REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75818

REFUGEE APPEAL NO 75819

AT AUCKLAND

Before:	M A Roche (Chairperson) B A Dingle (Member)
Counsel for the Appellants:	C Curtis
Appearing for INZ:	No Appearance
Dates of Hearing:	31 May & 1 June 2006
Date of Decision:	15 May 2007

DECISION

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[1] These are appeals against the decisions of a refugee status officer of the Refugee Status Branch (RSB) of Immigration New Zealand (INZ), declining the grant of refugee status to the appellants, who are citizens of Israel.

INTRODUCTION

[2] The appellants are a married couple. Their appeals will be dealt with jointly. Hereafter they will be referred to jointly as the appellants and, separately, as the husband and the wife. The appellants arrived in New Zealand on 29 December 2001 and applied for refugee status on 21 November 2003. They were interviewed by refugee status officers on 23 January and 7 May 2004. Their applications were declined in decisions dated 17 November 2004 leading to their appeals to this Authority.

[3] Pursuant to ss129P(5)(a) and 129P(5)(b) of the Immigration Act 1987 (the Act), where an appellant was interviewed by the RSB or, having been given an opportunity to be interviewed, failed to take that opportunity, the Authority has a discretion as to whether to offer the appellant the opportunity to attend an interview. In exercising this discretion, the Authority considers whether the appeal is *prima facie* 'manifestly unfounded or clearly abusive'. Should that be the case, the Authority may determine the appeal on the papers, without offering the appellant an interview. The Authority's general jurisdiction in this regard was examined in *Refugee Appeal No 70951* (5 August 1998).

[4] On 31 October 2005, the Authority determined the appellants' appeals without offering them an interview pursuant to s129P(5) of the Act and published a decision declining the appeals: *Refugee Appeal Nos 75449 and 75459* (31 October 2005). On 9 December 2005, the appellants filed proceedings in the High Court seeking judicial review of that decline decision. On 24 February 2006 those proceedings were withdrawn by consent and the decision in *Refugee Appeal Nos 75449 and 75459* was set aside. The appeals were subsequently reheard by a differently constituted panel of the Authority on 31 May and 1 June 2006.

[5] The appellants claim to be at risk of persecution in Israel because of their status as Christians and immigrants from the former Soviet Union. The wife, who is of Jewish origin, has become a Christian since being in New Zealand. She believes that her adoption of Christianity may have nullified the appellants' right to Israeli citizenship under the Law of Return which entitles any Jewish person and their spouse to Israeli citizenship.

[6] The appellants also fear persecution at the hands of an Arab Israeli, AB, who harassed the wife over a period of years in Israel and threatened to kill her and her family should she refuse to be in a relationship with him. The essential issue to be determined in these appeals is whether the appellants' fear of being persecuted in Israel for any or all of the reasons set out above, is well-founded.

THE APPELLANTS' CASE

[7] What follows is a summary of the evidence given by the appellants at the hearing. An assessment of that evidence follows later in this decision.

[8] The wife is aged in her late fifties and the husband aged in his early sixties. They were both born in the former Soviet Union. The husband descended from Polish Catholics and was secretively raised as a Catholic by his parents. The wife had a Jewish mother and a Russian father and, as was the norm in the Soviet Union at the time, was raised with no particular religious faith.

[9] Both the husband and the wife are highly qualified professionals. The husband's qualifications are in the field of medicine while his wife has engineering qualifications.

[10] The appellants met and married in the 1960s and had one child, a son. They eventually settled in the state of Belarus where they were living at the time of the break-up of the Soviet Union. Prior to their emigration to Israel, they held Belarusian citizenship.

[11] In Belarus, the appellants resided in close proximity to the Chernobyl nuclear power station which exploded in April 1986. In 1990, the husband's father died of leukaemia which the husband attributes to the Chernobyl explosion.

[12] In 1991, the appellants decided to emigrate from Belarus to Israel. They were entitled to do so under Israel's Law of Return. They thought that they would have better living conditions in Israel than in Belarus and that they should move away from Chernobyl because of the health risks posed by living near it. As a devout Catholic, the husband was attracted to the idea of living in the "holy land" within close proximity of sites of significance to his faith.

