IMMIGRATION AND PROTECTION TRIBUNAL NEW ZEALAND **[2019] NZIPT 801635**

RŌPŪ TAKE MANENE, TAKE WHAKAMARU AOTEAROA

Appellant:	**AB (Hong Kong)**
Before:	M Avia (Member)
Counsel for the Appellant:	T Mukusha
Counsel for the Respondent:	No Appearance
Date of Decision:	11 October 2019

DECISION

[1] This is an appeal against a decision of a refugee and protection officer declining to grant refugee status or protected person status to the appellant, a citizen of Hong Kong.

INTRODUCTION

[2] The appellant claims to be at risk of harm in Hong Kong at the hands of the authorities in an attempt to silence him by means such as poisoning and harassment, because he has made complaints about people in various institutions, including members of the police and the medical profession.

[3] The crux of the appeal is whether the appellant's concerns, albeit sincerely held, are objectively well-founded.

[4] Before turning to the facts of the claim, it is necessary to record that the Tribunal has determined not to offer the appellant an oral hearing.

Decision not to Offer a Hearing

[5] The file discloses that the appellant was interviewed by the Refugee Status Branch on 5 March 2019. Given that he was interviewed, the Tribunal may dispense with an oral hearing if it considers that the appeal is *prima facie* manifestly unfounded or clearly abusive, or repeats a previous claim – see, in this regard, section 233(3)(b) of the Immigration Act 2009.

[6] On 23 September 2019, the secretariat of the Tribunal wrote to counsel for the appellant, providing the appellant with an opportunity to present submissions and/or evidence to show why the Tribunal should not regard the appeal as *prima facie* manifestly unfounded. Notice was given that, unless it was persuaded otherwise, the Tribunal would consider and determine the appeal without giving the appellant an opportunity to attend an oral hearing. The reasons why the appeal was considered to be *prima facie* manifestly unfounded were explained. Those reasons are discussed below and need not be repeated here.

[7] The appellant did not respond to the Tribunal's letter within the specified period.

[8] For the reasons which follow, the Tribunal finds that that the appeal is, *prima facie*, manifestly unfounded and determines not to offer the appellant an oral hearing. The appeal is therefore to be determined on the papers.

[9] Given that the same claim is relied upon in respect of all limbs of the appeal, it is appropriate to record it first.

THE APPELLANT'S CASE

[10] The account that follows is a summary of the claim made by the appellant. It is assessed later.

[11] The appellant was born and raised in Hong Kong. He completed his schooling in 1970 and went on to graduate with a bachelor's degree from a university in Hong Kong in 1975 followed by a master's degree in 1978. In 1979, the appellant moved to Z country and began a doctoral degree which he did not complete, although he received a research degree. After further study overseas, he returned to Hong Kong in 1984. From 1985 to 1980, he worked as a Chinese language instructor. Between 1996 and 1998, he lived in Y country, where he undertook translation studies.

[12] In August 1998, the appellant moved to X country. While there, he wrote to the chairperson of ABC Ltd to correct a translation mistake in one of her books. She referred him to one of her colleagues, for whom the appellant wrote a short article about Baudelaire's avant-gardism and its relevance to X country. The appellant learned that these actions had offended powerful professors at XYZ university. In 2000, the appellant travelled to W country and sought asylum. Shortly afterwards, he left W country and, in 2001, he returned to X country and began living in V city. While there, he complained to the police about a neighbour stealing his tap water.

[13] The appellant returned to Hong Kong in October 2003 and, in November 2003, he came to believe that people had threatened to kill him, which he reported to the police and the ambulance service. Following a visit to a psychiatrist, he was prescribed a drug called trifluoperazine, used to treat schizophrenia. He took trifluoperazine regularly until 2011.

[14] In September 2007, the appellant discovered that his UVW university email address had been used to send out spam advertisements for fake luxury watches from X country. He complained to the police, who did not investigate. He was also advised by the university librarian that his email account would be cancelled and that his library card would not be renewed. In October 2007, the appellant complained to the Mayor of Hong Kong about corruption and the hacking. Although his complaint was referred to the Independent Commission Against Corruption, no corruption was found.

[15] One day, the appellant felt unwell and called an ambulance and was taken to hospital. The attending medic falsified his medical results. The appellant complained and was visited by an inspector from the fire service (which ran the ambulance service).

[16] In 2008, the appellant attended a movie about a social movement organised by a group of Hong Kong unions. Afterwards, he ate at a university canteen and became unwell with hand tremors. Although he was told that the tremors could be caused by trifluoperazine, a specialist later told him that they could have been caused by eating pork from X country as pigs from there could be fed too many chemicals.

