

AT AUCKLAND

Appellants:	AK (South Africa)
Before:	C M Treadwell (Chair) M A Poole (Member)
Counsel for the Appellants:	W van Harselaar
Counsel for the Respondent:	No Appearance
Date of Hearing:	17 and 18 November 2011
Date of Decision:	16 April 2012

DECISION

INTRODUCTION

[1] These are appeals against decisions of a refugee status officer of the Refugee Status Branch of the Department of Labour, declining to grant refugee status and/or protected person status to the appellants, citizens of South Africa.

[2] The crux of the claim is that the father, director of a signwriting company, is said to be at risk of serious harm at the hands of a criminal group in South Africa who have used violence (including the murder of the father's business partner) to drive the officers of the company away from a lucrative commercial contract. The wife and daughter have also been threatened with harm by the group. The issues which arise are whether the anticipated harm is for a reason prescribed by the Refugee Convention and, if not, whether any of the appellants are in danger of arbitrary deprivation of life or cruel, inhuman or degrading treatment.

[3] The Tribunal heard from all three of the appellants. The evidence of each was given in respect of all three appeals. Given that the same factual background is relied upon in respect of all limbs of the appeal, it is appropriate to record it first.

THE APPELLANTS' CASE

[4] The account which follows is that given by the appellants at the appeal hearing. It is assessed later.

[5] The father is 44 years old. He initially worked as a volunteer police officer but, in the mid-1980s, became a signwriter. The mother is a 39 year-old accountant. Their daughter is presently aged 14 years. They lived near Durban, in KwaZulu-Natal.

The father

[6] In 1995, the father began working for the ABC Company as a signwriter. The company was the primary supplier of soft drinks such as Coca Cola in the country. The father's duties included arranging all product advertising and signage at retail outlets across KwaZulu-Natal.

[7] At the company, the father became friends with another signwriter employed there, a black employee named AA.

[8] In 1996, the ABC Company began to contract out its signwriting work because its vans and employees were at risk of hijack and/or robbery. AA decided to leave the company to each set up his own private signwriting company, contracting back to the ABC Company.

[9] In spite of his departure from the company, the father kept in touch with AA, who would come in to the company to pick up work regularly and the two men saw each other socially as well.

[10] Between 1997 and 2006, the family suffered a number of incidents of crime, including burglary, attempted car-jacking and robbery. The father also suffered a number of incidents of crime in the course of his employment, including attempted car-jacking.

[11] In 2006, the father established his own signwriting business, which he operated in his spare time. The ABC Company was in the process of being bought by DEF Company and the father decided that his own business would be a valuable hedge against an uncertain future. Although it was small (he operated out of his garage on the weekends), the business was immediately successful.

[12] In mid-2007, AA approached the father to propose that they form a

partnership for the purpose of tendering for a signwriting contract offered by DEF Company. The contract was in respect of all signwriting at liquor outlets across a large section of Kwa-Zulu Natal and was worth a significant sum. Their bid was successful.

[13] The father resigned from the ABC Company in July 2007, in anticipation of the partnership with AA. By this time, the family were comfortably-off, owning their own home in a reasonably prosperous gated community and with the daughter at a private school. The mother was a successful accountant, doing private contract work and they agreed that her income alone was enough to sustain the family while the father built up his partnership with AA.

[14] In late August 2007, the father's father died. On the day of his funeral, the father and AA attended a pre-arranged meeting to arrange the terms of the partnership. That meeting ended in the early afternoon. The father then returned home.

[15] About a hour after he had returned home, the father received a telephone call from the brother of AA, advising him that AA had been murdered. The two men (AA and his brother) had been stopped at an intersection when armed men approached the car, shot AA and walked away. The brother was unharmed.

[16] Early that evening, the father answered a knock at the door. Two unknown men at the door told him that AA's killing had been a warning to abandon the signwriting contract and that he (the father) was being given 48 hours to leave the country. The father could tell the threat was serious but asked for more time. They told him that, if he did not wish to see his wife and daughter raped and killed, he would leave as told. On seeing the daughter in the hallway behind the father, one of the men told her that she would be a "nice rape".