[13] In 1991, the appellants were granted Israeli permanent residency after being interviewed at the Israeli Embassy in Moscow. In 1992, they obtained approval from the Belarusian authorities to exit Belarus. They did so on the understanding that they were renouncing their claims to Belarusian citizenship. In late September 1992, they travelled from Belarus to Israel where they were granted citizenship on arrival and, as a result, lost their Belarusian citizenship.

[14] The appellants quickly realised that life in Israel was far more difficult than they had anticipated. They were initially housed in a special migrant hostel which had strict rules based on Jewish principles. Residents were forbidden to observe Christian celebrations such as Christmas and were expected to observe the Sabbath.

[15] Neither of the appellants was initially able to find work commensurate with

their qualifications and experience. They both performed menial jobs while studying Hebrew. Early on the husband was dismissed from a job as a labourer in a factory after speaking in Russian and discussing Christianity with a fellow-worker.

THE WIFE'S EXPERIENCES IN ISRAEL

[16] In mid-1994, the wife found employment at a plastics factory as an engineer. She continued in this position until late 1996 when her shift supervisor made sexual advances towards her and threatened her that if she did not have sex with him she would be dismissed from her employment.

[17] After completing her shift, the wife complained to the factory manager about what had occurred. The factory manager responded by commenting that she would be safer if she had a Jewish husband rather than a Russian one. He declined to assist her.

[18] From the factory, the wife went directly to a police station and complained about the sexual harassment she had experienced. The police officer took her details and told her that he would investigate the matter at a later date. The same day, the wife visited a women's organisation known as *Naamat*. The person she spoke to there said that she could not assist her as she had not been physically harmed. Both appellants also visited the offices of the trade union the wife belonged to. However, the trade union declined to assist her.

[19] When the wife reported for work that evening, the shift supervisor handed her a letter of dismissal.

[20] In 1995, the wife's mother, together with the appellants' son, emigrated to Israel from Russia.

[21] The wife was unemployed for seven months before finding work as a chemical engineer some distance from the town in which the appellants had purchased an apartment. During the seven months she was unemployed, she received an unemployment benefit which was approximately 70 percent of her former salary.

[22] The wife initially travelled to her new job by bus but then started using a taxi driven by an Arab Israeli, AB. Initially there were no difficulties with AB but after a couple of months, the wife began to feel uncomfortable with the amount of

attention he paid her in the taxi and began carpooling to work with a neighbour. Although she no longer regularly commuted to work with AB, she did use his taxi from time to time.

[23] In or around March 1998, AB invited the wife to his home and also invited her to a restaurant with him. She declined these invitations and thereafter stopped using his taxi.

[24] In May 1998, the wife was waiting at a bus stop when she was approached by AB who offered to drive her home for no charge. She refused and took the bus. After she arrived home, the appellants went to their local police station to report AB to the police because the wife considered that AB was harassing her and thought that he had begun to follow her. A policeman took a statement from her and told her he would investigate the matter. However, he never contacted her. The wife decided to change jobs to avoid contact with AB and in July 1998 found another position as a chemical engineer closer to her home. She was provided with company transport.

[25] The wife did not see AB for one and a half years until early September 1999. She was walking to a bus stop near the centre of her town when a van stopped beside her. AB got out of the van, grabbed her, and attempted to push her into it. She cried out and two men on the street intervened and pulled her back from the van. AB drove off after warning her that he would get her next time.

[26] The following day the appellants made a complaint to the police about the incident. The wife's complaint was accepted, however, the police officer advised her that not much could be done as nothing serious had happened to her. He told her she should avoid AB and also advised her that if anything else happened, she should call the police immediately.

[27] The wife did not see AB again for approximately eight months when in May 2000 he approached her at a shopping plaza and asked her if they could talk. She sat down in a café area with him. He then told her that he wanted her to divorce her husband and marry him. She refused.

[28] In June 2000, the appellant was dismissed from her employment after refusing sexual advances made to her by her immediate superior at work. The wife complained to the director of the company and told him what had happened. He told her that if she was unable to maintain a good relationship with her

supervisor it was not his fault and that she should not complain or she would be unable to get other jobs in Israel.

[29] After leaving her job, the wife completed a brief course of study which updated her qualifications. She received a high level of social income from the state while completing this course because her salary at her previous job had been high.

