REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 70326/96

C Z

AT AUCKLAND

Before:	C M Treadwell (Chairperson) D Plunkett (Member)
Representative for Appellant:	D Patchett
Representative for NZIS:	No appearance
Date of Hearing:	17 February 1997
Date of Decision:	24 October 1997

DECISION

This is an appeal against the decision of the Refugee Status Branch (RSB) of the New Zealand Immigration Service, declining the grant of refugee status to the appellant, a national of the People's Republic of China.

INTRODUCTION

The appellant is a 39 year-old single woman from China. Her parents continue to live in China. Her only sibling (a sister) lives in Australia. The appellant has one child, a boy now aged eight years. He lives with the appellant's parents in Beijing.

The appellant arrived in New Zealand on 9 August 1995 on a visitor's visa. She applied for refugee status, through her former representative Wilson Consultants (New Zealand) Ltd, immigration consultants, on 8 November 1995. Following an

interview with the Refugee Status Branch on 1 October 1996, her consultants were notified in a letter dated 30 October 1996 that she had been declined refugee status.

The appellant now appeals against that decision.

THE APPELLANT'S CASE

The appellant was born in the town of X in the Province of JL. Although her parents lived in Beijing, the appellant remained with relatives in X until she was four years old, at which time she began to live with her parents in Beijing.

In 1984, the appellant married a Chinese national. Her husband was a soldier and was required to live on a military base. According to the appellant, they saw little of each other and divorced in 1986.

In 1986, the appellant met another man, one TSS, in Beijing. TSS was planning to go to Australia to study English and the appellant decided to accompany him. Although she too went ostensibly for the purpose of studying English, she did not in fact continue her course beyond Christmas 1986, telling the Authority that she could not afford the fees.

In Australia, the couple lived together in a de facto relationship until 1988. The appellant told the Authority that they did not marry because TSS was unable to obtain his own divorce papers from his first wife. The appellant also thought, on reflection, that TSS could have obtained a further copy through his parents, but believes that he did not do so because they had always opposed the couple's de facto relationship.

About two months after the couple arrived in Australia, the appellant became pregnant but lost the baby when she miscarried.

In about March 1988, the appellant became pregnant again. She told the Authority that she and TSS did not use any contraception. After the miscarriage, they had talked about having a child and TSS had been in favour of it because he wanted a boy. The appellant did not believe she had a very high chance of getting pregnant because she had had one ovary removed in an operation in about 1984.

After talking it over with TSS, it was decided that she should return to China to have the baby. The appellant says that they took this course because she had heard that, as an overstayer (which she was by this stage), she was not allowed to have a baby

in Australia and she feared that the Australian authorities would deport her. She told the Authority that a further reason for her return to China was because TSS had concerns about his own ability to look after both her and the child in Australia. While she herself did not want to return to China, she did so at the request of TSS. It was, she says, her intention to return to Australia once the baby was born. In 1991, the appellant did try to return to Australia by having her sister sponsor her. Her visa application was, however, declined.

At the time of her return to China in September 1988, the appellant was seven and a half months pregnant. The baby was born at a hospital although the appellant claims to have been able to avoid registering the birth of the child by transferring to another hospital within a few days of the birth and there claiming that the baby had already been registered at the first hospital but that the papers must have been mislaid in transit.

It appears that the appellant's son has thereafter been brought up by the appellant's parents. She states that her own family were delighted at the birth but that TSS' family were not.

In April 1990, the appellant moved to SZ to take up employment as a departmental manager in a hotel. She remained there for one month only because she found another job, this time as a translator for a joint venture company. She worked there for six months, accompanying Italian technicians around factories. In the course of doing so, she drew criticism from her Chinese workmates because she would socialise with the Italians, drinking at lunch-time. She also took to wearing 'informal' clothes, such as shorts and sleeveless tops that aroused resentment among her workmates.

The appellant describes one other incident during that employment. A work colleague entered her room one day and caught sight of a photograph of the appellant's son. Because the appellant had already stated that she had no family, the colleague queried the photograph. In reply, and on the spur of the moment, the appellant explained that her husband was deceased. When the Authority asked whether this answer had satisfied her colleague, the appellant stated that she could not tell whether it had or not.

Initially, the appellant told the Authority that she believed that her colleague must have informed her superiors, because the appellant was thereafter excluded from administrative meetings. When the Authority expressed surprise that being a widow

with a son should provoke such a hostile reaction, the appellant conceded that a friend had told her that there was a great deal of criticism of her within the department because of her excessive drinking, her choice of fashion and as to why a person of her age was still single. She resigned from this job.

The appellant worked for a number of further companies in China, returning to Beijing to live in November 1990, where she worked for a cosmetics company. She lost that job because a letter she had typed was stolen.