[17] Once the men had left, the father telephoned the police, who told him there was nothing they could do, in the absence of any actual harm. When the father pointed out that AA had been murdered that day, the police responded that there was no proof that the incidents were linked.

[18] Later that day, the appellants spoke with the widow of AA. She told them that she, too, had been threatened and told to leave the country. She had called the police but had received the same rebuff as the father. She told the appellants she had packed and was leaving immediately. She declined to say where she was going.

[19] The family were also telephoned by the house-girl, who told them she had been warned not to return to work at the house. In the circumstances, she had decided to resign.

[20] These events caused the father great fear for his own safety and the safety of his wife and daughter. He searched the Internet that night and found that New Zealand was a visa-free destination. Further, he knew a former South African national, now working in Wellington, with whom he might stay temporarily. The father booked a ticket online departing from Johannesburg in two days' time. He did not book tickets for the mother and daughter because they had insufficient funds. In any event, he knew that his pension payment was due from the ABC Company and that they would be able to use this to follow him. It was also clear that he was the primary target of the men's interest.

[21] The following morning, one of the men who had threatened the family telephoned the house and reminded the father that he had two days in which to leave. He assured the man that he had booked flights from Durban to Johannesburg and, from there, out of the country. The man told the father that they would be at Durban airport to ensure that he boarded the flight.

[22] Over the next 24 hours, the father discussed with the mother the steps she would need to take, in order to dispose of the family's property after he had left the country, before she and the daughter joined him in New Zealand.

[23] The next day, the mother drove the father to the airport. The two men who had threatened them approached them and told the father that he would be watched to ensure he boarded the flight and he was told that others would monitor his departure from Johannesburg. The mother was told that she should ensure that she left as well.

[24] The father boarded the flight and, in Johannesburg, caught the connecting flight to New Zealand. On arrival, he telephoned his acquaintance and arranged to stay at the man's house for a short while. He did not explain why he had left South Africa at short notice, without his family, though he thinks, in retrospect, that his agitation would have clearly signalled that he was in difficulties of some kind and the man was sufficiently tactful not to enquire.

The mother

[25] As to the mother, she found herself alone, in a state of great terror. She

returned to the home, where she packed clothes and basic necessities for herself and the daughter. She then went to a neighbour's house and told them that they were leaving and that the neighbours, and anyone else in the vicinity, could help themselves to the chattels in the house. She and the daughter then drove to the mother's parents' house, where they asked to stay for a fortnight. They were both afraid for their safety. The daughter was not allowed to go outside her grandparents' home, not even to swim in their pool.

[26] Over the next fortnight, with her sister's help, the mother gave instructions to a real estate agent to sell the family house for the best price she could get. The mother sold both family cars to a car dealer (her father had helped her collect the second car) and she sold their boat to her father for a nominal sum. She sold her jewellery and family heirlooms, including items which had been in her family for generations, for whatever she could get for them. The house did not, in fact, sell until after they had left for New Zealand and the money gained from the sale of the cars and personal items was relatively modest.

[27] The money from the father's pension plan did not come through as expected and so the mother approached a friend, from whom she borrowed 35,000 rand (approximately NZ\$7,000), in order to buy tickets for herself and the daughter. She has never been able to repay it.

[28] As to her employment, the mother telephoned a colleague to take over one set of accounts on which she had been working. She simply abandoned the balance of her business.

The daughter

[29] The daughter was barely 10 years old at the time of the events in August 2007. Nevertheless, she recalls the men coming to the door of their house and being hurried upstairs by her mother, after which she could hear shouting. She recalls her father leaving suddenly two days later and she and her mother going, without explanation, to live at her grandparents' house. Her mother would not let her return to the family home to collect things she had left behind. She recalls that her mother was highly stressed and irritable over the next two weeks, until they left the country. She recalls not being allowed to go to the shops or even to swim in the pool.

[30] By the time they left, the daughter knew that they were travelling to New Zealand but did not know why. There had been no prior family discussion of

migrating to New Zealand and she knew nothing about the country. It is only in subsequent years, as she has grown older, that she has come to understand the reason for their sudden departure from South Africa.

