

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

AT AUCKLAND

Application No 76127

IN THE MATTER OF An application pursuant to s129L of the
Immigration Act 1987 to cease to
recognise a person as a refugee

BETWEEN A refugee status officer of the Department
of Labour
APPLICANT

AND
RESPONDENT

BEFORE A R Mackey (Chairman)

Counsel for the Applicant: S Houliston

Counsel for the Respondent: D Ryken

Date of Hearing: 19 August 2008

Date of Decision: 29 August 2008

DECISION

[1] This is an application by a refugee status officer, brought pursuant to s129L(f)(ii) of the Immigration Act 1987 ("the Act"), for a determination that the Authority should cease to recognise the respondent as a refugee on the ground that recognition may have been procured by fraud, forgery, false or misleading

representation, or concealment of relevant information (herein referred to as “fraud”).

PRELIMINARY MATTERS

[2] The applicant lodged this application in June 2007, for reasons set out below. The respondent was served with the cancellation application in October 2007 and at the same time a copy of the documentation was made available to his representatives, Ryken and Associates. Mr Ryken had represented the appellant (along with his brother-in-law AA) when their appeals were heard conjointly before this Authority in 1998. The appeal (*Refugee Appeal No 70770/98* (17 December 1998)) in respect of the respondent was allowed and refugee status granted to him. (A decision (*Refugee Appeal No 70739* (17 December 1998)) also allowed the appeal of the brother-in-law AA.) Also in mid-2007 the applicant applied to this Authority to cease to recognise AA as a refugee. AA, however, could not be served with the application as it became apparent he was no longer in New Zealand. That matter then proceeded before another member of the Authority in *Application No 76189* (9 April 2008). There was no appearance and in a decision, of a procedural nature, the member concluded that it was appropriate to cease recognition of AA as a refugee.

[3] In the submissions made by the applicant to the Authority, relating to this respondent, dated 14 August 2008, Mr Houliston submitted the decision of the Authority in *Application No 76189*, in respect of the brother-in-law AA, was relevant to this determination as AA had travelled to New Zealand on a Kazakh passport at the same time as the respondent. The Authority was invited to adopt the reasoning in *Application No 76189* in this case.

[4] Mr Ryken, in submissions presented on 18 August 2008, objected to the inclusion of *Application No 76189* in this application submitting either that it should not have been tendered as evidence or, in the alternative, the Authority should place no weight on the findings in that determination. He submitted it was not relevant to this decision as the application had not been served on AA and the conclusions reached in that determination had been arrived at without any consideration of evidence or submissions from AA or anybody on his behalf.

[5] After hearing further short arguments from both parties at the hearing the Authority ruled that the evidence and conclusions in *Application No 76189* would be given no weight by the Authority because that determination had been one of a

procedural nature where there had been no appearance by the applicant or AA, who had not been served. There were thus valid fairness arguments as to why no weight should be attached to that determination in this decision. The Authority however noted that evidence AA gave in the original conjoint hearing, may have relevance and could be considered in this application. In the circumstances, this proved to be unnecessary.

ADDITIONAL DOCUMENTATION

[6] Other preliminary issues that arose in this application related to the provision of new documentation and authentication of that documentation by officials of the Russian Federation and the Republic of Kazakhstan. Directions hearings in respect of this documentation were held on 16 April 2008 (see Minute dated 16 April 2008) and on 28 July 2008 when the Authority noted the authentication process had been completed and therefore the matter could be set down for hearing.

[7] The documents authenticated were:

- (a) a Kazakh passport;
- (b) a Kazakh birth certificate; and
- (c) a copy of a document the respondent claimed was his military registration certificate relating to his compulsory military training in the USSR and a “driving licence” which he obtained preliminary to carrying out his military service. He claimed that the numbers on these two documents correlated and established his place of birth as being in Grozny, Chechnya (the Russian Federation). These documents were referred to as the “Murmansk documents” in the hearing.

[8] The applicant confirmed, prior to the hearing, that the Kazakh passport and birth certificate had been certified as valid by the Kazakh authorities, through the services of the New Zealand Embassy in Moscow. The First Secretary of the New Zealand Embassy in Moscow also confirmed, after enquiries had been made with the Russian authorities (in particular, the Military Registration Establishment Office at Murmansk), that the respondent had been called up for military service in 1988 and issued with a military identity card. A letter from the Military Registration

Establishment Office stated that the source of this information was: "military identity cards issuance list 1988".

