

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 73961

REFUGEE APPEAL NO 73962

AT WELLINGTON

<u>Before:</u>	P J Andrews (Chairperson) M Hodgen (Member)
<u>Counsel for the Appellants:</u>	L Ord
<u>Appearing for the NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	30 & 31 March and 10 & 11 May 2004
<u>Date of Decision:</u>	5 August 2004

DECISION

[1] These are two appeals against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellant and her son.

[2] The appellant in Appeal 73961 ("the appellant") was born in Armenia, lived in Uzbekistan for many years and holds a Russian Federation passport. The appellant in Appeal 73962 is her son, E, born in Uzbekistan. E is included in the appellant's passport.

INTRODUCTION

[3] Both appellants arrived in New Zealand from Uzbekistan in October 2001, having obtained a visitor's visa issued by the New Zealand Embassy in Moscow. The appellant applied for refugee status in January 2002 for herself and for E.

[4] The appellant was interviewed by a refugee status officer in February 2002, in respect of both applications, she being the responsible adult for E in terms of section 141B of the Immigration Act 1987 (“the Act”). Decisions declining refugee status were published in respect of the appellant and E on 11 June 2002. Both now appeal against those decisions.

Evidence

[5] The Authority has heard both appeals together. The appellant represented her 11 year-old son in respect of his appeal, in terms of s141B of the Act. The appellant gave oral evidence. The appellant’s sister, A, (who has permanent residence in New Zealand) and A’s New Zealand-born partner, Y, also gave evidence.

Documents and submissions presented to the Authority

[6] Written statements of evidence were provided for the appellant and her two witnesses. Copies of various letters and certificates were also tendered.

[7] Counsel for the appellants provided the Authority with a considerable quantity of country information relating to Armenia, Uzbekistan and the Russian Federation, both during and after the hearing.

[8] Counsel also provided the Authority with written submissions and gave oral submissions.

THE APPELLANTS’ CASE

Account of Events

[9] The appellant’s account of events in respect of both appeals is set out below. It is assessed later.

[10] The appellant is a divorced woman aged in her 30s, who was born in Armenia (then part of the Union of Soviet Socialist Republics (USSR)). She is the

second of four children, three of whom were born in Armenia and one in Uzbekistan (at that time also part of the USSR). She has spent most of her life in Uzbekistan. Her eldest sister, A, has permanent residence in New Zealand. Her other sister, B, is living in Bahrain, while her brother, C, remains in Uzbekistan.

[11] Her parents were members of the Georgian Orthodox Church, a branch of the Eastern Orthodox Church.

[12] The appellant's father was an ethnic Armenian, born in a region which has been claimed both by Armenia and Azerbaijan. The appellant's parents lived there at the time of A's birth, but her mother and A moved to Armenia prior to the appellant's birth. Her father did not live in Armenia with them, but went to Uzbekistan to seek employment and housing, visiting his family from time to time. When the appellant was four years old, the family moved to Uzbekistan. C was born in Uzbekistan.

[13] The appellant and her siblings attended school in Uzbekistan. Tuition was in the Russian language. Russian was, at that time, the dominant language in Uzbekistan. The appellant learned basic Uzbek at school, but is not able to speak, read or write the language with any fluency. Although her family had spoken Armenian when living in Armenia and her parents continued to speak Armenian to each other, she herself always spoke Russian, even with her parents, and (although she knows a little of the language) she is unable to speak Armenian.

[14] In Uzbekistan, the family regularly attended a Russian Orthodox church, as there was no Georgian Orthodox church in the city. Although the Russian Orthodox church has different icons, different ceremonies and different Sunday services, they were sufficiently similar to those of the Georgian Orthodox church.

[15] The appellant's family returned to live in Armenia for a period of about one year when the appellant was 14 years old. The family's return to Armenia was prompted by tensions between the Uzbek majority and the Armenian minority in Uzbekistan. The appellant's parents were worried for their children's future, believing that conditions were deteriorating in Uzbekistan for people of non-Uzbek ethnic origin. For example, the appellant's father would on occasion not be paid for work he had done for Uzbeks, or they would pay only half the amount due, being told that, as an Armenian, that was all he deserved. He could not take any

steps to enforce proper payment, being told, on occasion, that if he did not like the payment offered, he should go back to Armenia.

[16] The return to Armenia was not successful. First, the appellant and her siblings did not speak Armenian. Therefore, they attended a school where tuition was in Russian. This meant that the family did not settle in the town where they had relatives, as there was no school offering tuition in Russian in that town. They settled in a town about 30 minutes' bus ride away from a Russian school, which was primarily for the children of families living in a nearby Russian military garrison. The appellant's family had little contact with those families – they were the only non-military family at the school. They had little contact with the Armenian families in the area where they lived – the appellant and her siblings could not converse with them. Further, the appellant's father was not able to find work in the area.

[17] The appellant said that she and her family were treated as foreigners in Armenia. They spoke a different language and had a different way of living. This was not liked by the local Armenian people.

[18] The appellant's parents bought land and her father had almost completed construction of a house when it was burnt down. The appellant and her family believed that this was arson, committed by local Armenians who felt animosity towards them because they had not always lived in Armenia. Although convinced the fire was arson, the appellant believes that no complaint was made to the police and the arson was never investigated.

[19] The appellant's family returned to Uzbekistan, to the house where they had lived previously. The appellant's parents had tried to sell the house when they left for Armenia, but had been unsuccessful. The appellant went back to the school she had attended.

[20] After completing her schooling, the appellant enrolled at a teacher training institute in her home city in Uzbekistan. She completed a five-year course and received a diploma as a primary school teacher. To support herself while training, she worked in the Institute's library during the daytime, attending classes at night. The appellant applied, unsuccessfully, for several teaching jobs. Many of the graduates were unable to get teaching jobs. The appellant therefore continued to

work full-time in the library. In addition, she worked as a private tutor.

[21] The appellant married in 1991, just before she completed her teacher training. Her husband, X, was born in Uzbekistan; his father was Armenian and his mother Polish/Ukrainian. The appellant's and X's son, E, was born in Uzbekistan in 1993.

[22] Apart from the difficulties encountered when the family moved back to Armenia, the appellant had a relatively untroubled life up until the break-up of the former USSR in 1990-1991. That situation changed after Uzbekistan declared its independence. From that time, life became difficult in Uzbekistan for non-Uzbeks. The appellant recounted a number of events that occurred after that time; these formed the basis of her claim.