Material and Submissions Received

[31] The appellants have provided a number of documents on appeal. Those particularly relevant to their claims include:

[32] Letter dated 26 January 2012 from BB, the sister of the mother, confirming the family's sudden departure from South Africa and her own part in the mother's urgent sale of the house and other possessions. In particular, the sister notes:

"It took a few months for the house to be sold, partly due to the fact that [the mother and the father] left without signing necessary documents and without tying up any loose ends. At the time, I did not understand or have knowledge of why they had left, and thought that they were insensitive to leave me with such a large mess to deal with. When someone in your family just ups and leaves without packing or selling their assets, it is incomprehensible and at the time I just could not believe that they had left everything and literally run away....

I watched my sister and niece get onto a plane with just what they could carry, and leave their home, their friends and their family, and it was one of the most confusing and saddest times I have been through."

[33] Letter dated 10 January 2012 from CC, a friend of the appellants. He confirms that the father told him of their reasons for leaving South Africa in August 2010, including the murder of his business partner and the threats to the appellants themselves.

[34] Letter dated 13 January 2012 from DD and EE, South African friends of the appellants. They recently visited the appellants in New Zealand and confirm that the appellants explained to them the reason for their sudden departure from South Africa, namely the murder of the business partner and the threats to the appellants. They confirm that they have heard of other cases of such 'business takeover' in South Africa.

[35] Email dated 23 January 2012 from FF, a South African resident, who has known the father since childhood. He also confirms that the father explained to him, some seven months ago when they caught up after many years, the reason for their sudden departure from South Africa.

[36] Letter dated 24 November 2011 from GG, the mother's mother, who still resides in South Africa. She confirms:

"[T]hey started off with nothing and worked very hard for what they had. You can

imagine my horror when they arrived at my house and advised that they were leaving the country. [The father] was going immediately and [the mother and daughter] approx. 2 weeks later. They sold the house only for what they owed on it, the neighbours helped themselves to anything that they wanted in the house and [the mother and daughter] with only their clothes moved into my house until they left.”

[37] Email dated 15 November 2011 from the father to HH, a former work colleague at the ABC Company, asking him to try to find an old invoice from AA to establish his business links to the company, together with the response of Mr HH that he will try to find one.

ASSESSMENT

[38] Under section 198 of the Immigration Act 2009, on an appeal under section 194(1)(c) the Tribunal must determine (in this order) whether to recognise the appellant as:

- (a) a refugee under the 1951 Convention Relating to the Status of Refugees (“the Refugee Convention”) (section 129); and
- (b) a protected person under the 1984 Convention Against Torture (section 130); and
- (c) a protected person under the 1966 International Covenant on Civil and Political Rights (“the ICCPR”) (section 131).

[39] In determining whether the appellant is a refugee or a protected person, it is necessary first to identify the facts against which the assessment is to be made. That requires consideration of the credibility of the appellant’s account.

Credibility

[40] The appellants’ accounts are accepted in their entirety.

The Refugee Convention

[41] Section 129(1) of the Act provides that:

“A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention.”

[42] 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."

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

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

Assessment of the Claim to Refugee Status

[44] For the purposes of refugee determination, "being persecuted" has been defined as the sustained or systemic violation of core human rights, demonstrative of a failure of state protection – see *Refugee Appeal No 74665/03* (7 July 2004) at [36]-[90]. Put another way, persecution can be seen as the infliction of serious harm, coupled with the absence of state protection – see *Refugee Appeal No 71427* (16 August 2000), at [67].

[45] In determining what is meant by "well-founded" in Article 1A(2) of the Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), where it was held that a fear of being persecuted is established as well-founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective – see *Refugee Appeal No 76044* (11 September 2008) at [57].

Objectively, on the facts as found, is there a real chance of each of the appellants being persecuted if returned to South Africa?

[46] We are satisfied that this issue must be answered in the affirmative.