[30] In September 2000, the *Intifadah* began. Both appellants began to fear for their lives in Israel. Around the same time, the wife saw AB again. He approached her as she was walking out of a bank in her town and asked her what she had decided to do. He told her that if she did not convert to Islam and marry him, there was no place for her in Israel and she and her husband must prepare to die. He also told her that his family were aware of the situation and considered her refusal to marry him as a loss of face for the whole family. He told her that if she complained to the police she would die.

[31] In May 2001, the wife finished her course. The appellants decided to sell their home and shift to Tel Aviv because there was a better job market there and to get away from AB.

[32] In September 2001, the appellants were at a railway station when a bomb exploded. They were not hurt but saw dead bodies and body parts all around them. The wife was particularly disturbed by this incident and was sedated at the scene by medical staff.

[33] In October 2001, the appellants sold their home. Shortly afterwards AB called on them at the home they had sold. He told them that they had made the correct decision in selling up and that they should leave Israel. He told them that nothing had been forgotten but there is a certain order of things and that Israel was not the place for them. Following these two incidents, the explosion at the railway station and AB's reappearance after more than a year, the appellants decided to leave Israel.

[34] Their former daughter-in-law had moved to New Zealand with their only grandson so they made arrangements to come here. Prior to their departure, they moved to the town where their son and the wife's mother resided.

[35] In December 2001, shortly before their departure from Israel, the wife was buying cigarettes at a local café when AB walked in. He asked her whether she

and her husband were ready for death. He then said goodbye and left the café. Six days later, the appellants departed Israel for New Zealand.

[36] In early 2002, the appellant's son wrote to them saying that he had seen AB in his town. The son's town was approximately 50 kilometres away from where the appellants had resided in Israel.

[37] The wife believes that should she return to Israel, AB will carry out his threat to kill her. She believes that Israel is too small to hide from somebody and it would only be a matter of time before AB became aware of her presence and would feel compelled to do something about it in order to uphold his honour.

[38] The wife has converted to Catholicism in New Zealand and has been baptised into that faith. She attends mass every Sunday and sings in a church choir. She believes that she has the calling to be a missionary.

[39] The wife is of the view that her conversion to Christianity may have negated her Israeli citizenship as she is no longer Jewish for the purposes of the Law of Return. For that reason she believes she may not be able to return to Israel but even if she is, she believes she would have difficulty there because of her new Christian faith. She knows of instances when Christians have been harassed or victimised in Israel. For example, her mother wrote to her shortly before the hearing informing her that a Christian acquaintance had been bashed from behind on the street while wearing a cross.

[40] With regard to her conversion, the wife also has concerns about the provisions of the Israeli Penal Code that place restrictions on proselytising. She believes that provisions in this Code could result in her being jailed for converting to Christianity.

[41] The wife's final complaint about Israel concerns the practice there of harassing Russian women. The wife estimates that during the time she resided in Israel, she was harassed on the street on perhaps 15 occasions by men shouting "Hey Russian!" and similar things. This occurred particularly when she was with a very obviously Russian friend.

THE HUSBAND'S EXPERIENCES IN ISRAEL

[42] As noted earlier, the husband is a highly qualified medical professional who had several decades of experience at the time he emigrated to Israel. He had

expected that he would be able to practise medicine there. Between his arrival in 1992 and 1996, he attempted to obtain the appropriate licensing to allow him to practise medicine. Although he was highly qualified and experienced, each time he was interviewed in connection with his application for a medical training course or a medical licence, his application was declined. On a number of occasions he was given to understand that the difficulty was that he was not Jewish.

[43] In 1995, the husband visited the Belarus Embassy in Israel to enquire as to whether the appellants were eligible for Belarusian passports. He was advised that they were not and that they had no entitlement to Belarusian citizenship.

[44] In October 1995, he was informed by an adviser to the Israeli Minister of Health that registration was only given to Jewish doctors to avoid problems with patients who refused to be treated by non-Jewish doctors. Realising that he would never get a position in medicine, in 1996 the husband obtained a place on an x-ray laboratory assistant training course. He did this because he wished to work in a hospital, even though he now accepted he would not be able to practise medicine in Israel.