[17] On 5 November 2009, a neighbour assaulted the appellant because he had complained that the neighbour had breached the rules of the housing complex in which they both lived. The appellant was injured during the incident and was taken to hospital, where he was arrested and told that he would be charged with fighting

in a public place. The appellant did not consider that he was at fault, and at a February 2010 court hearing on the matter, the charge was withdrawn.

[18] After the court case, the appellant moved to another social housing complex where he saw a different psychiatrist, who diagnosed him with a delusional disorder. He believes this diagnosis was made to prevent him from testifying against the police in court. In March 2010, the appellant complained to the Independent Police Complaints Council; however, the Council responded stating that referrals could only be made by the police. The appellant also complained about his attending doctors because they had supplied false documents to help the police.

[19] In 2011, the appellant ceased taking trifluoperazine because he had dry eye syndrome, which he understood could be caused by psychiatric drugs.

[20] In 2014 or 2015, the appellant came home one day and noticed a pungent smell at his apartment entrance. Once inside his apartment, his eyes became painful and he could not stand or walk properly as he felt dizzy and he was bleeding from the nose and anus. Although he called the police, they took no action other than advising him to go to hospital. The appellant believed that the police and members of the medical profession may have put poison in his apartment to silence him as he had complained about them.

[21] In May 2015, the appellant travelled to U country to seek asylum. While there, he became sick after being given a banana to eat by an African man. He believed that chemicals had been put on the banana, which made him sick. Following his attendance at a psychiatric hospital where he was diagnosed with a depressive disorder, he remained there for a month. He believed that the medical professionals lied.

[22] Immigration officials denied the appellant asylum in U country. They considered that he had a delusional disorder and that his statement was not reliable. One evening, after having sought assistance from political parties in U country and showing them advertisements for fake watches on the website of a newspaper, the appellant believed he was followed home. He then developed heart palpitations. After a night in hospital, a psychiatrist diagnosed the appellant with paranoid schizophrenia. He was then forcibly held at the hospital for two and a half months, which he believed was because he was an activist, and which he believed had also happened to demonstrators in T city and U city. He was given heavy drugs during this time. In early 2017, the appellant wrote to the Office of the United Nations High Commissioner for Human Rights, complaining about the way in which his asylum

claim had been dealt with. The Office refused to consider his complaint. Its response was misdated and contained no name or signature.

[23] In October 2017, the appellant returned to Hong Kong. He wrote to the Hong Kong authorities about his medical symptoms: deteriorating eyesight, and bleeding from the nose and anus. The appellant believed that doctors were attempting to cover up his symptoms because they did not want this information to be included in his computerised medical records. His information could not be found in the computerised system.

[24] The appellant decided to leave Hong Kong, and on 19 April 2018, he arrived in Auckland. On 18 May 2018, he made a claim for refugee and protection status. An interview with the Refugee Status Branch (RSB) had been set down for 21 August 2018. However, on 17 August 2018, the appellant was assessed by a doctor as being unfit to attend the RSB interview until a further assessment of his health had been undertaken. As a result, the interview was postponed until 5 March 2019, when it took place. The appellant was unhappy with the medical assessment and has complained about the doctor. He believes that the doctor and his lawyer misled him and has also advised RSB that his internet access was often blocked by hackers.

Material and Submissions Received

[25] The Tribunal has before it the Refugee Status Branch file, together with the appellant's notice of appeal. In particular, as well as the remainder of the file, the Tribunal records that it has read the appellant's various statements (pp91-98, 100-102, 112-113, 168-190, 203-208, 209-213, 224-225 of the file), as well as the attached evidence which, he says, provide details of the mistreatment he has suffered.

ASSESSMENT

[26] 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" or "the 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).

[27] 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

[28] The Tribunal accepts that the appellant is a citizen of Hong Kong who has also lived in a number of other countries and that, following the rejection of his claim to asylum in U country, he returned to Hong Kong where he lived for six months before coming to New Zealand.

[29] It is also accepted that the appellant sincerely believes that he has experienced instances of poisoning and harassment by people and organisations who he believes wish to silence him about what he knows.

[30] It is not, however, accepted that the appellant has been poisoned or subjected to harassment by the Hong Kong police, the medical profession or any other public authority. Such a conclusion is not justified on the evidence. The reality is that the appellant is an ordinary individual with an academic background, who had previously worked as a Chinese language instructor at a university and for the Hong Kong Government.

The Refugee Convention

[31] 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."

[32] 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, is unable or, owing to such fear, is unwilling to return to it."

[33] 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

[34] For the purposes of refugee determination, "being persecuted" requires serious harm arising from the sustained or systemic violation of internationally recognised human rights, demonstrative of a failure of state protection – see *DS (Iran)* [2016] NZIPT 800788 at [114]–[130] and [177]–[183].