[47] The murder of the father's business partner, the lucrative nature of the business contract they were forced to abandon and the intensity of the threats to the appellants satisfies us that, if they return to KwaZulu-Natal, there is a real chance that they will be killed, or will suffer some other form of serious harm, at the hands of the men who killed AA.

[48] We are also satisfied that the protection afforded to the appellants by the South African police will not reduce the risk of such serious harm below the level of a real chance. The killers of AA have already resorted to murder and there is a real chance that they will do so again, if they perceive the need. The fact that they might later be apprehended and prosecuted is not an answer to the reality that the appellants, or any one or more of them, would have already suffered serious harm.

[49] It is worth restating that New Zealand refugee jurisprudence has expressly rejected the approach taken in the United Kingdom to the issue of the sufficiency of state protection. In *Horvath v Secretary of State for the Home Department* [2001] 1 AC 489 at 515H (HL) their Lordships held that a refugee claimant who has a well-founded fear of being persecuted will not be recognised as a refugee if there is available in the home state a system for the protection of the citizen and a reasonable willingness by the state to operate it. New Zealand has declined to follow *Horvath*. In *Refugee Appeal No 71427* [2000] NZAR 545; [2000] INLR 608, the Refugee Status Appeals Authority held, at [66], that the proper approach to the question of state protection is to enquire whether the protection available from the state will reduce the risk of serious harm to below the level of well-foundedness, or, as it is understood in New Zealand, to below the level of a real chance of serious harm.

[50] There are good reasons for not adopting the *Horvath* approach.

[51] First, the focus of the first issue raised by the Convention is squarely on the predicament of “being persecuted”. The question whether there is a reasonable willingness by the state to operate a system of protection fails to address the fundamental question of whether the person faces a real chance of serious harm. If the answer to that fundamental question is yes, then the willingness of the state to operate a system of protection is irrelevant.

[52] Second, *Horvath* does not explain what “a reasonable willingness by the state to operate a system of protection” means. Almost all states operate an intelligence service, a police force and courts of law in one form or another. Their effectiveness can range from very effective, through sometimes effective to wholly ineffective. Sometimes, the system of protection is nothing more nor less than the agent of persecution itself. Yet, at any point on this spectrum a reasonable willingness by the state to operate its system of protection (however ineffective) would suffice to deny protection to a victim of persecution, notwithstanding that a real chance of serious harm exists.

[53] In the present instance, we are not satisfied that the South African law enforcement agencies are capable of reducing the risk to the appellants below that of a real chance.

[54] In reaching this view, we have taken into account the fact that the appellants have been able to tell us little about the men who threatened them. We are not told how many they are in number, whether they have committed other serious crimes akin to the murder of AA, in the past, or whether they have since been apprehended by the police. We cannot, realistically, expect them to do so. While a claimant has the responsibility of establishing the claim (see section 226(1) of the Act), it may not always be possible to do so by providing corroborative evidence. As the Court of Appeal noted in *Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA) at [32]:

“Were a decision-maker to deny the particular difficulties of refugee claimants and to insist on proof that it was impossible for the applicant to provide there might well be an argument that the decision-making process was fundamentally flawed, and that it did not meet the obligations of States in respect of that process, implicit in the Convention, especially given its vital humanitarian purpose. To insist on such proof by claimants might properly be seen as requiring action by them which would not fall within their “responsibility” under the Act nor, in the circumstances, within the basic generally accepted principle that claimants must prove the facts they assert. In such an extreme case the legislation, read with the Convention (glossed by general principle, qualified by the relative situations of the claimant and the Authority), might well be seen as breached.”

[55] The practice of the Tribunal, and the Authority before it, is to extend the benefit of the doubt where a claimant cannot be expected to provide corroborative proof and is otherwise credible (see *Jiao*, at [30]). We are satisfied here both as to the credibility of the appellants and as to their genuine inability to provide corroborative evidence of the continuing violent intent of the persons who threatened them. We extend to the appellants the benefit of the doubt.

[56] We must also, however, address the issue of whether there is an internal protection alternative available to the appellants.