[9] At the hearing, the respondent provided additional documents which he submitted went further to confirming that he was born in Grozny, Chechnya. He also claimed that the Kazakh passport and birth certificate, whilst found authentic by the Kazakh authorities, were, as he had claimed throughout, fabricated documents which he obtained through the payment of substantial bribes to connections he had in Kazakhstan. These additional documents were:

- (a) a letter from a friend confirming that he had lived with the respondent in Ingushetia between 1995 and 1996;
- (b) a letter from another colleague MG, who now lives in England, stating that he had known the respondent since 1989 when he came back to Grozny after serving in the Soviet Army. This letter set out the original name of the respondent's father (a Chechen name) stating that MG had close business contact with him, he knew the respondent's first wife whom he had married in 1992 and that he had visited the respondent in New Zealand for 45 days and subsequently the respondent had visited him in England; and
- (c) originals of Soviet/Russian work training certificates, copies of which had been provided in the first bundle submitted in 2008.

BACKGROUND

[10] The respondent, accompanied by his brother-in-law AA, arrived in New Zealand in 1997. They both applied for refugee status on arrival at Auckland airport. An application was lodged with the RSB on in June 1997. The respondent was interviewed in October 1997 and, in a decision dated November 1997, his application was declined. The respondent appealed in December 1997 and as noted, a conjoint hearing was held over four days in April 1998. The decision granting him status was issued on 17 December 1998. The respondent then obtained permanent residence and applied for citizenship in this country. In 2003-2005, the respondent acted as a sponsor to his sister so that she could come to New Zealand as a language student. In relation to that application, made to the New Zealand Embassy in Moscow, a copy of what appeared to be the respondent's genuine Kazakh passport was provided. That passport was

considered by the New Zealand authorities to indicate that the respondent was a citizen of Kazakhstan and not of Chechen origin.

[11] The respondent travelled to Kazakhstan using his Kazakh passport and stayed for more than one month.

[12] It is principally the authenticated Kazakh documentation which prompted the present application filed with the Authority. Mr Houlston also directed the Authority to other evidence he submitted supported the application by the DOL both in the written submissions and orally before the Authority.

[13] As noted, the application was heard in full on 19 August 2008 and in support of the application evidence was heard from a refugee status officer, Mr Barlow. The respondent gave oral evidence relying principally on a brief of evidence dated March 2008. All evidence and submissions both oral and written have been taken into account by the Authority in reaching this decision.

JURISDICTION

[14] A refugee status officer may apply to the Authority in accordance with s129L(1)(f)(ii) of the Act for a determination as to whether the Authority should cease to recognise a person as a refugee where the status may have been procured by fraud or the like. Section 129L(1) of the Act provides :

“In addition to their function of determining claims for refugee status, refugee status officers also have the following functions:

...

- (f) Applying to the Refugee Status Appeals Authority for a determination as to whether –
 - (ii) The Authority should cease to recognise a person as a refugee, in any case where the recognition may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information.”

[15] From the above it is clear that there is a two-stage test involved in this enquiry. Both counsel in this case, in their written and oral submissions accepted the two-stage test as enunciated by the Authority in *Refugee Appeal No 75392* (7 December 2005) [10-12].

[16] The Authority must first determine whether the grant of refugee status made to the respondent “may” have been procured by fraud or the like. It is only once

this threshold has been crossed that the second stage of the enquiry (namely whether the Authority should cease to recognise the respondent as a refugee), is reached.

[17] Given that these are inquisitorial proceedings, it is not entirely appropriate to talk in terms of burden or onus of proof. Nonetheless, it is well recognised and accepted that, in cancellation proceedings, it is the responsibility of the DOL to present such evidence in its possession by which it can responsibly be said that the grant of refugee status may have been procured by fraud. It is also the Authority's view that the term "may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information" is deliberately imprecise and signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion: *Refugee Appeal No 75563* (2 June 2006).

THE RESPONDENT'S ORIGINAL CLAIM TO REFUGEE STATUS

[18] The respondent's claim to refugee status was based on his prediction that if he was returned to the Russian Federation, he would be arbitrarily detained by the Russian authorities, given his Chechen origins. While not distinctly Chechen in appearance, the respondent's Chechen origins would be apparent to the Russian authorities from his identity documents. Once known to them, he considered he would be arbitrarily arrested, detained, beaten and subjected to false criminal charges. He claimed that in the Russian Federation, persons from Chechnya were still very much at risk of such treatment irrespective of wherever they lived within the Russian Federation. He also feared that he would be persecuted by members of the local Russian population, given deep-seated resentment against ethnic Chechens since the war in Chechnya.