[23] It will be evident from the appellant's account that, in part, these events were the result of the Uzbekistan government's wish to "Uzbekistan-ise" the country – for example the promotion of Uzbek as the dominant language of the country. In part, the events were the response of ethnic Uzbeks to their position in their own, independent country. The appellant's evidence was that she and X were immediately recognisable, from their facial features and colouring, as not being Uzbeks. The appellant described the difference between herself and X and ethnic Uzbeks as like the difference between New Zealanders of European descent and those of Pacific Island descent. The Uzbeks, she said, had different facial features and a more "Asian" appearance. In addition, the appellant was, by her facial features and colouring, identifiable as an Armenian, while E was fairer and looked more like a Russian. The appellant said that this made herself, X and E targets for discrimination in Uzbekistan.

[24] On one occasion, in about 1992, the appellant and X were with another couple. Like the appellant and X, their friends were recognisable as being non-Uzbek. About 10 Uzbek men surrounded them. They beat X and his friend and tore the clothes of the appellant and her friend. The appellant was pushed hard against a tree, causing her to fall down. Neither of these incidents was reported to the police. The appellant, X, and their friends were of the view that a complaint would be ignored by the authorities.

[25] On another occasion, in late 1992 or 1993, the appellant and X were

walking together. Two Uzbek men came up to them and pushed them apart. X was pushed far away, while the other man tried to drag the appellant around the corner. Both the appellant and X managed to free themselves.

[26] One day, when she was eight months pregnant with E, the appellant was on a bus. Most of the other passengers were Uzbeks. When the appellant came to get off the bus, she asked a woman in front of her to let her pass to get to the door. The woman pretended not to hear. When the appellant asked again, the woman turned round and, with some other Uzbeks, tried to push the appellant out of the bus. As a result the appellant fell and injured her knees. She then found that there were criss-cross cuts on the back of her coat. She believes that a man standing behind her had done this. After this she was so scared that she never caught a bus again.

[27] The appellant obtained a passport issued by the USSR in 1991. In 1994 this passport was endorsed "Citizen of the Russian Federation". She had been given the option of applying for a Russian Federation passport and took that option. She was therefore required to hold an Uzbekistan Identity Card, which gave her residence in Uzbekistan as a foreigner.

[28] The appellant and X moved to a city in the Krasnodarsky Kray region of Russia, in 1994. X had been unable to get a job in Uzbekistan, which he attributed to the fact that he was not Uzbek. Many non-Uzbeks left Uzbekistan at this time and the appellant and X had friends in the Krasnodarsky Kray region.

[29] However, X was unable to get a permanent job and further, notwithstanding their holding Russian Federation passports, he and the appellant were not successful in their application for a permit to live in the city. A translation of a letter declining their application was provided to the Authority. No reasons were given. The appellant believes this was because they were Armenian. The appellant returned to Uzbekistan after 10 months. X remained for a further five months, but was still not able to get any more than occasional work, so he returned to Uzbekistan as well.

[30] Following her return, the appellant experienced continuing harassment. She said that every time she walked in the street she could have been beaten. She said that when she and her family walked to church on Sundays they had to

pass a military office which was near to the church. The Uzbek soldiers would always throw stones at them. She and others in her family were injured by stones, the appellant suffering bruises on her back and on the back of her head. Accordingly, they had to find a different route to the church, which would avoid the military office.

[31] On another occasion after her return, the appellant went with her sister to a bazaar. The vendors pushed her and her sister into a water channel in the street. The vendors said “Are you Armenians still here – why are you not leaving us?” The appellant thereafter avoided markets and instead shopped in small shops, as she considered markets and large bazaars too dangerous.

[32] In the winter of 1996, the appellant was crossing a road which was icy. She slipped on the ice and fell. The Uzbek driver of a car on the road chased her in his car while she was crawling on the road and trying to get up. The appellant can remember him smiling while he was carrying on this deliberate bullying.

[33] Then in 1997, the appellant was at the side of the road when a young Uzbek on a motorcycle grabbed at the strap of a handbag she was wearing on her shoulder and pulled her some distance along the road. The appellant has heard of this happening to other young women of non-Uzbek ethnic origin.

[34] The appellant had been on maternity leave for two and a half years after E’s birth, but returned to work in the institute library, where she remained for another two years, until mid-1997. At that time she was forced to resign because all staff at the institute were required to write, speak and read Uzbek. The appellant had only basic Uzbek. The appellant considers that even if she had had the required knowledge of the Uzbek language she would still have lost her job, because she was not Uzbek. Apart from the appellant and one other person, all non-Uzbeks had left the institute by the time she resigned.

[35] The appellant then found work working in a residential hotel, used (at that time) mostly by foreigners employed by an English company (“the company”). She was assisted in obtaining this job by her sister A and A’s partner, Y, who were working for the company at that time. Her duties at the hotel included cooking, cleaning and general management.

[36] In August 1998, while the appellant was working at the hotel, she was attacked by one of the hotel guests. The guest was an Uzbek man who held a supervisory position in the company. From the outset, this man expressed dislike and hatred of the appellant. The appellant could recognise this from the manner in which he looked at her and spoke to her.

[37] The attack occurred late one evening when the appellant was in the hotel kitchen cleaning up while waiting for a driver to come and take her to her home. The man entered the kitchen, grabbed the front of her dress, grabbed her forearms and shouted loudly at her saying things like "What are you doing here? This is not your country, why don't you leave!" and calling her names such as "dirty Armenian prostitute!" The man kept on shaking her and pushed her against the wall. She managed to push him away and ran from the kitchen to the dining room. The man grabbed a kitchen knife and started to chase her around the dining room. He then grabbed a large bunch of keys from a table and threw it at the appellant. This caused cuts and bruising to the appellant's forehead.

[38] A short time later another woman who worked at the hotel came into the room and the driver arrived. Together they managed to hold the man, enabling the appellant to escape to the driver's car.

[39] The appellant feared for her life in this incident and believes that the only reason she survived was the timely appearance of the other woman and the arrival of her driver.

[40] The next day the appellant obtained medical attention for her injuries and filed a complaint with the company's security department. Nothing happened, although the man was no longer staying at the hotel. The appellant then went to the state police, but was told the matter was beyond their jurisdiction. The appellant believes this is a standard reply to dispose of unwanted complaints from people of different ethnic origin.

[41] By about 1999, there were far fewer guests staying at the hotel and those guests who did stay at the hotel were no longer foreigners but local Uzbeks who had taken over the jobs formerly held by foreigners. In about September 2000, the appellant was told to go home from the hotel, as there were no guests staying there. A few days later, she was told that she no longer had a job there and

someone had replaced her.

[42] The appellant and X separated in 1999 and have divorced since the appellant has been in New Zealand. It was noted in the appellant's Confirmation of Claim that he was living in Russia. The appellant's evidence at the hearing was that he had returned to live in Uzbekistan.