[45] After completing the course, he was interviewed at a hospital in Jerusalem for a position as an x-ray assistant. Although he believed he answered all the questions correctly at the interview and provided evidence of his qualifications and experience, his application was declined without reason. The husband contacted a member of the *Knesset* (the Israeli parliament) and asked for assistance. The *Knesset* member told him that she could not help him because the Ministry of Health treated nationality as a serious issue when employing people. He realised then that he would not be able to work in the health field in any capacity in Israel and, for the remainder of his time there, worked on construction sites.

[46] In addition to his disappointment concerning his ability to practise medicine in Israel, the husband was disappointed in respect of his desire to freely practise his Catholic faith. As noted earlier, one of his motivations for immigrating to Israel had been the prospect of living in a place that was sacred to him as a Catholic.

[47] Shortly after arriving in Israel, he began to attend services at a Christian church in Haifa. The majority of the congregation there were Arabs. At first he seemed to attend the services unnoticed but on the fourth occasion he attended, he was approached by members of the congregation who told him that he should not be attending their church. Because there are relatively few Catholic churches

in Israel, the distances between them are considerable. The husband found another church to attend, but it was a 70-80 kilometres journey from his town, which involved him taking two buses and took three hours. As the services were held during the Israeli working week (on a Sunday, while the Israeli Sabbath is a Saturday), he stopped attending for financial reasons and because he needed to go to work on Sundays.

[48] Unable to attend church, the husband manifested his faith as he had in Belarus when there was no church to attend, by praying regularly and performing Catholic ceremonies and traditions in his own home.

[49] Although the husband experienced profound disappointments concerning his ability to practise his profession in Israel and to attend church there, he considered his greatest difficulty in Israel was his inability to ensure the safety of his wife. The husband corroborated his wife's evidence concerning the couple's visits to the police in Israel in 1996 when she complained about her sexual harassment at work and in May 1998 and September 1999 when she complained about the harassment she was experiencing from AB.

[50] After receiving no assistance from the Israeli police on the three occasions they had complained about matters, and, suspecting them of corruption, the appellants decided not to complain when AB made his first threat to kill them. The husband was very concerned about AB's threats. He considers that threats from Arabs such as AB are not empty threats and that eventually AB would make good on them. He thought that the better course of action was to leave their town.

[51] Initially, the appellants planned to relocate to Tel Aviv. However, following the explosion at the train station they witnessed, the wife was so traumatised that the husband decided they must leave Israel. The husband believes that if they had not left Israel, the appellants would by now have been killed by AB.

DOCUMENTS AND SUBMISSIONS FILED

[52] Prior to the hearing counsel filed submissions and country information in support of the appeal.

[53] On completion of the hearing on 1 June 2006 the Authority directed that counsel file further country information in support of various propositions raised by

her at the hearing. At counsel's request, these directions were recorded in a letter to counsel from the secretariat dated 7 June 2006.

[54] On 15 September 2006 counsel filed further written submissions. These submissions were accompanied by a tabulated bundle of country information corresponding to the matters raised in the secretariat's letter of 7 June 2006.

[55] In addition to the tabulated bundle of country information, a substantial volume of correspondence and further country information has been filed by the appellants and their counsel since the hearing. It is not possible to address each item they have submitted in this decision. However, all the information filed has been read and considered.

THE ISSUES

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

> "... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[57] 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

[58] Before determining the framed issues, it is necessary to make an assessment of the appellants' credibility.

[59] The Authority found both appellants to be credible witnesses and accepts their account of their experiences in Israel and their claims concerning their practice of Catholicism in New Zealand.

[60] It is accepted that in Israel the appellants experienced disappointment and hardship to a degree they did not anticipate when they made their decision to emigrate from Belarus. It is accepted that they have no further citizenship rights which would allow them to return to Belarus or Russia.

[61] There are a number of elements to the appellants' claim to be refugees. These are:

(a) Whether they continue to be entitled to Israeli citizenship given that the wife is no longer Jewish for the purposes of the Law of Return;

(b) Should they be able to return, the consequences they would face in Israel because of the wife's conversion to Catholicism;

(c) The discrimination they experience in Israel as immigrants from a former Soviet Republic;

(d) The sexual harassment the wife experienced in Israel;

(e) The threat posed to them by AB.