When asked by the Authority, the appellant readily admitted that she had been continually in employment from 1990 onwards, ceasing only to come to New Zealand. She also agreed that she had been employed throughout at a reasonable salary level.

As to why she found her life in China so distressing, the appellant stated that her life was "not stable", and that she had to move around looking for work. She did not have the security of "permanent" work outside Beijing, where her *hu kou* is. Elsewhere, she would have to pay for private accommodation.

The appellant described the non-registration of her son's birth as a financial burden, stating that she had to pay for his education. If she worked for a work unit, and if her son's birth had been registered, then the government would re-imburse her for the costs of his education. She applied to several kindergartens in her area when her son was young, but could not afford the RMB10,000 charge. As matters stand, she would need to pay between RMB5,000 and RMB10,000 annually for him to attend school. Her son did not attend school while she was still in China but has been going since 1996. This, the appellant told the Authority, was because her mother complained to the Education Bureau. The Education Bureau told her to negotiate with one of the schools and the principal eventually gave in and allowed the appellant's son to be enrolled for a year.

The appellant also says that the absence of a father causes embarrassment and difficulties for her son. When he is asked at school or elsewhere, he is forced to reply that he does not know his father, nor know where he is. The appellant herself finds it difficult to know how to answer queries put to her and told the Authority that she tries to avoid giving an answer. She does not consider that she can evade questions by claiming to be a widow or divorced because she will be asked for a death certificate or a divorce certificate. She describes her own life and that of her son as causing them both a great deal of stress.

In answer to a question put to her in re-examination, the appellant stated that she wanted to live in New Zealand because it offered herself and her son a better life than in China. If she returned to China now, she would have difficulty finding a job at her age (approaching 40) and would have the problem of finding private accommodation.

The appellant also stated that she fears that the Chinese authorities may know she has applied for refugee status. A flatmate recently went to the Chinese embassy in New Zealand, in order to renew his or her passport. At the embassy, the flatmate was asked by embassy staff why he or she had applied for refugee status. The appellant does not know how the embassy found out that her flatmate had applied, and fears that they may also know of her own application. If so, she believes the local police or neighbourhood street committee will want to talk to her to see whether she maintains her opinions and, if she does, she would be subject to study sessions and would be unemployable. It is her understanding that the Chinese government consider persons who apply for refugee status overseas as opponents of Chinese policy and law. As an aggravating factor, she told the Authority that her sister in Australia was subject to enquiries by a Chinese organisation following her own application for refugee status.

In April 1996, while awaiting the outcome of her application for refugee status, the appellant entered into a sham marriage with a Chinese man from Australia, sent over to her by her sister for that purpose. She then applied for residence in Australia but her application was declined. She has been in a relationship with a New Zealander since January 1996.

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 appellant being persecuted if returned to the country of nationality?

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

ASSESSMENT OF THE APPELLANT'S CASE

Before the issues raised by the Convention can be addressed, an assessment must be made of the appellant's credibility. Having heard her at length, we are satisfied that the appellant has been truthful in her account to us and that her evidence may be relied upon. We note in particular that there were a number of occasions upon which the appellant imparted information which could be said to be unflattering, yet there was no attempt on her part to dissemble or evade those issues.

Before turning to a consideration of the issues, we record that we have read and carefully considered the detailed submissions made by counsel, all of which have been taken into account. We have paid careful consideration to the country material submitted by counsel.

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

We have reached the conclusion that there is not. The Authority accepts that the appellant is at risk of some discrimination if she returns to China, but the degree of harm involved does not amount to persecution within the meaning of the Convention.

It must be remembered at the outset that this appeal concerns a claim to refugee status by the appellant, *not* her son (who is not even in New Zealand). It is in respect of the appellant that the risk of persecution must be assessed. Counsel properly acknowledged this at paragraph D(f) of her written submissions.

The appellant says she if she returns to China, she faces:

1. an unstable future, forced to find 'temporary' work, as opposed to the security of employment in a work unit, and will be forced to find private accommodation;

2. the dilemma of having to explain to people the existence of her son;

3. the financial burden of having to pay for her son's education because he has never been registered.

We are satisfied that none of these matters, even taken cumulatively, amount to persecution within the meaning of the Convention. Certainly, they may be the result of discrimination. Nevertheless, they fall far short of the concept of a 'sustained or systemic violation' of the appellant's basic human rights.