[35] 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, 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 the appellant being persecuted if returned to Hong Kong?

[36] The Tribunal is satisfied that the appellant does not face a real chance of serious harm if he returns to Hong Kong. The appellant's claim of mistreatment, harassment and other attempts to silence him by the authorities in Hong Kong, or any other country, are not grounded in reality. While it is acknowledged that he has had challenges and difficulties in the past, there is no objective evidence which would establish that he would be at risk of serious harm arising from breaches of human rights, accompanied by an absence of state protection, in Hong Kong. Instead, it is likely that the appellant suffers from a mental disorder which causes him to believe that he is being persecuted.

[37] It is accepted that there is little expert medical evidence about the appellant's state of mind before the Tribunal. However, following an assessment by a local health screening service on 17 August 2018, a general practitioner concluded that it was necessary for the appellant to undergo a thorough psychological and psychiatric assessment due to the symptoms he displayed during the assessment.

The appellant's own evidence was that he had previously been diagnosed with schizophrenia and, for a number of years, took trifluoperazine, a drug commonly used to treat schizophrenia.

[38] Although the appellant may suffer from physical symptoms of a medical nature, such as tremors, dry eyes, and bleeding, there is no objective evidence that this is the result of poisoning by any person or any organisation.

[39] The Tribunal does not mean to downplay the importance to the appellant of the concerns that he has, and it is accepted that he sincerely believes that he is at risk as he has claimed. The refugee enquiry, however, requires that the person establish that the risk of harm is objectively well-founded. In this instance, that is not established on the facts.

[40] The Tribunal also agrees with the Refugee Status Branch's conclusion that the appellant does not face a real chance of being denied access to treatment or healthcare in any discriminatory way. Hong Kong has an excellent health system, although the health services available to people with severe mental illness may be more limited and further, there is a stigma attached to mental illness. Nevertheless, there is no real chance that the appellant would be treated differently to other people suffering from mental illness in Hong Kong. The appellant has been able to access mental health services in Hong Kong previously, and there is no reason to suppose that he will be unable to do so upon his return.

[41] Given the finding that the appellant does not face a real chance of serious harm in Hong Kong, he does not have a well-founded fear of being persecuted there.

Is there a Convention reason for the persecution?

[42] Given the conclusion above, it is not necessary to address this issue.

Conclusion on Claim to Refugee Status

[43] For the reasons given, the appellant does not have a well-founded fear of being persecuted in Hong Kong. He is not entitled to recognition as a refugee.

The Convention Against Torture

[44] 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

[45] 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."

[46] The appellant is not, on the evidence, at any risk of severe pain or suffering in Hong Kong, let alone such harm for any of the purposes identified in Article 1(1). The Tribunal is satisfied that there are no substantial grounds for believing that the appellant would be in danger of being subjected to torture if deported from New Zealand.

The ICCPR

[47] Section 131 of the Act provides that:

> "(1) 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.
>
> ...
>
> (6) In this section, cruel treatment means cruel, inhuman, or degrading treatment or punishment."

[48] By virtue of section 131(5):

> "(a) treatment inherent in or incidental to lawful sanctions is not to be treated as arbitrary deprivation of life or cruel treatment, unless the sanctions are imposed in disregard of accepted international standards:
>
> (b) the impact on the person of the inability of a country to provide health or medical care, or health or medical care of a particular type or quality, is not to be treated as arbitrary deprivation of life or cruel treatment."

Assessment of the Claim under the ICCPR

[49] There is no risk of the appellant suffering arbitrary deprivation of life. In relation to cruel, inhuman or degrading treatment, it is important to bear in mind that

such treatment still requires the person to suffer a level of harm not less than that required for recognition as a refugee. See, in this regard, the discussion in *AC (Syria)* [2011] NZIPT 800035, at [70]–[86].

[50] As *AC (Syria)* pointed out, the rights enshrined in Article 7 of the ICCPR are among those which are directly relevant to the assessment of "being persecuted" in the refugee context. Just as the need for serious harm has meant that the appellant is not at risk of "being persecuted" so too does it mean that he is not in danger of cruel, inhuman or degrading treatment or punishment if he returns to Hong Kong.

Conclusion on Claim under ICCPR

[51] There are no substantial grounds for believing that the appellant is at risk of arbitrary deprivation of life or cruel treatment if deported from New Zealand.

CONCLUSION

[52] For the foregoing reasons, the Tribunal finds that the appellant:

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

[53] The appeal is dismissed.

Order as to Depersonalised Research Copy

[54] Pursuant to clause 19 of Schedule 2 of the Immigration Act 2009, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellant's name and any particulars likely to lead to the identification of the appellant.

Certified to be the Research Copy released for publication.

M Avia
Member

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M Avia
Member