[62] Each of these factors will be assessed in turn.

<u>The appellants' ability to return to Israel – statelessness issue</u>

[63] As noted above, it has been accepted that the appellants are not Belarusian or Russian nationals and that they have no citizenship rights in respect of either of those countries. Country information confirms that between 1991 and August 2002, Belarus citizens who acquired the citizenship of another country were required to relinquish their Belarus citizenship: Canadian Immigration and Refugee Board 2002, *Belarus: whether a citizen of Belarus who migrated to Israel in 1993 would have lost his or her Belarussian citizenship* (12 September 2002).

[64] At the hearing, the wife claimed that the appellants were now effectively stateless because she would be disqualified from the Israeli citizenship she had obtained under the Law of Return because of her conversion to Catholicism. This claim (that the conversion to Christianity of an Israeli citizen whose citizenship had

been obtained under the Law of Return would result in the cancellation of that citizenship) was one of the matters about which counsel was requested to file country information subsequent to the hearing.

[65] Israel's Law of Return entitles Jewish people born outside Israel the right to immigrate to Israel and obtain Israeli citizenship. It also provides the right to immigrate to Israel and obtain Israeli citizenship to the non-Jewish spouses of Jewish people. Both the appellants emigrated to Israel and obtained Israeli citizenship under its provisions, the wife as a Jew and the husband as the spouse of a Jew.

[66] The term "Jew" is defined in the Law of Return as meaning a person who was born of a Jewish mother, or has converted to Judaism and is not a member of another religion. It is accepted that if the appellants were now applying for the right to Israeli citizenship, they would not be entitled to it as the wife, having converted to Catholicism, is no longer a "Jew" for the purpose of the Law of Return.

[67] The Law of Return contains no provision for the cancellation of Israeli citizenship held by persons who were Jews (or the spouses of Jews) when Israeli citizenship was granted to them but are not now Jews due to their conversion to other religions. In the absence of such a provision, the appellants remain Israeli citizens despite the wife's conversion to Catholicism.

[68] This finding is supported by two items of country information. The first reports advice provided by the Embassy of Israel in Ottawa in 1999 that a person who was Jewish on arrival in Israel, who was granted citizenship under the Law of Return, would retain that citizenship despite subsequent conversion to another religion: Canadian Immigration and Refugee Board, Research Directorate *ISR32150.E Israel: Whether conversion from Judaism to Christianity would affect the citizenship rights, of immigrants to Israel, that are accorded under Article 4 A of the Law of Return* (1 June 1999).

[69] The second item of country information reports an interview conducted in 1996 with the director of the Israel Religions Action Centre in Jerusalem. During the interview, the director stated that, "To revoke Israeli citizenship once you receive it is a very complicated process which is very rarely done": Canadian Immigration and Refugee Board, Research Directorate *ISR25735.E Israel: Information on the new immigrants from the former Soviet Union and the Israel*

Religions Action Centre (1 November 1996).

[70] In her submissions of 15 September 2006, counsel submitted at [1.2] that a Jew who has converted to the Christian faith, is not a Jew any more and has no right to return to live in Israel and, at [1.3], that the Israeli citizenship of the appellants would continue only until the expiration of their current Israeli passports because on renewing their passports it will be revealed that they are no longer "a Jew in their own eyes as to both their religious belief and ethnicity".

[71] Counsel provided no country information with her 15 September 2006 submissions to support her proposition that the appellants' Israeli citizenship would be revoked due to the wife's conversion and despite making the submissions noted above, conceded at the conclusion of [1.3] that, due to an absence of supporting information, she is unable to assert that their citizenship will actually be withdrawn.

[72] On 14 March 2007, counsel filed additional written submissions. At page 3 of these submissions she asserted that the appellants "will cease being Israel citizens because they have changed their residence and want to sever their relationship with Israel where they are very clear they suffered persecution". Referred to in and annexed to the submissions of 14 March 2007 was a decision of the Refugee Review Tribunal (RRT) in Australia dated 28 July 2005, which recognised a former Israeli national as a refugee on the basis that his Israeli citizenship was revoked. He had claimed to the RRT that this revocation could be ascribed to his conversion from the Jewish faith to Christianity.

