Falun Gong practitioners,

worshippers at the temple had not only been detained and abused but had been driven to suicide and even murdered by the police. If that were true, it is astonishing that such dramatic and important information has been withheld by the appellant through the preparation of his application, his first written statement, his Refugee Status Branch interview, his response to the interview report and his statement filed in advance of the appeal. The incongruity of it emerging well past the 11th hour is underscored by his glib explanation that he was never asked. The reality is that he has had every opportunity to advance his claim and the failure to mention such crucial information because he was not asked is beyond belief.

Evidence of witnesses

[74] The sincerity of Father Laffey is undoubted. The *de novo* nature of this appeal, however, means that it is not necessary for the Authority to traverse his concerns with the decision of the Refugee Status Branch.

[75] Father Laffey's views on the prevalence of underground churches in China is noted but the place of worship under assessment here is claimed to have been an authorised Daoist Buddhist Taiwanese temple, not an 'underground' Christian church. In any event, the Authority is satisfied that the appellant's account of it is untruthful.

[76] As to the letter from DD, a Chinese individual resident in New Zealand, who asserts that the authorities are still "very keen to locate" the appellant and that the family are living under surveillance, the appellant did not produce DD to give evidence in person and the letter is not, in all the circumstances, accorded any weight.

[77] Nor did the appellant call CC, the manager of the Chinese temple in New Zealand, who asserts in her first letter that the appellant has "since his arrival" attended her temple. Her apparent ignorance of the fact that the appellant had been in New Zealand for six months before attending her temple suggests that she is not closely associated with him at all and her evidence contributes little to corroborate his account. Indeed, the assertion by her that, even today, her Taiwanese temple would be "unable to have an open practice temple in China as a rule" further undermines the appellant's claim that such a temple has been practising openly in Guangdong province for at least a decade and a half.

[78] The second letter, dated 6 July 2007, from the manager of the temple in New Zealand purports to corroborate the appellant's claim that his hearing loss was caused during his escape from the Chinese authorities and that he and his family "face difficulties" if he returns. It is significant, however, that the writer does not identify the source of her information and, given that it cannot be known first-hand, it is presumably sourced from the appellant himself. His testimony on these very issues is unreliable, for the reasons already given, and it adds nothing to his account that he has related the same story to a third party for the purpose of obtaining the very letter now before the Authority.

Conclusion on credibility

[79] The foregoing concerns, taken cumulatively, lead the Authority to conclude that the appellant's account of being at risk of serious harm at the hands of the Chinese authorities on account of his attendance at a Taiwanese temple is not credible. It is so fraught with implausibility and inconsistencies that it cannot be relied upon in any respect.

Ancillary matters

[80] Again, so that there is no misapprehension, mention must be made briefly of the appellant's partial deafness. It is not doubted that he suffers from partial deafness and that his right ear causes him periodic pain – possibly from inflammation, though this is unclear. The fact of his deafness and pain, however, is not proof that he suffered the injury in the manner he has described. Nor would the production of a medical report do more than establish what is already accepted – that he is partially deaf and in pain. Even if the cause was an injury, the circumstances in which that injury was suffered in China are not matters on which a medical expert in New Zealand, many years later, can sensibly offer an opinion. In summary, the existence of the appellant's condition is accepted but his account of the cause of it is not.

The Convention issues

[81] It follows that there is no evidence before the Authority upon which a well-founded fear of being persecuted could be established. The first issue raised by the Convention is answered in the negative and the second issue, inevitably, does not arise.

CONCLUSION

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

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C M Treadwell
Member