[19] When he made his application, he was a widower in his late 20s from Grozny, Chechnya. He stated he was half-Russian and half-Chechen. At that time, he had a Russian surname and spoke Russian and conceded that his physical appearance did not make it possible for him to be recognised as ethnic Chechen or Russian. He had explained that his grandfather, who was ethnic Chechen, was one of several thousand Chechens deported by Stalin to Kazakhstan in 1944. His grandfather died before reaching Kazakhstan. His grandmother died two years later. The respondent's father was an orphan. His

father was subsequently adopted by an elderly Russian couple in Kazakhstan and assumed a Russian surname. On the death of his adoptive parents, the respondent's father returned as an adult to live in Grozny and subsequently married the appellant's mother, an ethnic Russian. In the decision of the Authority in December 1998, the panel concluded that "the appellant's [respondent's] parents died in January 1995 in the Chechen war". They also stated that:

"As for the remainder of the appellant's living relatives, the appellant stated he was aware he had relatives on his mother's side who lived in Siberia, but had never met or had contact with them."

[20] The respondent's family had lived in Murmansk in the early 1970s and subsequently, when his father was made redundant, moved to Grozny. At the same time, the appellant undertook studies to become a mechanic. After completing those qualifications in 1988, he was then conscripted into the Soviet army to serve two years' compulsory military service. He was deployed to the Ukraine. After completing his military service, he tried to find a job in Grozny. He was unsuccessful so he then returned to Murmansk and obtained work. In 1992 he married for the first time. His wife was a student from Ossetia who was living in Grozny. She remained living there with her parents while the appellant worked in Murmansk. The couple had one child. The respondent's wife's family, including his brother-in-law AA, were from a well-known noble background and observed strict Muslim and local traditions. After his first wife's family had problems in Ossetia, and subsequently in Ingushetia, they moved to live with the respondent and his family in Grozny. In December 1994, the Russian military entered Grozny. By the beginning of 1995, air raids and bombing occurred in Grozny. The respondent claimed that those who knew him well did not regard him with hostility, despite his being half-Russian. Everyday life became very difficult and he and his brother-in-law, AA, ventured out with a group of volunteers to search bombed areas for wounded and bring them out of harm's way.

[21] In January 1995, while the respondent and AA were searching for wounded (apparently some six to seven kilometres away from their home in central Grozny), their home area was attacked in an air raid. It completely destroyed the area. The respondent and his brother-in-law found their home totally destroyed and could not find survivors. After three or four weeks of searching, unable to find any family members, they decided to leave Grozny for ZZ in Ingushetia. The respondent was able to register his presence there with relief organisations at the United Nations camp.

[22] It became clear, after two difficult years in the camp, that the situation would not improve and they could be better received in Kazakhstan. Accordingly, the respondent and AA decided to travel to Kazakhstan by truck, arriving in Almaty in January 1997. However, life for both the respondent and his brother-in-law was difficult, particularly as AA, due to his dark complexion, was recognisable as being Chechen. After making efforts with various embassies and international authorities, they were unable to secure their position in Kazakhstan. However, with the assistance of a contact, AD, who had previously lived in Australia, they were able to make arrangements to travel to New Zealand. They used false Kazakh "tourist" passports.

FINDINGS OF THE FIRST AUTHORITY IN 1998

[23] The first Authority allowed the appeal after finding the evidence of the respondent and AA to be compelling through sheer detail, frankness and spontaneity. A very detailed assessment of the real chance of the respondent being persecuted on return to his country of nationality (the Russian Federation) was then undertaken, including careful consideration of country information and the respondent's half-Russian, half-Chechen ethnic background. The Authority took into account the respondent's "forced migrant" status that he had obtained in ZZ, including that they had doubts as to whether the respondent's status as a forced migrant would afford him any particular protection should he come to the attention of the (Russian) authorities either at the airport or elsewhere.

[24] The first Authority, after considering his case fully, found that it was

"... left with a real doubt as to whether or not this particular appellant could safely live in the Russian Federation due to his half-Russian half-Chechen ethnic background. Accordingly, the Authority is prepared to give him the benefit of the doubt in finding that his fear of persecution is well-founded."