[43] The appellant was unable to find other work during the period from September 2000 until October 2001, when she left Uzbekistan to travel to New Zealand. She applied for many jobs but the Uzbeks to which she had to apply would not employ her.

[44] In 2000, the appellant was attacked when out with a female friend. A police car was stopped on the side of the road. The officers in the car tried to pull the appellant and her friend into the car. They struggled free and managed to run away and hide between some houses.

[45] That year the appellant went to visit friends in the Urals in the Russian Federation. She made enquiries as to the possibility of obtaining a residential permit to live there. She was asked if she had a place to live. The appellant says that she could not get a place to live until she had a residence permit and the authorities would not issue a residence permit until she had arranged a place to live.

Everyday experiences

[46] The appellant was asked to describe her experiences on a typical day for her, at the time of her worst experiences in Uzbekistan as a non-Uzbek. She first described 1 September, Independence Day. She would stay at home all day inside the house, having ensured that she had sufficient provisions and did not need to go out, because it always happened that there were riots and people who were not Uzbek were killed or beaten. This was because nationalist groups ran amok, unrestrained.

[47] On an "ordinary" day, she would get up, prepare her son to go to school, take him to school (about 10 minutes' walk), leave him there and then return home. She could visit her mother, because she lived close by. In the afternoon

she would ensure that she was outside her son's school at the exact time that he came out of the school and bring him home. Her aim was to avoid "accidents" and to avoid Uzbeks. The route to and from the school presented no problems, because it did not involve an open street.

[48] The appellant said that all the time she lived in Uzbekistan, she was afraid of being harassed by the local population – they would harass her even if she were just walking along. The local people regarded this as being their right, because Uzbekistan was their land. She said that whenever she went out in the city she would be subjected to insults and verbal abuse. She also said that every time she walked on the street she could have been beaten. As noted above, she gave several examples of physical actions or assaults.

Experiences with E

[49] When E was born, the appellant feared that they would not obtain adequate medical treatment. The birth was difficult, but the treatment given to non-Uzbeks was not the same as that given to Uzbeks. The appellant spoke of injections not being given when required and sugar/glucose mixes being substituted for proper medication. She had heard of many people dying in hospital just because they were not Uzbek.

[50] Because of what she had heard the appellant believed, from the time of E's birth, that she would not be able to obtain proper medical treatment for him because he was not Uzbek. She would not be able to take him to any public hospital and there were no private facilities available. Therefore, she sought advice from her mother in law (who was a nurse) and was sent basic medication such as Paracetamol by her sister in New Zealand.

[51] E was safe at the kindergarten he attended and at the public school he attended for a year. There were 20-25 children in his class, comprising Russians, Tartars, Koreans and other non-Uzbek children. His tuition was totally in Russian. He does not speak any Uzbek.

[52] However, E was not safe outside the kindergarten, school or his home. In 1999 (when he was six), two teenage Uzbeks put him on a swing and pushed him so hard that he fell off and hit his head. Other Russian or non-Uzbek children in

the area were treated similarly by the Uzbek teenagers.

[53] On one occasion the appellant was a little late in collecting E from school and he had started to walk home alone. Three boys aged about 10 or 11 pushed him between two garages and started to beat him up, calling him a Russian pig. By the time the appellant got there, the boys were beating E and he was crying and trying to protect himself by covering his face with his hands. The boys ran away as the appellant approached.

[54] On another occasion, when he was seven, E was outside playing but when the appellant checked, he was not where he usually played. She found him in the basement of her apartment, beaten up, covered with saliva and crying. This had been done by boys from another street.

[55] Generally, whenever the appellant was out with E, she would hear derogatory comments as to their ethnic origin directed at them. These comments were so frequent that she regarded this as routine. As noted above, the appellant pointed out that she and E were different in appearance from Uzbeks and were immediately recognisable as not being Uzbeks. E, in particular, was fairer than ethnic Uzbeks.

Religious discrimination

[56] The appellant also suffered as a result of her attendance at the Russian Orthodox church. The stone-throwing described earlier was not restricted to herself and her family. Members of the church could not attend services freely because of violence by Uzbeks; services were disrupted and candlesticks were removed from their bases. An area of land owned by the church was appropriated by the state and commercial premises built on it. These are now owned by a private individual. The appellant said that every single Easter service over a period of 10 years was disrupted when groups of young Uzbeks broke into the church and committed violence. The church priest also had his telephone cut off.

Events following the appellants' departure from Uzbekistan

[57] After the appellant left Uzbekistan, her younger sister, B, stayed in the appellant's apartment. B has told the appellant that on five occasions someone

knocked on the door and asked who owned the apartment, where that person had gone and when the owner would be returning. The visitors were men, dressed in suits, not uniforms. They did not say who they were, but B was sure that they were representatives of the “secret police”. She did not open the door. Each time, B told the people that she did not know where the owner was and the people then went away. The first visit was in about August 2002 and the last reported by B was at the end of 2003, after which time B herself left Uzbekistan. No enquiries have been made of the appellant’s mother, or anyone else, regarding the appellant.

A’s evidence

[58] The appellant’s sister, A, gave evidence. A described a number of incidents that occurred from 1990 onwards, in which she, other members of the family and other people known to her, were attacked for no reason other than that they were Armenian. One incident she described occurred during the year prior to the appeal hearing.

[59] A told of experiences attending church that were similar to those described by the appellant. She said that every year after she started going to the church, the Easter service was disrupted by Uzbeks and the police never intervened. Further, she said that the police stood by, smiling, when Uzbeks threw stones at churchgoers entering or leaving the church.

[60] She gave evidence of similar problems with respect to her employment to those described by the appellant, including having been forced to resign a job so that an Uzbek woman could be employed.

[61] A also gave evidence as to enquiries having been made at her house, after she had left for New Zealand. The police, she said, told A’s mother that the house could not be sold unless A returned to Uzbekistan. Alternatively, A’s mother “would have to come down to the police station”. A’s mother was too frightened to do that, fearing that she might be detained. A believes that the appellant’s position is worse than her own would be, as A did not claim refugee status in New Zealand.

[62] A said that the mother of a friend who had been granted asylum in the United States had received a visit and telephone calls from the police. The police

then asked her to go to a particular address, saying that they had “more questions to ask”. The friend’s mother fled the country to relatives in another country because “she knew the police wanted to get her, detain her, beat her, charge her with a crime, because her daughter had got refugee status in America”.

Y’s evidence

[63] A’s New Zealand partner, Y, also gave evidence. He had worked in the same city in Uzbekistan as that where the appellant and A lived, following the country’s independence. After having met A, he became aware of the fears held by A and other Russian-speaking Armenians, that they could be persecuted and that their safety was at risk. He knew that it was never safe for A to walk around the city on her own. He was aware of assaults on Armenians that were not dealt with by the police. It was his experience that the Uzbek authorities maliciously targeted ethnic minorities. On one occasion he was travelling with A and crossed the border into Uzbekistan. The Uzbek border guard spent at least 10 minutes abusing A. Y was of the view that this was because she was Armenian and from an ethnic minority.

