REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NOS. 70083/96 and 70084/96

B S AND O S

AT AUCKLAND

Before:	S Joe (Chairperson) E M Aitken (Member)
Counsel for Appellant:	J Petris
Representative for NZIS:	No Appearance
Date of Hearing:	21 October 1996
Date of Decision:	20 February 1997

DECISION

This is an appeal against the decision of the Refugee Status Branch of the New Zealand Immigration Service (RSB) declining the grant of refugee status to the appellants, both nationals of Israel.

INTRODUCTION

The appellants are both citizens of Israel. BS, the de facto husband, is a 44 year old Jewish man who was born in Baku, Azerbaijan. He is not a practising Jew. He speaks Russian, Hebrew and a little English. OS is a 43 year old woman born in Minsk, of the former Soviet Union. She is a Russian Orthodox Christian. The appellants were married from 31 July 1977, but then divorced on 7 June 1987. Following the divorce, OS retained custody of their 17 year old son. The appellants then resumed their relationship in Israel in 1991.

BS emigrated to Israel in 1990 and was granted Israeli citizenship upon arrival. Subsequently, OS emigrated to Israel with her son on 21 February 1991. They

similarly were granted Israeli citizenship upon their arrival, based on BS' Jewish descent and his relationship as father to their child. Subsequently BS resumed his relationship with OS in Israel and lived together with her and their son.

BS arrived in New Zealand on 19 July 1995 and subsequently lodged an application for refugee status on 4 August 1996. He was interviewed in respect of this application by the RSB on 9 December 1995. This application was declined by the RSB by letter dated 13 May 1996.

OS arrived in New Zealand on 1 September 1995, applying for refugee status on 14 September 1995. Her son, who is now aged 18 years, was also included as part of this application. OS was similarly interviewed by the RSB on 13 December 1995. Her application was also declined by the RSB by letter dated 13 May 1996.

By letter dated 17 May 1996, counsel for both appellants lodged an appeal in respect of both refugee applications. Counsel further requested in this letter that their applications be heard as one family. Given the extent of their shared experiences in Israel, and the fact that the appellants have now resumed a de-facto relationship in New Zealand and have expressed an intention to re-marry, the Authority agreed to counsel's request to hear the two appeals together and issue a joint determination of their appeals.

COUNTRY INFORMATION

It is also appropriate to record that at the hearing the Authority provided counsel with material on Israel obtained from UNHCR's Refworld country information service dated July 1996. Counsel was granted further leave of 7 working days from the date of hearing within which to lodge any written submissions in respect of this material. To date the Authority has not received any further submissions.

Of particular relevance to the appellants' claim is the country information obtained from a report dated February 1993 and entitled "Israel: Jews from the Former Soviet Union" issued by the Immigration and Refugee Board (IRB) in Canada. In this report it is stated:

> "ARRIVAL IN ISRAEL
>
> 3.1 Absorption

The Israeli government was ill-prepared in terms of housing, job training and other facilities for the sheer numbers of immigrants who have come from the Soviet Union and its successor states since 1989. The problems has been compounded by the fact that many immigrants had little or no knowledge of Judaism and Hebrew and few ties to the State of Israel.

…New immigrants from the former Soviet Union are provided with financial assistance, known as an absorption basket. Reports on the details of this assistance package have varied. In a January 1991 article, Roberta Cohen, a senior advisor with the Refugee Policy Group in Washington, reports that a family of three qualified for US$11,000 (of which a portion is a rent subsidy), free health care for six months and free language and job training…According to the Israel Yearbook, at the beginning of 1991, a family of four received a basket worth about US$15,000, which included rent subsidies and free health care for six months. More recently, an official Israeli source stated that the entire absorption basket is worth approximately CDN$20,000.

The basket also includes immigrants' air travel from the former Soviet Union, mortgage assistance, subsidized cultural activities and a one-year income tax exemption. Olim can purchase an apartment or house with a considerably smaller down payment than other Israelis, who…receive mortgages for, at most, 70 per cent of the cost of their purchase. Former Soviet immigrants also pay a lower interest rate on their mortgage.