Internal protection alternative

[57] As a matter of general principle, a state will not be deemed unable to protect a claimant if, notwithstanding a real chance of the person being persecuted in one part of the state’s territory, there is another part of the state’s territory in which the protection of the state would reduce the risk to below the level of a real chance.

[58] South Africa is a country of substantial size, with its main urban centres set, for the most part, at great distances. The appellants lived exclusively in KwaZulu-Natal and the contract which was the subject of the threats they received was also confined to that province. The question arises whether the appellants could avoid the adverse attentions of the men who threatened them by living in another part of South Africa outside KwaZulu-Natal – say Johannesburg or Cape Town.

[59] In *Refugee Appeal No 71684* (29 October 1999), the Authority adopted *The Michigan Guidelines on the Internal Protection Alternative*, which articulated a three-stage enquiry for determining whether an ‘internal protection alternative’ exists, in any particular case. The issues are:

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

[60] If the answer to any of those issues is “no”, then an internal protection alternative is not available.

[61] For the reasons given at [54]-[55] above, we cannot know how extensive the criminal group behind the threats to the appellants might be. It might be that they are a small group, confined to KwaZulu-Natal. They might also, however, be more widespread.

[62] Further, even if the group is generally confined to KwaZulu-Natal, inter-provincial travel in South Africa is inexpensive and unmonitored. If the group learned of the appellants’ resettlement in another province, it would not be difficult to travel there, should they still be intent on harm. Nor, it should be added, does the internal protection alternative require persons to access protection elsewhere in the state by going into hiding there.

[63] In determining whether, in the proposed site of internal protection, the real chance of persecution for a Convention reason is eliminated, the assessment must be whether these appellants, with all of their characteristics, would be at risk. As best as we can judge on the evidence, the appellants would return to a lifestyle

similar to that which they had before they departed South Africa. The adult appellants would own property, would work for professional or corporate entities, would be recorded in all of the normal sources (Internet, telephone directories, electoral rolls, utilities accounts, etc) and would, in time, re-establish reputations in their respective employment fields. In particular, the father could be expected to return to the only field in which he has extensive experience – signwriting. That is, of course, the same field in which the persons who drove him away from the contract in KwaZulu-Natal, are presumably involved.

[64] Given the uncertainty about the resources and reach of the criminal group, we find that we should exercise caution before assuming that the appellants would be able to avail themselves of state protection elsewhere in South Africa. Given their right to live openly and the fact that the criminal group appears to be associated with the same industry in which the father works, we are not confident that their presence in South Africa would not come to the notice of the group, in the fullness of time.

[65] We find that the first issue raised by the *Michigan Guidelines* is answered in the negative. The real chance of persecution for a Convention reason is not eliminated in the proposed site of internal protection. There is not an internal protection alternative available to the appellants.

Is there a Convention reason for the persecution?

(a) *The father*

[66] While it is established that the father faces a real chance of being persecuted if he returns to South Africa, it is not for any Convention reason. It is not for reasons of race, religion, nationality, political opinion or because he belongs to a particular social group. The reality is that he is at risk of serious harm for reasons of crime.

(b) *The mother and daughter*

[67] At one level, it can also be said of the mother and daughter that they, too, are at risk because of crime. They are also at risk, however, for another reason. The threat to the mother and daughter exists because of the criminal group's interest in driving the father away from the signwriting contract. From this perspective, it can be seen that part of the reason for the risk of harm to the mother and daughter is because they are members of the father's family.

[68] As to whether the father's family comprises a particular social group, we are satisfied that it does. Membership of a family is either an immutable characteristic (the daughter's relationship to her father, for example) or is a characteristic so fundamental to human dignity that the person ought not to be required to abandon it (the mother's marriage to the father, for example). See further *Refugee Appeal 3/91* (20 October 1992) and *Refugee Appeal No 71427* (16 August 2000).

[69] It is well-established that the Convention ground need not be the sole, or even a dominant, cause of the risk of being persecuted. It need only be a contributing factor (though it must be more than remote to the point of irrelevance) – see *Refugee Appeal No 72635* (6 September 2002), at [175]-[179].