[64] He described “cultural bullying” of “minority ethnic groups” (such as Armenians) and said that this “would flow over into actual violence, on occasions broken windows, etc”. In his written statement, he said that that the matters covered in the evidence of the appellant and A had, in most instances, been told to him before. It is noted that in regard to the appellant’s and A’s evidence about problems in relation to attendance at church, Y’s oral evidence was somewhat different. He gave evidence of having gone to the church attended by A and her family about a dozen times and that there had been no difficulties with the Uzbek population on those occasions. He had heard only of people calling out, which would have been uncomfortable for the churchgoers, but was not aware of any physical assaults. He had heard of no attacks on the Easter services while he was in Uzbekistan.

[65] Y described the day to day existence of the appellant’s family as one of snide remarks addressed at them, being careful (especially women), choosing what taxi to go in and trying to manage their activities so that they went out only during the day, not at night. He said that foreign ethnic people in Uzbekistan (such as the appellant’s family) tended to live behind barred windows, with steel doors

on their houses. Whereas the Uzbeks lived in open compounds, the foreigners had a fortress mentality because they felt more vulnerable.

[66] Y believed that the Uzbek authorities would know that the appellant had applied for refugee status in New Zealand. He considered that the police and security forces were very well resourced. A refugee claimant was a person “not under control” and that would put the appellant in danger if she were required to return to Uzbekistan. Further, she would not be able to get employment, because she is not Uzbek. Non-Uzbeks, such as Russians or Armenians, are seen by the Uzbeks as “part of the problem, part of the reason for [Uzbekistan’s] economic decline”. She would be powerless and without any protection.

The appellant’s claim

[67] The appellant fears that if she is required to return to Uzbekistan she would not be able to return to her former home. As soon as she returned, the police would start making enquiries, and she might well end up in prison. These enquiries would be instigated simply because of the fact that she had left the country, and remained away for a long period of time. This is because those who leave Uzbekistan (even non-Uzbeks) are regarded as betraying the country, because of the things they say about it. In prison, she could be subjected to beatings, rape or being killed.

[68] The appellant does not know of any non-Uzbeks who have left Uzbekistan and then returned, but assumes they would be treated in the manner she described. The appellant also said that, as a non-Uzbek, she would not be wanted in Uzbekistan.

[69] The appellant also fears that if she and E are required to return to Uzbekistan, they both face persecution on the grounds of their non-Uzbek ethnicity.

[70] Although the appellant’s claim centred on Uzbekistan, the Authority raised with her whether she could go and live in the Russian Federation or in Armenia. She claimed that she has no entitlement to live in the Russian Federation and that she could not live in Armenia, as she does not speak, read or write Armenian, would not be able to work and would not be able to find anywhere to live.

THE ISSUES

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

"... owing to a 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."

[72] In terms of *Refugee Appeal No. 70074/96* (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 APPELLANTS' CASE

Credibility

[73] The first question for the Authority to address, prior to considering the principal issues, is whether the appellant's evidence and that of her witnesses is credible.

[74] The Authority heard evidence from the appellant over two days. The Authority put to the appellant that most of the instances of discrimination as to which she gave evidence had not been mentioned previously, either in her Confirmation of Claim form, in her interview with the RSB or in the written statement of her evidence presented at the beginning of the hearing. In fact, the only instance of discrimination directed against her (rather than to any of her siblings) mentioned at her RSB interview and in the written statement was the incident that occurred at the hotel in 1998, described earlier.

[75] The appellant's response was that she had not been asked questions in

such detail prior to this hearing before the Authority. She had had the impression that the RSB interviewer was short of time. She thought it sufficient that she had given the worst example of her treatment in Uzbekistan. Further, the written statement of evidence was prepared on the basis of questions asked of her by her counsel. With the passage of time and in the course of discussions she had with her counsel prior to the hearing, she had remembered more events.

[76] This response was of concern to the Authority. If matters in Uzbekistan were as bad as the appellant contended, then it should have been apparent to her that she would need to outline them in her evidence at the RSB interview. If she felt for some reason that she had not had sufficient time in the course of the interview, then we note that she had the opportunity to do so when she was asked by the RSB interviewer "Are there any other instances or occasions which we have not covered here today which affect your claim?" The appellant's response was to give further evidence about her and X's attempt to live in the Krasnodarsky Kray region and then to speak of her parents' attempt to move back to Armenia. She had a further opportunity, when preparing her statement of evidence, to ensure that all relevant matters were covered.

[77] Over all, while the Authority accepts that the hotel incident occurred as described by the appellant, that her employment history was as described and that from time to time the appellant was subject to some verbal abuse, it is concerned that the appellant and A may have somewhat embellished their accounts of their experiences in Uzbekistan. In particular, the Authority does not accept their assertions that every time they attended church they had stones thrown at them, nor that every Easter service was disrupted, nor that on every occasion when they went out they were subjected to verbal or physical attacks.

[78] The appellant's evidence of soldiers at a base close to the Russian Orthodox church throwing stones at her and others on the way to church is not supported by A, who did not know of soldiers doing this (despite attending services at the same church). A and the appellant also confirmed that the Uzbekistan army is drawn from every ethnic group in Uzbekistan, including Russians and Armenians. This makes such behaviour by soldiers less likely. Further, the appellant's evidence is not consistent with country information as to religious freedom in Uzbekistan, referred to below.

[79] The Authority also has concerns regarding the appellant's account of the visits to her apartment by men believed to be members of the "secret police". If these people were indeed members of the "secret police", then it would seem implausible that they would simply walk away on five separate occasions over the course of about one year and not press the occupant of the apartment for further information or insist on entering so as to search the apartment. Further, given the significance of evidence as to authorities making enquiries after the departure of a refugee claimant, the Authority would have expected the "secret police" visits to have been mentioned both in her Confirmation of Claim form and in the course of her RSB interview. These two matters lead the Authority to conclude that the appellant was not targeted by the "secret police".

[80] The Authority accepts that the appellants were subjected to discrimination and that they were also subjected to some verbal and physical abuse because they were not Uzbek. The Authority finds that the appellant's claim that she had stones thrown at her every time she attended church, or that she was subjected to verbal abuse or physical attacks on every occasion when they went out is not credible.

Preliminary issue : Nationality/citizenship

[81] The Authority must first consider the countries against which the principal issues might be assessed.