…3.2 Difficulties of Adjustment

Soviet immigrants are generally educated, urban, middle-class and secular. Many are professionals accustomed to a certain status and, what was in Soviet terms, a fairly high standard of living.

… Upon reaching Israel, many olim discovered that the housing was in short supply and very expensive. According to the Embassy of Israel in Ottawa, the situation has improved somewhat in the past two years, and now 81 per cent of those who arrived in 1989 and 1990 have purchased apartments. In addition, a massive building programme was undertaken, and there is now a surplus of empty apartments awaiting new arrivals. The Shamir government reportedly built new housing facilities for olim in remote areas where there were few jobs and, thus, little incentive to settle.

Many professionals find that there are few openings in their specialized fields, and they are forced to take low-paying menial jobs. There are retraining facilities available, and, once one has learned Hebrew, it is possible to qualify for professional status in Israel. ….One survey showed that newer olim tend to resist retraining, preferring to remain in their own fields, although those who have been in the country for a longer period would choose retraining if they discovered that job opportunities in Israel were very different from those in the Soviet Union.

Unemployment is very high among olim; officially it is about 30 to 40 per cent, although …unofficially it may be as high as 60 per cent….The Israeli Finance Ministry indicates that 90 per cent of the men and 85 per cent of the women have found work after two years in Israel. Immigrants reportedly feel this figure is misleading since, they claim, only one-third work in their own fields.

…3.3 Religion: Identification as "Jewish"

Olim who are not Jewish by the rabbinical definition can face difficulties related to their personal status. According to an official Israeli source, the Interior Nubustrt extends all marriage-related benefits only to couples who have been married either in a religious ceremony or in a civil ceremony outside Israel. There are no provisions for civil marriage in Israel, and the rabbinate will marry only couples

whom it considers to be Jewish…Those who are Jewish according to the Law of Return are entitled to health payments and other government benefits not available to non-Jews. In December 1991, The New York Times reported a specific example, although it added that, "[f]or the most part…the government has chosen to turn a blind eye and not make an issue of technically who is and who is not a Jew".(24 Dec. 1991)

4. THE ISSUE OF DISCRIMINATION

4.1 Societal Treatment of and Attitudes Toward the Olim

…In elementary and high schools, Soviet Jews, referred to as "Russians" regardless of where in the former Soviet Union they come from, report verbal, and even instances of physical, abuse by their Israeli classmates…Efforts are being made to encourage more tolerance within the schools through teacher training and other programmes (The Jerusalem Report 22 Oct. 1992a, 23).

…According to the representatives of the IRAC and the ACRI, there is no widespread discrimination of former Soviet Jews in Israel. In addition, Andre Rosenthal, an Israeli lawyer who specializes on discrimination issues, says that he is not aware of such discrimination. He emphasizes that, far from being discriminated against, the olim are provided with numerous absorption basket benefits not available to other Israelis. He states that some olim may be denied jobs because their language skills were not adequate.

4.2 Avenues of Redress

Israel has neither a constitution nor a bill of rights. Its fundamental law is the May 1948 Declaration of Independence, which lays the basis for the State of Israel and guarantees equal social and political rights to all "inhabitants" of Israel. In November 1992 a constitution and bill of rights were reportedly both under consideration.

…There are a number of groups in Israel that support the cause of particular segments of the Israeli population and/or provide legal assistance to individual Israelis, including those claiming discrimination…The IRAC operates a network of advocacy agencies for Israelis, especially Soviet immigrants…There are a number of organizations in Israel …many deal specifically with the rights of Soviet olim.

…The [IRAC] is also setting up an ad hoc working group to lobby for changes to the country's marriage and divorce laws so that civil marriages can take place and be officially recognized in Israel.