[25] The Authority went on to conclude that:

"Aside from the fact that the appellant has no other living relatives in the Russian Federation, let alone Moscow, it is the Authority's view that, cumulatively, such factors as the appellant's mixed ethnicity, his Chechen origins, the lapse of his Forced Migrant status and need to re-register to be entitled to a propiska, and the known country information of the treatment towards such persons at the hands of the authorities, places him in a particularly vulnerable position to such an extent that there is a real, as distinct from a remote, chance that he would be subject to an identity and/or residence permit check by law enforcement agencies, and that in doing so, his Chechen origins would, if not through his appearance, become known through such enquiries being made. Further, the appellant's background as an internally displaced person or "forced migrant" is a cumulative factor which would serve to exacerbate his already vulnerable position at the hands of the authorities. In such circumstances we find for all of these reasons that there is a

real chance the appellant would be subject to the various arbitrary treatment referred above. There is also a real chance that the appellant would face discrimination from the local populace at large in light of the xenophobia currently pervading Russian society against non-Slavic persons from the Caucasus. Such treatment would cumulatively amount to a sustained and systemic violation of the appellant's core human rights or the denial of human dignity in any key way amounting to persecution (see Refugee Appeal No. 2039/93 (12 February 1996) 15). These rights include his right to freedom of movement guaranteed in the Russian Federation Constitution and article 12 of the 1966 International Covenant on Civil and Political Rights (ICCPR), and the right to liberty and security of person and freedom from arbitrary arrest and detention (ICCPR, article 9), the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (ICCPR, article 7)."

[26] After cumulatively assessing the respondent's situation and all of the objective information, the Authority found that there was a real chance the respondent would be persecuted "on his return irrespective of wherever he lived in the Russian Federation" and that persecution, they considered, would be for reasons of race, both real and imputed. The appeal was therefore allowed and refugee status granted.

THE APPLICANT'S CASE

[27] The RSB alleged that the respondent's refugee status may have been procured by fraud. The refugee status officer provided a statement, dated 15 August 2008, which he adopted at the hearing. He noted that the original assessing officer was no longer with the DOL but he was fully familiar with the file and application. He confirmed that in July 2008, he received a reply from the Embassy of the Republic of Kazakhstan, via the Moscow branch of Immigration New Zealand, verifying the respondent's Kazakh passport. He also stated that in July 2008, he received a translation of the reply from the Embassy of the Republic of Kazakhstan, which stated that the respondent (whose full Russian name and correct date of birth were provided) had been born in the Almaty region of Kazakhstan and had a valid identity card and passport, both of which had been issued in 1996 and were valid until 2015.

[28] In addition, the applicant submitted that the Authority should adopt the reasoning set out in *Application No 76189* (9 April 2008) relating to the brother-in-law, AA. A ruling by the Authority on this is dealt with above as a preliminary matter.

[29] It was also claimed that the respondent had given fraudulent information relating to his family by not disclosing that his natural mother and sister were still alive and living in Russia, and later Kazakhstan. The applicant submits that the respondent was under a positive duty to disclose material facts, although not to disclose those facts which are immaterial (in support of this *R v Secretary of State for the Home Department ex parte Jaykody* [1982] All ER 461 is cited). The applicant submitted that the proposition set out in *Jaykody* was implicit in the test in s129L(1)(f)(ii) and that there must be a causal nexus between the fraud and the procurement of refugee status. It was noted by the applicant that the respondent now concedes he concealed relevant information from the Authority in 1998 but now deems that “it simply was not relevant”. The applicant submits that the existence of the respondent’s mother and sister were material and relevant facts. In support of this, the applicant claims that the statement made by the respondent that his “family” were all killed in January 1995, as is noted in the Authority’s decision in *Refugee Appeal No 70770/98*, was in fact a lie which impugns all further evidence about the air raid. The claim, made by the respondent at his RSB interview when his original application was made, that he could not remain in Kazakhstan, was submitted as inconsistent with his statement of 30 March 2008 that his family was living in Kazakhstan at the time when he received refugee status in New Zealand.

[30] The concealment of these material facts, it is claimed, must have a bearing on the 1998 decision by the first Authority, particularly the assessment of the respondent’s credibility. The Authority was referred to p11 *Refugee Appeal No 70770*.