[82] In this appeal, the appellant's case was primarily and initially that she and E had suffered persecution in the past in Uzbekistan and that there was a real chance of her being persecuted if she were to be required to return there. However, as the hearing progressed the possibility of the appellant going to Russia or Armenia was canvassed. As a result, the Authority has considered the appellant's and E's positions vis-à-vis each of these three countries.

[83] The Authority observes at this point, that it is evident from the passports and identity cards examined at the hearing, that in the former USSR (and now in the Russian Federation and Uzbekistan), the term "nationality" is used to denote either ethnicity or citizenship. As "nationality" has two possible meanings (ie ethnicity or citizenship), the Authority will, as far as possible, use the term "citizenship", in preference to "nationality", in this decision.

[84] Each of the references cited below were referred by the Authority to the appellant and her counsel.

Armenia

[85] *The Law of the Citizenship of the Republic of Armenia* (sourced via http://www.arminco.com/hayknet/laws/or_qax4.htm (22 March 2004)): Article 9 sets out the bases of acquiring citizenship of Armenia. One of these is birth. As the appellant was born in Armenia, she has Armenian citizenship by birth. Article 1 provides (*inter alia*) that “A citizen of the Republic of Armenia may not be a citizen of another country at the same time.” If the appellant is a citizen of another country, she will, effectively, have renounced her Armenian citizenship. However, she could apply for resumption of her Armenian citizenship under Article 14.

[86] With respect to E, Article 11 deals with the citizenship of children born to parents, one or both of which are Armenian citizens. Without making any finding on the point, the Authority observes that it is possible that E could obtain Armenian citizenship.

Uzbekistan

[87] An information document dealing with citizenship in Uzbekistan was sourced from *Citizenship Laws of the World*, United States Office of Personnel Management Investigations Service, March 2001. This states that citizenship of Uzbekistan may be acquired by birth (this is not automatic), by descent or by naturalisation if former citizenship is renounced, the person has lived in Uzbekistan for at least five years and has gainful employment.

[88] It appears that the appellant and E may be entitled to apply for citizenship of Uzbekistan.

Russian Federation

[89] The Russian Federal Law No. 62-FZ of 31 May 2002 on *Citizenship of the Russian Federation* provides, at Article 5, that persons possessing the citizenship

of the Russian Federation on the day of the law's entry into force shall be citizens of the Russian Federation. Article 10 provides:

"The documents certifying the citizenship of the Russian Federation shall be the Passport of a Citizen of the Russian Federation or another basic document indicating the person's citizenship."

[90] Article 4.3 is also relevant:

"A Russian Federation citizen's residence outside the Russian Federation shall not terminate his/her citizenship of the Russian Federation."

[91] With respect to E, Article 12.1.a provides:

"A child shall acquire the citizenship of the Russian Federation at birth if on the date of the child's birth ... his both parents or single parent possess the citizenship of the Russian Federation (irrespective of the place of the child's birth);..."

Discussion

[92] The appellant is the holder of a Russian Federation passport, issued in September 2000, replacing a passport issued by the USSR in 1991. E is noted as the appellant's child in this passport and is also the holder of a Russian Federation passport, issued in September 1995. The appellant is also the holder of an Uzbekistan Identity Document issued in May 2000.

[93] The 1991 passport records (in Russian) the appellant's place of birth in Armenia and her "nationality" as Armenian (page 57 of the NZIS file). There is also a stamp in the passport (in both Russian and English) which records "Citizen of the Russian Federation (Russia)" (page 58 of the file) inserted by the Russian Consulate in Tashkent, Uzbekistan, in 1994.

[94] Copies of the appellant's Russian Federation passport issued in September 2000 appear at pages 51-55 and 1-4 of the file. The Authority observes that neither copy is complete, however certain pages of the passport appear in both copies. On the page recording the appellant's name, date of birth and photograph (pages 51 and 4 of the file), her "nationality" (in both Russian and English) is recorded as "Russian Federation". The appellant's New Zealand Visitor's Visa (page 52 of the file) records her citizenship as "RU". E is noted as the appellant's child (page 3). The Visitor's Visa for E (pages 53 and 3 of the file) also records his citizenship as "RU".

[95] The writing in Russian on the inside cover of this passport (page 54) was translated at the hearing. Paragraph 1 reads as follows:

“During the period of this passport’s validity, this passport certifies that this person is a citizen of the Russian Federation.

Issued for the purpose of travel abroad and for the re-entry into the Russian Federation.”

[96] We note again that pursuant to Article 10 of Federal Law No. 62-FZ of 31 May 2002, on Citizenship of the Russian Federation, the passport held by the appellant and E certifies their citizenship of the Russian Federation.

[97] The Uzbekistan Identity Document records the appellant’s “nationality” as Armenian and her “citizenship” as Russian (page 60 of the file). These words are printed in Uzbek, Russian and English.

[98] During the first two days of the appeal hearing, the appellant claimed that she was not, in fact, a Russian citizen; that the Russian passport was no more than a “travelling” document, which did not give her citizenship.

[99] The UNHCR Handbook states at paragraph 93:

“Nationality may be proved by the possession of a national passport. Possession of such a passport creates a *prima facie* presumption that the holder is a national of the country of issue, unless the passport itself states otherwise. A person holding a passport showing him to be a national of the issuing country, but who claims that he does not possess that country’s nationality, must substantiate his claim, for example, by showing that the passport is a so-called “passport of convenience” ... However, a mere assertion by the holder that the passport was issued to him as a matter of convenience for travel purposes only is not sufficient to rebut the presumption of nationality.”

[100] The appellant’s assertions did not satisfy the Authority that she and E are not citizens of the Russian Federation. Counsel, after consideration, conceded that this was the case.

Conclusion as to nationality/citizenship

[101] The Authority concludes that:

(a) Both the appellant and E are citizens of the Russian Federation.

- (b) By birth, the appellant is entitled to apply for and take up Armenian citizenship (provided she renounces her Russian citizenship). E may be entitled to apply for Armenian citizenship, on the basis of his mother's birth in Armenia.
- (c) The appellant and E may be entitled to apply for citizenship of Uzbekistan.

IS THERE A REAL CHANCE OF THE APPELLANT BEING PERSECUTED IF RETURNED TO THE COUNTRY OF CITIZENSHIP/NATIONALITY?

[102] Some preliminary observations must be made:

- (a) The Refugee Convention provides only surrogate protection, which occurs when the protection is unavailable in the country of citizenship.
- (b) There is a presumption of state protection. This presumption can be rebutted.

See J C Hathaway *The Law of Refugee Status* (Butterworths, Toronto, 1991) at 2.5.1 and *Refugee Appeal Nos 72558/01 & 72559/01* (19 November 2002) at [87] – [93].