5. MILITARY SERVICE

Military service is a significant aspect of life in Israel. Anyone who is considered Jewish as defined in the Law of Return must complete a period of compulsory military service after reaching the age of 18. Such service is three years for men and two years for women. After completion, Israelis are also required to serve 30 to 60 days annually of reserve duty until the age of 54.

…Men who wish to seek exemption for reasons of conscience can apply on the grounds of "unsuitability"…..Finally, some of those who refuse to serve can be offered alternative service within the military or in the civilian sector. Decisions on exemptions and alternative service are made either by an exemption board or at the discretion of individual commanding officers (Amnesty International 18 Oct.1988, 1-2; ibid, Jan 1991, 13)

Those who have had their application for military exemption refused and who subsequently continue to refuse to serve can be disciplined or face a court-martial.

In early 1991, Amnesty International reported that "[d]ozens of objectors…have imprisoned for periods of between 7 and 56 days…although sentences of up to one year's imprisonment or more may be imposed.

…In order to ease young olim the Israeli army has set up a three month summer camp in which young immigrants learn basic military manoeuvres and self-defence, study Zionism and Israeli history, and pick up Hebrew slang, camp songs and folk dances. The time they spend at the camp is counted towards any later period of compulsory military service. Other measures have also been taken by the military. Russian-speaking soldiers have been assigned to induction centres, and the army has provided Soviet immigrants with special education kits (Associated Press 14 Aug.1991;IDF Journal Winter 1989, 58).

6. FUTURE CONSIDERATIONS

Unlike aliyas of the past, the recent wave of immigration from the Soviet Union and its successor states is neither religious nor Zionist. These immigrants are consequently finding it more difficult to adjust to life in Israel than some of their predecessors. Under- or unemployment, housing shortages, military service and cultural alienation have all been cited as difficulties faced by recent immigrants (International Journal of Refugee Law Jan. 1991, 67; Reiser 1992, 28).

…In November 1992, an Israeli official stated that his government was planning to receive about 100,000 olim per year until the turn of the century. (Eran 13 Nov. 1992, 2). At the same time, the Rabin government announced a $280 million package of investment and job training in order to cut unemployment (The New York Times 8 Jan. 1993). The government's policies on issues such as absorption assistance, employment, housing and civil marriage will likely be a major factor in determining how well social tensions arising out of such a large influx of immigrants can be mitigated in the future."

The Authority has also considered the information contained in another IRB information response dated 18 August 1995, based on an interview with a professional psychologist involved with the Institute for Immigrant Integration and Cross-Cultural Studies. The opinion is expressed that:

"During my work in the former Soviet Union, I had to work with a variety of groups. I, therefore, have a certain knowledge about religious identification in the former Soviet Union. …When the Soviet Union collapsed and religion became more accessible, some people who were ethnically Russian re-aligned themselves with the Orthodox Church, some Jewish people re-aligned themselves with Judaism in the religious sense. But I believe the absolute majority of people in the former Soviet Union never did re-align themselves with a religion. They stayed non-affiliated. My belief is that the majority of people who are coming to Israel and who are non-Jewish, are people who have no religious affiliation, who were never baptised, who never went to church. They were typical Soviet people! The whole premise that every non-Jew who is coming to Israel is automatically a Christian is very misleading. That is why you can analyze the situation of new Soviet immigrants in Israel in terms of Jew and non-Jew, but not in terms of Jews versus Orthodox Christians. As citizens of Israel, they have all the rights and obligations of an Israeli citizen."

THE APPELLANTS' CASE

The appellants feared persecution upon their return to Israel on the following grounds:

1. Discrimination on account of OS' Christianity

OS gave evidence that, at about 30 years of age, she adopted the Russian Orthodox religion and subsequently visited the church on a regular basis. In the latter years prior to emigrating to Israel, she sang in the church choir. Following her emigration to Israel, OS claimed that, despite her efforts, she could not find any church at which to attend religious services.