As to the appellant's claim that her ability to work will be affected, we note the observations of the Authority in Refugee Appeal no 732/92 Re CZZ (5 August 1994), where it was stated, at 17:

> "The right to work is also an "economic and social" right contained in the International Covenant on Economic, Social and Cultural Rights. Article 6 (Brownlie *op cit* 116) provides:
>
> > *"1 The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*
> >
> > *2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."*
>
> The right to work, as with the right to education, is a second generation right and appears third in the hierarchy of rights referred to [in the four-tier hierarchy of rights discussed by Professor Hathaway in The Law of Refugee Status (1991) 108-111]. However, as recognized by Professor Hathaway, The Law of Refugee Status 111:
>
> > *" the deprivation of certain of the socio-economic rights, such as the ability to earn a living, or the entitlement to food, shelter, or health care will at an extreme level be tantamount to the deprivation of life or cruel, inhuman or degrading treatment, and hence unquestionably constitute persecution."*

> To this might be added the observation that at a less extreme level, substantial impairment of ability to earn a living coupled with other discriminatory factors could, depending on the circumstances, constitute persecution.
>
> The difficulty faced by the appellant, however, is that there is no significant evidence that she has been excluded from employment."

The same conclusion prevails in the present case. The appellant admitted to the Authority that in the five years after she returned to work in 1990, she was never unemployed for any significant period of time. That fact reinforces our view that, if she returns to China now, she faces the same risks in terms of obtaining employment as are faced by all Chinese nationals. It may be that she will be discriminated against by a state work unit, if she chooses to seek employment in one and if she chooses to reveal to them that she has an illegitimate child. There is, however, no reason apparent to the Authority why she cannot seek employment in a private company, as she did previously, where the question of the illegitimacy of her child would not be of any consequence.

As to the appellant's claim that she is forced to keep secret the existence of her son, there is simply no evidence before the Authority to suggest that she is at risk of persecution if her relationship to her son is discovered. In this regard, we note Article 19 of the Marriage Law of the People's Republic of China (as published by the Foreign Languages Press, Beijing, in 1982 and submitted to the Authority by counsel), which states:

> "Children born out of wedlock enjoy the same rights as children born in lawful wedlock. No person shall harm them or discriminate against them.
>
> The father of a child born out of wedlock must bear part or the whole of the cost of maintenance and education of the child until he or she can live on his or her own."

The appellant has given evidence of the occasion on which she was excluded from departmental meetings at her work place. Even if the reason for her exclusion *was* her child (and not her drinking or style of dress, which seem far more likely reasons), such a reaction borders on the trivial.

The appellant also raises the issue of the need for her to pay full school fees for her child. The Authority accepts that, if true, such a practice is unfortunate and regrettable. The legitimacy or otherwise of a child should not be the determinative factor in the question of the cost of its education. Nevertheless, to the limited extent that such treatment can be considered as impacting on the appellant rather than her son, we cannot say that it is persecutory. The appellant is not *prevented* from

obtaining education for her son. Rather, she is required to pay for it. The gravity of the harm therein does not, in our view, amount to persecution.

APPLYING FOR REFUGEE STATUS

Before leaving this topic, it is necessary to also address the appellant's claim made at the appeal hearing (though not in her application form or statement) to the effect that she fears that the Chinese authorities may find out that she has applied for refugee status in New Zealand and punish her accordingly.

In that regard, we note:

1. There is no evidence before the Authority to suggest that the Chinese authorities have any knowledge of the appellant's application for refugee status. The processing of such applications (and appeals) is undertaken in strict confidence and there is nothing to suggest that such discretion has been breached. It follows that the claim that the Chinese authorities *might* have learned of it is simply speculative and falls well short of creating any real chance of persecution. We discount the appellant's evidence of the visit by her flatmate to the Chinese embassy. The flatmate did not give evidence to the Authority, nor was there any evidence presented as to what the flatmate's circumstances were nor how the Chinese embassy may have learned of the flatmate's application. Further, there was not even any evidence that the flatmate was criticised by the embassy staff, let alone persecuted. At most, on the evidence of the appellant, the flatmate was simply asked why she had applied. Such skeletal information from the appellant falls well short of discharging the burden upon her of proving her claim.

2. Even if the Chinese authorities *were* to learn of the appellant's application (and there is no evidence to show that they have done) there is nothing before the Authority to suggest that she would be persecuted as a result. The Authority has dealt with hundreds of claims by Chinese nationals is recent years, many of whom have suggested that the Chinese authorities would take an adverse view of their application for refugee status in New Zealand and would persecute them accordingly. In spite of those many claims, the Authority remains unaware of any evidence whatsoever to show that, of itself, applying for refugee status in another country places a Chinese national at risk of persecution. The Authority has researched this issue

widely on a number of recent occasions, without result. Significantly, this late-emerging claim by the appellant was not supported by any evidence from her (beyond, of course, the anecdotal account of her flatmate's visit to the embassy, to which we have already referred).

While it may be that the appellant has a genuine subjective fear in this regard, we consider her fear to be groundless for the foregoing reasons.