[103] In the appellant's and E's cases, the Russian Federation is the country of citizenship; the position as to Russia therefore has to be considered first.

[104] In relation to the Russian Federation, the appellant raised two arguments:

- (a) She and E do not have "effective" citizenship of the Russian Federation, in that she has no entitlement to live there. She said that her previous experiences in the Krasnodarsky Kray and the Urals demonstrated this.
- (b) As Armenians, she and E would face persecution on the grounds of their ethnicity if they were required to live in the Russian Federation.

[105] These are considered in turn.

"Effective" citizenship

[106] The Authority has found that the appellant and E are Russian citizens. Article 27 of the Constitution of the Russian Federation (as approved by the President of Russia Boris Yeltsin and submitted to the National Referendum in December 1993) provides:

- “1. Everyone who is lawfully staying on the territory of the Russian Federation shall have the right to freedom of movement and to choose the place to stay and reside.
2. Everyone shall be free to leave the boundaries of the Russian Federation. The citizens of the Russian Federation shall have the right to freely return into the Russian Federation.”

[107] The Authority finds, therefore, that the appellant and E have, under the Russian Constitution, the “right to freely return into the Russian Federation” and “the right to freedom of movement and to choose the place to stay and reside”.

[108] Counsel then submitted that the refugee determination required consideration of whether the claimant’s country of citizenship could provide effective, rather than formal, protection. It was further submitted by counsel that the right of entry provided under the Constitution did not, in fact, give her the right to live anywhere in the Russian Federation. The registration requirement and the refusal of municipal authorities to allow registration effectively denied her the exercise of the constitutional right. She was, therefore, it was argued, unable to exercise her right to live in the Russian Federation.

[109] In *Canada (Attorney General) v Ward* [1993] 2 SCR 689 at 724, the Supreme Court of Canada held that (in the absence of a concession by state authorities of their inability to protect a claimant) “clear and convincing confirmation of a state’s inability to protect must be provided” by a person claiming refugee status; see also *Refugee Appeal No 70074/96* [1998] NZAR 252, at 257.

[110] The appellant’s evidence was that she and her husband, X, had experienced the registration requirement when they attempted to move from Uzbekistan to the Krasnodarsky Kray region of the Russian Federation. Although they applied many times, they could not obtain registration. Without registration they could not secure proper accommodation or fixed work in the area. Further, when the appellant enquired as to registration when visiting friends in a town in the Urals, she was faced with the situation where she could not obtain registration without first arranging a place of residence.

[111] The appellant has also written to the Russian Embassy in Wellington, attaching a copy of her passport. A copy of her letter was provided to the Authority. She wrote as follows:

“Further to my visit on 7th April 2004.

My name is [appellant’s name] and together with my 11 year old son [name of appellant’s son], I have applied for refugee status in New Zealand.

I was born in Yerevan (I am Armenian) in 1970. I emigrated with my family to Uzbekistan in 1974. I came to visit my sister in New Zealand in 2001. I have only a Russian Travel Passport, a copy of which is attached.

My family is in New Zealand and Uzbekistan and I have no connections in Russia – no family and no property.

If I cannot stay in New Zealand, would I be granted a Residency Permit (Russian word “propiska”) to live in Russia?

I look forward to your response.”

[112] It will be recalled that the Authority has found that the appellant and E are citizens of the Russian Federation and that this was accepted by counsel at the hearing.

[113] Counsel advised the Authority that the appellant has received no response from the Embassy.

[114] The failure of various municipal or regional authorities to allow citizens the free exercise of their constitutional right of residence, even in the face of court decisions declaring the practice (of making registration difficult or sometimes impossible, and in conflict with the constitution) to be illegal, has been described in country information.

[115] The paper by Svetlana Gannushkina *The Institution of the Propiska (Residence Registration) and its Evolution*, August 25, 2003, provides a useful background to this issue. Ms Gannushkina notes that in the 1930s, the Soviet Union had established a “*propiska*” (roughly translated as “registration”) regime, the effect of which she describes as follows:

“A Soviet citizen’s whole life was tied to his or her propiska. It determined the medical institution into which he or she should be born, and where he or she went to daycare, kindergarten, and school. It was a necessary pre-condition to being accepted for a job. First and foremost, it gave him or her the right to legally reside in the apartment house where he or she was registered..... In some cities and population centers the number of propiskas was limited, and highly-placed authorities had to give permission for them to be granted.”

[116] Ms Gannushkina then sets out “Point 1” of the federal law “On freedom of movement, temporary residence and permanent residence for citizens”, passed in 1993, as follows:

“As specified by the Constitution of the Russian Federation and in international laws on human rights, every citizen of the Russian Federation has the right to freely move, choose where he wished to be, and choose where he wishes to live within the borders of the Russian Federation. Freedom of movement, temporary residence and permanent residence can be restricted only by law.”

[117] She then sets out “Point 3” of the federal law:

“Russian citizens within the Russian Federation must register where they are staying and where they are living.”

[118] Ms Gannushkina states that:

“Under the Constitution and laws of the Russian Federation and the civil administrations, rights can not be restricted or granted [based] on registration or the absence thereof.

Thanks to the law on residence registration, as indicated by a stamp in the passport, the propiska was no longer a means for limiting or establishing someone’s rights.”

[119] However, after the introduction of the federal law in 1993, some local administrations, such as those in Moscow, Krasnodar, Stavropol and Voronezh regions, introduced their own laws that limited the registrations (*propiskas*) issued in their areas of jurisdiction.

“The local administrations with unconstitutional registration requirements were challenged, and the Russian Constitutional Court has repeatedly declared such unconstitutional local laws to be illegal. However the local administrations continued to pass new laws, and to enforce them, in place of the laws that were overturned.”

[120] The US Department of State *Country Reports on Human Rights Practices – Russia*, February 25, 2004, at section 2.d “Freedom of Movement within the Country, Foreign Travel, Emigration, and Repatriation” states:

“The Constitution provides citizens with the right to choose their place of residence freely; however, some regional governments continued to restrict this right through residential registration rules that closely resembled the Soviet-era “propiska” (pass) regulations.” (underlining by the Authority)

[121] A report from ACCORD/UNHCR 2002, 8th *European Country of Origin*

Information Seminar, Vienna, 28-29 June 2002 – final report: Russia notes, at page 207, that migrants are not allowed to enter the Krasnodar Kray region and comments on discriminatory legislation against “everyone with a family name of non-Russian origin, including Armenians, Meshketian Turks, Kurds and Georgians”. At page 209 of the report, the abolishing of the “*propiska*” system with the adoption of the 1993 Constitution is noted, but it is also noted that authorities are still enforcing the old registration system. Moscow is noted as an area where it is difficult to obtain residence registration, although it is said to be available on payment through a “commercial firm”.