In 1991, OS travelled to Tel Aviv to locate the Christian church she had been advised was there. Upon her arrival, however, she discovered that the church had since closed and no longer held services. OS acknowledged to the Authority that while there was a church that she could go to in the Old City of Jerusalem, she could not find "people who lived there so they would tell me what or how", and that while she managed to visit a convent twice, this was located in the Arab Quarter of the Old City, which was not as accessible. Further, after one of the women at the convent gave her opinion that husbands with Russian wives (interpreted by OS as meaning "non-Jews") should be killed, OS never returned there again. She therefore practised her faith by praying at home.

OS conceded that while the Israeli authorities had not overtly prevented her from practising her faith, the authorities would be more accommodating during such days as Easter, when many overseas Christians visited. On other days, however, she was surprised to find that the attitude towards Christians was quite different, for example, when a certain site relevant to the Christian faith had had to be demolished by order of the government.

OS also gave evidence that her display of icons and other belongings kept at home, which evidenced her commitment to the Christian faith, attracted the hostility of neighbours, landlords and even other Jews formerly from the Russian Federation who visited their home. The appellants claimed that when it was known that the appellants were Christians, neighbours would complain about the smallest things to cause a disturbance. OS gave as an

example the occasion when a tenant complained that her son had not closed their door properly and so bit their son. BS reported the matter to the police, but as they did not know the tenant's name or the flat address where he lived, the police said that they could not take any action against that person. The tenant subsequently asked that the appellants not proceed further in the case.

Similarly, when neighbours saw that a Christmas tree was erected in their house on Jewish New Year's Eve, they called to condemn the appellants, threatening to call the police. The neighbours did not call the police on the assurance of BS that it would not happen again. As a result of this, however, the appellants claimed that their landlord would not renew their lease as they did not want to have any trouble with their neighbours. The appellants claimed that similar incidents occurred an estimated six or seven times in the five years they lived in Israel, resulting in their having to move to another flat.

She further claimed that her son, who wore the cross, was physically assaulted by other children at school. BS gave evidence that, despite his complaints to the school principal, he was told that "children [were] children" and that this was a matter which did not call for their intervention but should be resolved between the children themselves. Such was the level of harassment that the appellants decided to transfer their son to a different school. However, BS claimed that their son continued to be harassed, and this resulted in his being transferred to a number of different schools. Such experiences resulted in her son being under depression. At the time of his departure from Israel, the son had completed the sixth form.

The appellants claimed that both were fluent in Hebrew and that language was not a barrier in conducting any negotiations to solve their problems. They complained that generally, however, in addition to the incidents referred above, they were subject to negative attitudes among the general populace and were considered "different". OS was recognisable as a non-Jew by the fair colour of her hair.

The appellants further claimed that while the government did not actively encourage such hostility, they took no action to discourage such local attitudes either. BS referred to the fact that even in the newspapers, such

statements as "all women from Russia were prostitutes" and that "all Russian men were thieves" were allowed to be published in the media.

2. Employment

Prior to leaving the former Soviet Union, BS was director of a music school in Azerbaijan. OS was a music teacher.

While BS obtained employment as a pianist immediately following his arrival in Israel, he claimed that the money he earned was not sufficient to support his family. He was not eligible for an absorption package as he worked. He therefore supplemented his income by doing cleaning work for the elderly. After living in Israel for two years, he also obtained a position teaching in the conservatorium approximately four hours a week.

Following her arrival in Israel, OS spent six months learning Hebrew attending the free language course provided by the government. She also attended a course which enabled her to graduate as a dental assistant. She had received an absorption package from the government which supplemented her living for the first year. Subsequently she registered with the Employment Service to find employment and would attend at job interviews when notified by the Service of suitable vacancies. In the following two to two and a half years she nevertheless remained unemployed. Her son had a part-time job in the two hours prior to attending school as a labourer.