[31] The applicant further submitted that the respondent continued to make false statements in relation to his family when he completed a medical form in support of his residence application, made in 1998. There he stated:

“Q: Applicant’s immediate family (including age and state of health of parents and siblings. If any are deceased, specify age at death and cause of death)?

A: Family were killed.”

[32] Cumulatively, on the basis of the submissions relating to the issuance of the Kazakh passport, the birth certificate and the false information about family members, it is claimed that the first stage of the required test has been met.

[33] Finally, Mr Houlston submitted that in a situation where there were both Kazakh and Russian documents validated by the relevant governments, the genuine Kazakh passport and birth certificate should be seen by the Authority as more compelling than the Russian military documents. The Authority was also asked to note that the scale of corruption in both Kazakhstan and Russia is high, with Kazakhstan rated at 150 and Russia at 143. Accordingly, the nature of the documents concerned needed to be taken into account carefully by the Authority.

THE RESPONDENT'S CASE

[34] The respondent confirmed the brief of evidence given on 30 March 2008. This set out a detailed explanation of the matters which had arisen through the documentation that he had obtained from Murmansk and Kazakhstan. In particular, he gave the reasons why his mother and sister were not specifically referred to or addressed in his original application.

[35] In summary, he claims that the documentation he obtained showing that he had been born in Kazakhstan, and had thus obtained a passport, were false and had been obtained through corruption and bribery. In respect of his natural mother and sister, he explained that he had come from a broken family. His natural mother and father had separated in approximately 1987 when they were all living in Murmansk. His mother left on very short notice, taking with her the respondent's sister. They returned to the mother's home district in Siberia. Apart from brief contact while he was carrying out his military training in 1989 in Ukraine, he had had no contact with his mother or sister until, during the processing of his refugee status application in New Zealand in 1998, he went to extensive lengths to try and establish contact and ultimately was successful in doing so. At the time he lodged his application therefore, in 1997, there had been no contact with his mother or sister for some 10 years and he had no idea of their whereabouts or their condition.

[36] He also explained that his father had remarried in approximately 1989 and then moved to Grozny with his step-mother. Thus, when he referred to his "family" all being killed in the bombing of Grozny, his reference was to his father, step-mother, his wife, his daughter and the family of his brother-in-law. He claimed that there was no intention to deceive or mislead at that time as the reality of his family

and family life were the people with him in Grozny who were killed in the bombing raid. It is for this reason the failure to mention his natural mother and sister was, in his view, irrelevant.

[37] In respect of the Kazakh passport and birth certificate that have since been validated by the Kazakh authorities to be genuine, he maintains that these were fraudulently obtained through bribery. Whilst he was not fully aware of the total system used by the agent he employed to obtain such documents, as best he understood it, it involved manufacture or amendment of actual birth records at the hospitals in Kazakhstan where it was claimed, for the purpose of this exercise, that he had been born. In that situation, accordingly, the birth certificates were seen as genuine by the Kazakh authorities and this led to the issue of a genuine passport. In addition, he had taken active steps in 1998, after his application for refugee status was declined by the RSB, to set up a "back up plan". To do this, he had to establish that he had been born on Kazakh territory and to own property. For this reason, he took steps to purchase a property in Kazakhstan. In point of fact, his mother and sister were moved into that property after he had re-established contact with them in 1998 and he found the state of destitution in which they were living in Siberia.

[38] In further support of his evidence that he was not a Kazakh national, during the processing of this application, he took steps to obtain the "military documents" from Murmansk. He agreed that a small bribe had been paid as a fee to obtain these documents from the military records in Murmansk. They included both his pre-military training records and military identification. He submitted the numbers and references in these documents interrelated and gave valid evidence that he had been born in Chechnya of mixed Russian and Chechen origin. In addition to the Murmansk documents, which have now been confirmed by the Russian authorities as genuine, he submitted that the additional documents from his colleagues in Ingushetia, and in England, gave further credence and cross-reference as to the reality of his background that he came from Grozny and had served in the Soviet army.