[70] We are satisfied that the reason for the risk of harm to the mother and daughter is, in part, because they are members of a particular social group – the father's family.

Conclusion on Claim to Refugee Status

[71] We find that:

- (a) The father is not entitled to recognition as a refugee because, although he faces a real chance of being persecuted in South Africa, it is not for a Convention reason.
- (b) The mother and daughter are entitled to recognition as refugees.

The Convention Against Torture

[72] Section 130(1) of the Act provides that:

"A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand."

Assessment of the Claim under Convention Against Torture

[73] Section 130(5) of the Act provides that torture has the same meaning as in the Convention Against Torture, Article 1(1) of which states that torture is:

"... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such

pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

(a) *The father*

[74] This limb of our enquiry can be addressed shortly. Whatever the gravity of the harm the father might be at risk of in South Africa, or whatever the reason for it, it would not be "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". The father is not at risk of torture as that term is understood within the context of the Convention Against Torture.

(b) *The mother and daughter*

[75] The mother and daughter having been found to be refugees, they are protected against *refoulement*. Neither of them can be deported from New Zealand by virtue of section 129 (2) of the Act (the exceptions to which do not apply here). Accordingly, the question whether there are substantial grounds for believing that either would be in danger of being subjected to torture if deported from New Zealand must be answered in the negative. Neither the mother nor the daughter is a person requiring protection under the Convention Against Torture. They are not protected persons within the meaning of section 130(1) of the Act.

Conclusion on Claim under Convention Against Torture

[76] There are no substantial grounds for believing that any of the appellants would be in danger of being subjected to torture if deported from New Zealand. They are not entitled to protection under the Convention Against Torture.

The ICCPR

[77] Section 131(1) of the Act provides that:

"A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand."

Assessment of the Claim under the ICCPR

(a) *The father*

[78] For the reasons given above, in relation to the assessment of the claim to refugee status, we are satisfied that there are substantial grounds for believing that the father would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

[79] As to the “in danger of” threshold, it signals a degree of risk which is less than the balance of probabilities but more than mere speculation or conjecture. See *AI (South Africa)* [2011] NZIPT 800050-53, at [80]-[85]. It is a threshold analogous to the real chance threshold long-established in refugee law. It follows that the reasoning in relation to the ‘well-foundedness’ issue above is also applicable to the enquiry under the ICCPR.

[80] As to the harm of which the father is in danger, we are satisfied that it would either comprise arbitrary deprivation of life or serious physical harm sufficient to constitute cruel treatment.

[81] Finally, we also have regard to section 131(2) of the Act, which provides:

“a person must not be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if he or she is able to access meaningful domestic protection in his or her country or countries of nationality or former habitual residence.”

[82] We have already found, in relation to the claims to refugee status, that an internal protection alternative is not available to the father in South Africa. No more need be said in relation to section 131(2).

[83] It is not, of course, necessary for the father to establish a causal nexus to demonstrate that he meets the requirements of the ICCPR.

(b) *The mother and daughter*

[84] The mother and daughter having been found to be refugees, they are protected against *refoulement*. Neither of them can be deported from New Zealand by virtue of section 129 (2) of the Act (the exceptions to which do not apply here). Accordingly, the question whether there are substantial grounds for believing that either would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand must be answered in the negative. Neither the mother nor the daughter is a person requiring protection

under the ICCPR. They are not protected persons within the meaning of section 131(1) of the Act.

Conclusion on Claim under ICCPR

[85] There are substantial grounds for believing that the father would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

[86] There are no substantial grounds for believing that either the mother or the daughter would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

CONCLUSION

[87] For the foregoing reasons, the Tribunal finds that the father:

- (a) is not a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture;
- (c) is a protected person within the meaning of the Covenant on Civil and Political Rights.

[88] For the foregoing reasons, the Tribunal finds that the mother:

- (a) is a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture;
- (c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[89] For the foregoing reasons, the Tribunal finds that the daughter:

- (a) is a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture;

- (c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[90] The appeals are allowed.

"C M Treadwell"
C M Treadwell
Chair

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C M Treadwell
Member