It is OS's belief that she was deliberately informed by prospective employers that the job had been filled when she subsequently arrived for an interview because she was a Russian. On some occasions she would insist that the job was available. She would then be asked to fill out details in a form, but would never hear from the employer further. After several refusals and one confrontation in which, after her Russian origins were known, she was asked by the employer to sleep with him, OS ceased looking for a job. She was therefore supported by her de-facto husband, BS. Occasionally she would do private cleaning work for the disabled on a casual basis. By the time she left Israel, OS worked approximately four hours a day, earning 800 shekels a month. It is the appellant's evidence that she did not know of any non-Jew who was employed during her time in Israel.

3. Conscription

In July 1995, prior to their leaving Israel, the appellants' son, then aged 17 years old, was required to register for military service. Having done so, he would have been required to fulfil the compulsory military service requirement once he reached the age of conscription in September 1995. While it was possible for their son to leave the country even after he had registered in July 1995, it was known that his passport would not be renewed once he reached 18 years of age in September 1995. The appellants fear that if they were to now return to Israel, their son, who is now aged 18 years, would immediately be required to carry out his military service obligations. Prior to coming to New Zealand, (and unlike BS, who was able to extend his passport for five years), the son was only permitted to extend his passport for a further three years, given that by then he would have reached 18 years of age.

The appellants also feared that, if required to do military service, their son may be killed in combat, or alternatively, would suffer harassment from other military servicemen due to his being a non-Jew. OS considered that while the government had a right to conscription, from her personal perspective, as mother of only one child, she did not wish to risk his losing his life while serving in the military. She referred the Authority to the fact that three of a Jewish rabbi's five sons had died while performing military service in Israel. BS also gave evidence that in Israel there is a "non-stop war" and that it was a very dangerous place to live and serve.

The appellants also claimed that they had received hearsay information, and had also read of the same in the newspapers, that some non-Jews had been physically assaulted by other military servicemen, which resulted in their being hospitalised. They did not know whether any action was taken against the perpetrators by their superiors in the military. However they were concerned that their son, being a talented musician and a particularly sensitive individual, would not be able to stand the psychological pressure if he faced the same kind of harassment in the military, and feared that he may even be driven to take his own life.

It was put to the appellants that, according to the country information available through Refworld, there were provisions for conscientious

objectors to apply to perform alternative military service in the civil sector. Neither of the appellants were aware of these provisions. It is also appropriate to record that counsel was invited to submit any information to support the appellants' claim to Christians being differentially treated by the military and was given seven days' leave for this purpose. No such information has to date been received by this Authority.

4. Marriage

The appellants further expressed a fear that if they returned to live in Israel, their son, being of mixed parentage, would not, in terms of the domestic law of Israel, be able to marry. Counsel submitted that this factor should be taken into account by the Authority in the context of making an objective assessment of the country of origin. Counsel submitted that the right to marry was a fundamental right, and thus the fact that this right is not recognised is evidence of the general attitude towards Christians in Israel.

THE ISSUES

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

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

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

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

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

ASSESSMENT OF THE APPELLANTS' CASE

We find that, in general terms, the appellants gave a credible account of their experiences in Israel. The difficulties faced in the areas of unemployment, military service and cultural alienation have all been cited in the country information available as difficulties such immigrants do face in Israel. We do not consider, however, that the appellants have been entirely truthful in their evidence about the reason for the timing of their departure from Israel. The appellants denied the fact that their son's nearing the age of conscription was in any way the precipitating factor in their decision to leave Israel. It is clear from their evidence, however, that this was an issue of concern to the appellants, and the coincidental timing of their departure so close to the son's registration with the military suggests that this had more of a bearing on their decision to leave Israel at the time they did, than they would have the Authority believe. This matter aside, the Authority is willing to accept that the appellants have a genuine subjective fear of persecution upon return to Israel, by reason of the wife and son being Christians, and due to their Russian origins.

1. Persecution by reason of OS' and son's Christianity

We address first the appellants' claimed fear of persecution by reason of OS' and the son's Christianity. OS has, in her own evidence, conceded to the Authority that she has never been prevented by the Israeli authorities from practising her religion at home, although she had encountered some difficulty in finding a formal place of worship elsewhere. The issue of concern to OS is the general hostility which she faces from Israeli citizens by reason of her being a non-Jew. It is the appellants' claim that their son has similarly been the focus of hostility at school, allegedly for the same reason.