[39] Mr Ryken submitted that from the evidence that was now before the Authority, the applicant had not established that the refugee status granted to the respondent in 1998 by the first Authority may have been procured by fraud. The evidence now indicated that the actual place of this appellant's birth was in Grozny

and that the basis for his refugee claim was true and correct. The reason for establishing himself in Kazakhstan in 1998 was initially to provide an alternative safe haven after the decline by the RSB of his application in 1997. In respect of his mother and sister, the respondent, at the time when he made his application in 1997, had had no contact with and did not know of the whereabouts of either of these natural relatives and their existence at the time was clearly irrelevant to the decision. It was submitted that a close consideration of all of the documentation provided, including the original decision and RSB assessment, was required by the Authority to show that the “may have been” test was not met in this case.

[40] He submitted that the evidence provided by the Kazakh government, that stated they considered the passport and birth certificate were genuine documents, should not be given greater weight than the military identification documentation. Firstly, the source of the military identification documents had to be noted as coming from “military identity card records”. This, of necessity, would have involved a cross-check of the military identification cards by the Russian authorities for the year 1988 and therefore there were a number of internal steps required beyond mere checking of the actual documents. It showed a clear verification process which should be given considerable weight by the Authority, especially when it was now presented to the Authority on the basis of government-to-government authentication. This was a very powerful verification of the appellant’s identity, in his view. Secondly, the additional original certificates and documentation provided at the hearing, relating to the work record and qualifications, together with the photographs included within them, added to the authenticity. When the information provided in the letters from his two colleagues was added into the mix, the verification process was further enhanced.

[41] In his submission, the Kazakh documentation, including the birth registration document that had been created to obtain the passport and the residence and citizenship of his mother and sister, were all clearly part of the same fabrication which ensured these documents were as “real” as possible. The respondent agrees that there has been fraud and corruption used in obtaining these documents and states honestly that he does not have a detailed knowledge of how this was all carried out. The country information on the level of corruption and identity fraud in that part of the world, in his submission, gave further weight to the respondent’s explanation.

[42] He further submitted that the subsequent knowledge of the presence in Russia of the respondent's mother and sister, at the time when the refugee status application was made in 1997/98, had been overstated by the DOL in this application and submissions. The reasoning given by the Authority in *Refugee Appeal No 70770* had to be fully and carefully taken into account. At that time, identification with a *propiska* was very important in the assessment of claimants from the former USSR. The Authority had carried out a careful examination of the opportunities for internal flight or relocation at that time and had concluded that it was not a viable option for this respondent. Again, evidence relating to the respondent's mother and sister would have been irrelevant, even if it had been produced. The respondent clearly had no idea as to where his mother and sister were living, if at all, in the Russian Federation at the time of the application. Although he subsequently located them, he then became aware that they did not have a *propiska*, or any ability to assist him to relocate at the time when the appeal was heard. Indeed, it was for the reasons of their destitution and lack of security that the respondent went to considerable lengths to establish Kazakh identity then and also a secure place for them to live in Kazakhstan.

[43] He also submitted that it was well-established refugee law that a falsehood on one matter did not mean that all the rest of the evidence presented was tainted, provided the reasons for the falsehood were explained. In this case, that was clearly the situation. The respondent had also explained that the existence of his mother and sister had been kept secret from his brother-in-law and their family because of their Chechen and Muslim background. He and his father would have been considerably embarrassed by evidence that disclosed the respondent's natural mother had "run off" with her daughter. That was a matter of shame which the respondent, and indeed his sister in her application for a student visa, had gone to considerable lengths to continue to conceal from AA and others.

[44] In summary, therefore, he submitted that the "may have been" test had simply not been established. Accordingly, this application to cease to recognise the respondent as a refugee should be declined.

ASSESSMENT OF THE FIRST STAGE

[45] The Authority now turns to consider all of the evidence and submissions as they relate to the first step of the required enquiry: whether the original grant of

refugee status may have been procured by “fraud, forgery, false or misleading representation or concealment of relevant information”.

[46] The Authority found that the respondent gave credible evidence and explanations in this application. There was nothing of an inconsistent or implausible nature in the evidence that he has now provided. Additionally, beyond those admitted by the respondent, the Authority has found no inconsistencies with the original evidence he provided in respect of his application for refugee status, or the first hearing before this Authority in 1998.

[47] During the hearing, the Authority raised with the parties a number of factors relating to the original decision, some of which could have been concerns relating to credibility and other which were of a potentially exculpatory nature.