[122] The UK Home Office Country Information Report *Russian Federation*, April 2003, at paragraphs 6.30 to 6.33 comments on “Freedom of Movement” and noted (at 6.32):

“The UNHCR and refugee rights non-governmental organisations have cited Stavropol, Krasnodar, Moscow and St Petersburg as being the least open to migrants.”

[123] The Authority observes that the appellant and X had tried to settle and obtain registration in the Krasnodarsky Kray region, which is consistently reported in the country information as being one of the most difficult places in Russia to obtain registration and one of the areas least open to people who are not ethnic Russians.

[124] The Authority accepts, therefore, that the appellant would face difficulties in obtaining a residence permit in one of the places referred to above. However, the Russian Federation is a very large country and the difficulties that may be encountered in some individual places do not lead inevitably to the conclusion that they will be encountered everywhere. No evidence was put before the Authority to the effect that the registration difficulties referred to above extend to all, or even most, areas in the Federation. Accordingly, the Authority cannot conclude that the appellant and her son would not be able to avail themselves of the protection of the Russian Federation, as the country of their citizenship.

Persecution

[125] Counsel, in her submissions on behalf the appellants, also argued that the appellants, as migrants from former USSR countries in central Asia, would face

persecution in the Russian Federation and that such migrants are subjected to persecution and massacres.

[126] No evidence was given at the hearing in support of this argument. The Authority has reviewed the country information submitted in support of this submission. A Human Rights Watch paper *The Rise of Xenophobia in Russia* (<http://www.hrw.org/reports98/russia/srusstest-03.htm>) notes:

“Ethnic Caucasians have replaced Jews, who now enjoy a more secure existence in Russia than in the past, as the main target for manipulation of public xenophobia. A 1994 survey revealed that between 30 and 34 percent of ethnic Russians are “distrustful” of Azerbaijanis, Armenians, and Chechens...”

[127] A number of articles referred to clashes between ethnic groups and racial attacks by skinheads; see, for example, a paper published by the Commission of Security and Cooperation in Europe, October 15 2002, *Briefing: Intolerance in Contemporary Russia*; “Targets of Rage: Armenians beaten as gangs on the rampage”, *ArmeniaWeek*, July 12, 2002; “Xenoracism reaches Russia”, *Independent Race and Refugee News Network*, 17 March 2004; “Russian Federation: Cases of discrimination on grounds of race”, Amnesty International EUR46/023/2003, 19 March 2003. The last-mentioned report lists instances of discrimination against African students, Chechens, Tajiks, Meshketians and an Iranian. The ArmeniaWeek article reports attacks on Armenians. The Authority notes that the discrimination and attacks are reported to have occurred in and around Moscow and in the Krasnodarsky Kray area – both areas previously noted as enforcing local laws against registration.

[128] There are clearly instances of discrimination and racially-motivated attacks within some parts of the Russian Federation against non-ethnic Russians. However, the information submitted simply does not indicate that the appellant and E would face such serious harm in the Russian Federation that they can be said to face a real chance of persecution there. Furthermore, the information suggests that the problems that do exist appear to be in certain localities. Thus the appellant and E could minimise their potential difficulties in this regard by seeking to avoid those places (such as around Moscow and the Krasnodarsky Kray region). Importantly too, the information submitted does not satisfy the Authority that state protection is unavailable.

[129] The Authority also notes that the appellant’s first language is Russian and

she was educated and obtained a tertiary-level qualification under the former Soviet regime. She has qualified as a teacher in the Russian language. Further, she has attended the Russian Orthodox church from a very young age. The Russian Orthodox church is a favoured religious denomination in the Russian Federation. The appellant is thus in a somewhat better position than are many other persons from the former states of the USSR, who do not speak Russian as their first language and who adhere to other religions or to less well-accepted Christian denominations.

[130] The country information shows that while Russians are the largest ethnic group in the Russian Federation, there are numerous minorities. For example, the ACCORD/UNHCR 2002, *8th European Country of Origin Information Seminar, Vienna, 28-29 June 2002 – final report: Armenia* records that the Armenian community living in the Russian Federation has had a population of more than 2 million since the early 1990s.

[131] Accordingly, the Authority cannot conclude that there is a real chance of the appellants being persecuted, if they were to go and live in their country of citizenship, the Russian Federation.

Uzbekistan

[132] Given the above finding, it is not necessary to consider the position as to Uzbekistan, notwithstanding that Uzbekistan was the main focus of the appellant's case. Uzbekistan would only become relevant (pursuant to Article 1A(2) of the Convention) if it were the case that the appellants had no country of citizenship. That is not the case here. However, for completeness and because of the focus at the hearing, the Authority has considered the same issues in relation to Uzbekistan.

Citizenship

[133] As noted earlier, the appellant is not an Uzbek citizen. She lived in Uzbekistan under a residence permit that noted her citizenship as Russian. As noted above, the focus of the appellants' case was their fear of persecution if they were required to return to Uzbekistan – implying that she and E have the right to re-enter Uzbekistan and to reside there. The Authority has considered whether

they do in fact have that right. The answer was provided in a “Country Information report” from the Australian Department of Foreign Affairs and Trade *Residence Visas in Uzbekistan*, 18 January 2001, responding (*inter alia*) to a query as to whether a holder of a Russian passport, married to an Uzbekistan citizen, had the right of residence in Uzbekistan. The following response was given:

“According to information provided by the consular section of the Uzbekistan Embassy in Moscow, the holders of Russian passports (citizens of the Russian Federation) do not need a visa to travel to Uzbekistan. They may stay in Uzbekistan for an unlimited period without applying for a visa. In the event that a Russian wished to apply for Uzbekistani citizenship, he or she would first have to renounce all other existing citizenships.”

Persecution

[134] We turn to consider whether the events described by the appellant amount to persecution, as was claimed.

[135] As the Authority stated in *Refugee Appeal No 71427/99* [2000] NZAR 545, at [54]:

“... it is important to bear in mind that discrimination *per se* is not enough to establish a case for refugee status. A distinction must be drawn between a breach of human rights and persecution. Not every breach of a refugee claimant’s human rights constitutes persecution.”

[136] The Authority’s understanding of the meaning of persecution has been set out in that decision, and in *Refugee Appeal Nos 72558/01 and 72559/01* (19 November 2002). It can be shortly stated as serious harm (the sustained or systemic violation of basic human rights) plus the failure of state protection.