The Authority accepts that the appellants have encountered some harassment from the general populace by reason of OS' Christianity and the fact that they are olim. However, we find that these forms of harassment of the appellants and their son are discriminatory measures only, and are not of sufficient gravity, either in themselves, or when considered cumulatively, to amount to persecution. We further reject the appellants' claim to a lack of protection against such harm from the Israeli authorities. It is noted that on the occasions where the appellants did approach the police, their complaints were taken seriously. It was only because of the limited nature of the information provided by the appellants that prevented the police from taking the matter any further.

In terms of employment, while it is noted that OS was unable to obtain formal employment despite her proficiency in Hebrew, the appellants conceded that unemployment in Israel was high and as a result, the job market was very competitive. Despite this, OS received the benefit of the Israeli government's assistance in the form of its "absorption package" in her first year of arrival. Subsequently she was able to be financially supported by her de-facto husband who, despite his Russian origins, was able to obtain several jobs in his professional area of expertise.

There is therefore no basis upon which the Authority can conclude, upon a consideration of the appellants' pre-flight experiences, that there is a real chance of persecution upon their return. The nature of the our enquiry is, however, a prospective one, and the Authority has also considered whether there is any evidence to suggest that if the appellants now returned to Israel that they would be at risk of persecution. We find, however, that there is no evidence (either from counsel, or through the Authority conducting its own enquiries) to suggest that the appellants would be subject to persecutory treatment by reason of either the wife or son's Christianity if they now returned to Israel. Accordingly there is no real chance of any member of this family being persecuted by reason of their religious or imputed religious beliefs.

2. Feared Persecution to the Appellants' Son

We have also considered the appellants' claimed fear of persecution in terms of the son's conscription into the military. The Authority does not consider that the conscription of the son, when the son has reached the age of conscription, to be in itself persecutory. Indeed, as previously noted in the IRB report, there are procedures in place whereby persons who refuse to serve in the military can apply to perform alternative service in the civil sector. Further, as noted by counsel, the appellants have conceded that the Israeli government has the right, like any country, to seek to defend itself. The issue of concern to the appellants, and which must be determined by this Authority, is whether, in being conscripted to serve in the military, there is a real chance the son would face persecutory treatment for any one of the five Convention reasons in terms of the Refugee Convention. The Authority concludes that there is not.

Should the son refuse to perform military service, there is a real chance that he would receive some punitive measures for doing so. According to the country

information available, there is a real chance that the appellant would be punished by up to one year's imprisonment. Such a measure does not, however, in the Authority's view, amount to "persecution". Further, and importantly, there is no evidence before the Authority that the penalty for failing to perform military service is in any way affected by the reasons for one's decision to evade conscription. Without there being a nexus between the claimed persecutional treatment and a Convention reason for such treatment, the Refugee Convention does not offer protection.

Assuming that the appellants' son did comply with the military conscription call, then even if the Authority were to consider there to be a real chance that the appellants' son would be killed in combat in the course of his military service, such harm would not be by reason of any one of the five Convention reasons set out in the Refugee Convention. Further, all Israeli citizens of the age of conscription are required to serve in the military, and there is no evidence that any such persons are differentially treated in the application of such a requirement for any Convention ground. Counsel has not submitted any country information to support the submission that Christians, or for that matter, any non-Jews, are differentially treated in the Israeli military, by either the Israeli authorities themselves or its servicemen, by reason of their religion. Nor has the Authority, despite its efforts, found any information to support this contention. Thus, the risk to the appellant's son falls well below the level of a real chance.

Finally, as there is no evidence that the appellant's son presently wishes to marry a specific partner in Israel, it is not necessary for the Authority to consider whether there is a real chance of persecution occurring on this ground.

CONCLUSION

Accordingly, for the reasons given, the Authority finds the appellants are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

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Chairperson