[48] Firstly, in relation to the passport the respondent used in 1997 to enter New Zealand (which was purportedly one issued by the former USSR and stated that he had been born in Kazakhstan on 14 May 1970), the respondent has stated from the outset that this was a fabricated document he obtained through the use of a friend/agent in Kazakhstan and that he was actually from Chechnya (p76 of the file). It is also interesting to note that the refugee status officer, at that point, stated: “I found this applicant to be credible.” The respondent’s explanations, in the process of this application, have consistently stated that the passport he arrived on and the subsequent Kazakh passports issued to him, based on the fabricated birth certificates, are not genuine documents. They have been obtained through a fairly expensive, but detailed procedure, involving corruption and the falsification of documents from the birth certificate onward. He claimed that it was unsurprising that the Kazakh authorities had found the documents to be apparently authentic.

[49] In respect of the evidence given regarding his natural mother and sister, whilst on the face of it they may have validly led the applicant to be suspicious, a close examination of the evidence actually provided to the RSB and the questions actually asked, indicate the possibility of alternative interpretation. In the actual application form and questioning by the RSB, and indeed the Authority at a later stage, the respondent’s family could equally be considered to have been his wife and daughter, his father and step-mother and his brother-in-law’s family as well. The respondent has provided his mother’s full name where required. Apart from

the concerns noted regarding a residence application form, noted below, he has not stated categorically that his natural mother was killed or had died and there was no direct requirement for him to disclose his natural sister in the forms that were submitted.

[50] When the matter was considered on appeal by this Authority in 1998, the Authority set out conclusions that “the appellant [respondent] has no other relatives in the Russian Federation”. That conclusion was reached on the basis of the evidence that was before the Authority at that time, including all of the RSB information and RSB forms. As stated, none of these directly called upon the respondent to state that he had a sister or that his natural mother had been killed or died. Revisiting this issue now, the Authority agrees it should also be seen in the light of the cultural situation of the shame, particularly held by his father, when his natural mother separated from the respondent and his father and took with her the daughter/sister. The respondent continued to keep the information about his mother and sister from his first wife and first wife’s family, including AA. This continued, to the extent that his sister, when she came to New Zealand as a student, was passed off as his niece. Whilst all of this behaviour may seem strange or suspicious in a New Zealand context, the Authority is not in a position to say, on all the evidence now assessed, that this was fraudulent, false or a misleading representation or concealment by the respondent made to procure the grant of refugee status. The respondent’s general credibility supports this.

[51] There remains, however, one document, completed post the grant of status, that does give rise for some concern. That is the application for residence form completed by the respondent, with the assistance of a firm of consultants. That form states, at question A18:

“Q: List all your parents, brothers and sisters (including full, step, half and adopted brothers and sisters). It is not necessary to list deceased family members.

A: All deceased.”

[52] Whether this form was directly completed by the respondent himself or by his agent is not apparent. In assessing this issue, the Authority notes the respondent clearly disclosed his natural mother’s full name in the original application. There appears no attempt to disguise her existence. Also, there is the potential confusion that may be explainable through the death of the father and

step-mother. The response in this form may thus have been an oversight. This is so, particularly in respect of the evidence surrounding the visa application by his sister and the fact that the respondent had continued to keep his natural mother's and sister's existence secret whilst he was living with his brother-in-law, AA, subsequent to obtaining refugee status and applying for residence.

[53] The Authority is prepared, in all the circumstances, to accept that while there is some element of deception, the manner in which the respondent completed this form it is of a minor nature. It does not indicate, to the required level, that the refugee status may have been obtained by fraud. In addition, the Authority accepts that even if the potential failure to disclose his natural mother and sister's existence is accepted, it is of inconsequential relevance to the procurement of refugee status in the Authority's determination in 1998. At that time, the only relevance his natural mother and sister could have had to the assessment by the Authority would have been possibly in respect of an internal relocation alternative. In the circumstances, the first Authority found that relocation was simply not available to the respondent within the Russian Federation. Accordingly, even if full disclosure of the existence of the natural mother and sister had been before the first Authority, it would have had no ultimate impact on the Authority's determination.

[54] In the circumstances, therefore, the Authority concludes that the applicant has not established, to the required level, that the refugee status granted to this appellant in the Authority's 1998 decision may have been procured by fraud. The first step in this enquiry therefore is answered in the negative and thus the Authority has no jurisdiction to go on and consider the second stage as to whether or not the respondent should cease to be regarded as a refugee.

CONCLUSION

[55] The application to cease to recognise the respondent as a refugee is declined.

"A R Mackey"
A R Mackey
Chairperson