[137] Country information indicates that since it became independent, there has been a broad nationalist agenda in Uzbekistan. For example, a report prepared by the Research Directorate of the Immigration and Refugee Board of the Canadian government (updated on 2 June 2000), quotes a Eurasianet Culture article from 2002:

“... promotion of the Uzbek language and the development of national culture [which aims] to remove Russian influence from Uzbeks’ lives and thereby redistribute political and cultural power away from Russians to Uzbeks. The second law on state languages, adopted in December 1995, promotes Uzbek as compulsory in the state administration, justice system and the mass media. Russian is placed on a par with other national minority languages.”

[138] The report then goes on to comment:

“This zeal hints at a broader nationalist agenda. The language law makes Uzbekistan one of the most aggressive countries in the region in terms of stripping Russian language from the public discourse. ... This has negatively affected relations with Russians in the country who had always lived separate lives from Uzbeks. ... The promotion of the new language law has therefore solidified an Uzbek-Russian divide that already existed in the Soviet era.” (<http://www.irb.gc.ca>, June-July 2002)

[139] The “Executive Summary and Recommendations” of a report by the International Crisis Group “*The Failure of Reform in Uzbekistan: Ways Forward for the International Community*” (11 March 2004) includes the following statement:

“Uzbekistan occupies a key strategic position in Central Asia and has a strong security relationship with the U.S. but its political system is highly repressive and its economy is barely reformed since Soviet times. Economic decline and political sclerosis threaten internal stability and undermine regional security. The international community has long urged political and economic reform, but with little success.”

[140] The US Department of State *Country Report on Human Rights Practices – 2003: Uzbekistan* (February 25, 2004) includes the following in its introductory comments:

“Uzbekistan is an authoritarian state with limited civil rights. The Constitution provides for a presidential system with separation of powers among the executive, legislative, and judicial branches; however, in practice, President Islam Karimov and the centralised executive branch that serves him dominate political life and exercise nearly complete control over the other branches.

...

The Government’s human rights remained very poor, and it continued to commit numerous serious abuses. Citizens could not exercise the right to change their government peacefully. Security force mistreatment likely resulted in the deaths of at least four citizens in custody. Police and NSS forces tortured, beat, and harassed persons. Prison conditions remained poor. Serious abuses occurred in pretrial detention. Those responsible for documented abuses rarely were punished. Police and NSS arrested persons the Government suspected of extremist sympathies, although fewer than in previous years. Police routinely and arbitrarily detained citizens to extort bribes. Several human rights activists and journalists were arrested in circumstances that suggested selective law enforcement. The number of persons in prison for political or religious reasons, primarily individuals the Government believed were associated with extremist Islamic political groups but also members of the secular opposition and human rights activists, was estimated to be between 5,300 and 5,800. Police and NSS forces infringed on citizens’ privacy.”

[141] Notwithstanding the very grim picture painted by these reports, it appears (relevantly, in terms of the present case) that the targets of persecution are

specific: political and human rights activists and extremist Islamists. A *Religious Freedom Report* prepared by the International Coalition for Religious Freedom (updated 5 November 2002) notes that Uzbekistan's Constitution guarantees religious freedom, but goes on to cite a 1996 US State Department Report on Human Rights:

"Fearing the destabilising influence of extremist Islamic forces, the Government has sought to control the Islamic Hierarchy, the content of imam's sermons, and the extent and substance of published Islamic materials. ... Islamic groups not affiliated with the Government have been harassed, arrested and tortured. Some have disappeared. Several mosques have closed."

[142] The same report states later:

"Jews, Russian Orthodox, and other ethnic minorities are free to practice their religion so long as they do not criticize the government or proselytise. Missionary activity and evangelism in Uzbekistan are illegal."

[143] The Authority also raised with the appellant other reports which presented a slightly more "positive" view of the situation in Uzbekistan. For example, a Canadian Immigration and Refugee Board report dated 2 June 2002 noted, in relation to the treatment of ethnic Russians (citing an 18 May 2000 UTAR-TASS report on Uzbekistan):

"This Central Asian Republic's Russian-speaking population numbers [1.3 million] ethnic Russians, ..., ranking second after indigenous Uzbeks. Russian Orthodox churches function not only in the capital and regional centres but also in many towns and villages."

[144] There is then a quote from Uzbekistan's Counsellor for trade and economic affairs in Washington, USA in February 1999:

"Evidence that things are looking up in Uzbekistan ... is that ethnic Russians are no longer emigrating from Uzbekistan to Russia as they did in the early 1990s."

[145] The country information was not accepted by the appellant. For example, the Authority discussed with the appellant a report by the International Coalition for Religious Freedom, referred to above. The appellant said that, notwithstanding the Constitutional guarantee of religious freedom, in practice the Russian Orthodox church was persecuted, as she described. She commented that visitors to the country would not be presented with the true situation. A, in her evidence, said that a reporter had told her that Uzbekistan is a country where you can never

get any accurate information. Further, she said that because there are United States bases in Uzbekistan, that country's reports would not "point out bad things". The Authority does not accept that these criticisms justify a rejection of the country information.

[146] The Authority accepts that the appellant and E were subjected to a number of discriminatory incidents, over a period of some years. The appellant lost her job at the institute library when it was required that employees speak, read and write Uzbek and the appellant could do none of these well enough. She lost her job at the hotel when an Uzbek woman was appointed in her place. She was subjected to a serious physical attack and was verbally abused by the Uzbek man at the hotel.

[147] Against that, the appellant had her own home, her son attended a public school (at which he had tuition in Russian) and, in large part, they were able to live their lives unaffected by the persecution of activists and religious extremists noted above. There is nothing to suggest that the appellant is likely to be the target of the persecution to which the country information referred. She is not a political or human rights activist. She follows the Russian Orthodox Christian church and is not a fundamentalist.

[148] Past treatment is a useful indicator of likely future treatment. The Authority is not satisfied that the experiences of the appellant and E in Uzbekistan prior to her departure for New Zealand constituted persecution. Further, the Authority is not satisfied that there is a real chance that the appellant and E would be persecuted should they return there.

Armenia

[149] Given our findings in respect of Uzbekistan and the Russian Federation, it is not necessary for the Authority to consider the third alternative open to the appellant and E, which is Armenia. By virtue of her birth, the appellant is entitled to resume her Armenian citizenship, should she so wish. She acknowledged that this was so.

[150] The appellant also commented that "she could not live in Armenia", because she has no knowledge of the Armenian language, she could not get a job

and she would be completely unable to look after E. As noted, these are matters which the Authority need not address.

Conclusion as to the appellants' case

[151] The Authority finds that the appellant and E do not have a well-founded fear of persecution, in respect of either Uzbekistan or the Russian Federation.

[152] As the first issue set out in paragraph [72] above has been answered in the negative, the second issue does not need not be addressed.

CONCLUSION

[153] For the above reasons, the Authority finds that the appellant and E are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeals are dismissed.

.....
P J Andrews
Member