CONVENTION REASON

In view of our findings as to the lack of any real chance of persecution, it follows that there cannot be any Convention reason. Nevertheless, for the sake of completeness, we propose to address briefly counsel's submission that the appellant is a member of a particular social group.

DEFINITION OF THE SOCIAL GROUP

Counsel submits that the appellant is a member of a social group of "single solo mothers" and adds that such group is:

> "…more precisely, women with a dependant child or children who are not currently married and who have never been married to the natural father of their child or children."

The difficulty with this proposition is that, for a particular social group to exist, it must be capable of reasonably clear definition. The proposal of counsel does not, in the view of the Authority, adequately define a cognisable group. While the term "single solo mothers" does encompass the narrower definition articulated by counsel, it also encompasses:

1. women with a child or children who were married to the father of their child or children but who are now separated;

2. women with a child or children who were married to the father of their child or children but who are now divorced;

3. women with a child or children who were never married to the father of their child or children but who have been married to another man and are now separated;

4. women with a child or children who were never married to the father of their child or children but who have been married to another man and are now divorced;

5. women with a child or children who were married to the father of their child or children but who are now widowed;

6. women living alone who have adopted a child;

7. women living alone who have custody of a child.

Then too, there is the difficulty posed by other definitions that counsel would (by implication) exclude from consideration. What, for example, of women who have an illegitimate child but who then marry the natural father? The evidence before the Authority is to the effect that it is the illegitimacy of the child which results in the child being unable to receive benefits such as free education and which stigmatises the appellant. That being so, and because *post facto* marriage to the child's father does not cure the illegitimacy, such women would fall, *prima facie,* within the same social group. Yet by counsel's definition, they do not.

Viewed against such uncertainty as to the parameters of its membership, we are satisfied that there are no grounds for holding that "single solo mothers" comprises a particular social group.

THE VIEW OF THE COMMUNITY

It has been said that the identity of a social group often lies in the significance ascribed to the group by its community or by the state. As was stated by the Authority in Refugee Appeal No3/91 Re ZWD (20 October 1992), at 84 - 85, in relation to a claim involving China's one-child family policy:

> "We have been presented with no evidence to show that the community of which the appellant is a part perceives [opponents of the one-child family policy] to be members of an identifiable social group.
>
> The same is true in relation to the government officials who are the relevant agents of persecution.
>
> Certainly, individuals who do not comply with official family planning policy would be identified as such, just as persons in any society who fail to obey the law will be identified as lawbreakers. It does not necessarily follow that such persons comprise, and are recognized as comprising a distinct social group within society.

> The one observation of the 9th Circuit Court of Appeals in Sanchez-Trujillo approved of by Hathaway is appropriate in these circumstances:
>
> > "... the term does not encompass every broadly defined segment of the population, even if a certain demographic division does have some statistical relevance."
>
> We also return to the succinct observation made by Goodwin-Gill in The Refugee in International Law (1983) 30:
>
> > "The importance, and therefore the identity, of a social group may well be in direct proportion to the notice taken of it by others, particularly the authorities of the state."
>
> Here, there is no evidence that Chinese society, and more importantly, the authorities of the state, identify or take notice of the individuals concerned ***as a social group***."

The Authority also refers to its decision in Refugee Appeal No 2124/94 Re LYB (30 April 1996) in which it found that 'unmarried mothers or expectant mothers who have refused to undergo an abortion' are not a social group in China.

Although counsel in the present case provided the Authority with a number of documents relating to the relationship between solo mothers in New Zealand and the New Zealand community and state, there is nothing before the Authority at all to suggest the Chinese authorities or society would identify the appellant and people in her circumstances as a cognizable social group. Indeed, the extract cited above from Article 19 of the Marriage Law of the People's Republic of China strongly suggests that the view of the Chinese state is diammetrically opposed to the recognition of any such group.

In view of the foregoing conclusions on the lack of any cognizable social group, it follows that, even if the appellant did have a well-founded fear of persecution (which she does not) it would not be for any Convention reason.

Finally, we refer briefly to the (somewhat tentative) suggestion made by counsel in her written submissions, that it may be that the appellant's claim rests upon the Convention ground of political opinion, in that by her very existence as a 'single solo mother' she has made a statement of political dissidence which, if discovered, could provoke retribution from the state.

We reject this suggestion. The appellant has engaged in no political activism and she provides no evidence that the Chinese authorities regard 'single solo mothers' in this way. In view of the protection afforded by Article 19 of the Marriage Law of the People's Republic of China to the rights of illegitimate children, there is no justification

for concluding that the Chinese authorities would imbue the actions of the appellant with any political overtones at all.

CONCLUSION

For the above reasons, the Authority finds that 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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Chairperson