[73] The circumstances in which the applicant to the RRT had his Israeli citizenship "taken away from him" are not clearly articulated in the decision. The RRT decision at page 9 explicitly recognises the obscure source of the claim:

> "He has sought to ascribe this loss to his Christian religion, however the evidence he has adduced consists of statements by him which are of a general nature and are not consistent with some information which indicates that Israeli law provides for freedom of worship and guarantees freedom of religion ..."

[74] In its decision, the RRT nevertheless determined to recognise the applicant as a refugee on the basis that conclusive evidence was required to refute his claims. See page 13:

> "... the Tribunal finds that there is no conclusive evidence that would refute what the applicant claims in terms of the reason and the method by which his citizenship was revoked."

[75] The requirement that there be conclusive evidence to refute what the applicant claims is a clear misstatement of the law. The High Court of Australia in *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559, 570 accepted that the onus of proof was on the refugee claimant. Even were the RRT approach to be correct in terms of Australian domestic law, it is an approach which is untenable under New Zealand domestic law, given that that ss129G(5) and 129P(1) impose on the claimant the responsibility to establish the claim. See further *Refugee Appeal No 72668/01* [2002] NZAR 649 and *Jiao v Refugee Status Appeals Authority* [2003] NZAR 647 (CA).

[76] The RRT decision-maker at page 13, in the face of an evidential vacuum, has engaged in speculation that the revocation occurred because of a breach of allegiance. This is no more than a guess and is speculation which the High Court of Australia emphatically rejected in *Minister for Immigration and Ethnic Affairs v Guo*. See further the discussion in *Refugee Appeal No 72668/01* [2002] NZAR 649 at [111] to [112].

[77] The overwhelming weight of the evidence recited by the RRT is that Israeli citizenship gained under the Law of Return is not lost where the individual subsequently converts to a religion outside Judaism and where the original acquisition of nationality was not acquired on the basis of false particulars.

[78] The appellants' evidence is that they voluntarily acquired Israeli nationality and lived in Israel for a period of years. They have produced no evidence to show that they have lost that nationality. Their assertion that they have lost their Israeli nationality invites the Authority to engage impermissibly in speculation. The decision of the RRT does not assist them.

[79] The Authority finds, based on the country information and the submissions and evidence provide by the appellants, that they continue to hold Israeli citizenship despite the wife's conversion to Catholicism. Despite their strong desire to no longer reside in Israel, they are Israeli nationals. It is unnecessary therefore to address the issue of statelessness as it does not arise in these appeals.

<u>Consequences of wife's conversion to Catholicism – discrimination in Israel against Christians and Christian converts</u>

[80] The wife claims that she would face difficulties in Israel because of her

conversion to Catholicism and that these anticipated difficulties would be at a level that they would result in her being persecuted. She claims to have found solace in the Catholic faith and that her devotion to her new faith is such that she wishes to be a missionary. A statement dated 25 May 2006 from the appellants' parish priest, Father Patrick Brady, was filed in support of the appeals. This statement concerns the appellants' involvement with the Church and notes matters such as their baptisms. In the statement, Father Brady notes the desire expressed by the wife to do Christian missionary work. He comments that, in his opinion, it is too soon after her admission to the Catholic Church for any missionary work to be a serious consideration.

[81] Counsel placed considerable emphasis on the wife's conversion to Catholicism and filed a number of items of country information in support of her contention that the treatment of Christians and Christian converts in Israel amounts to them being persecuted.

[82] The country information filed by counsel includes an article from the *Messianic Times* published in October 2005 concerning attacks on Messianics (Jews who recognise Jesus Christ as the Messiah) in the town of Arad. This town has a population of 200 Messianic Jews. The report notes the subjection of the Messianic Jews of Arad to physical assaults, tyre slashings, threats and broken windows. The article is mainly about the fire-bombing of a Messianic book store. Several more articles from the *Messianic Times* concerning the plight of Messianic Jews in Arad are among the country information filed by counsel. Also included was the translation of an article, sourced from the Internet, concerning the beating of a television presenter wearing a Santa Claus hat by a group of teenagers on New Year's Day 2006. An untitled document noted as No 13 in counsel's bundle of documents concerns discrimination against non-Jews in Israel.

[83] In a similar vein, the Authority has considered an article posted on the Internet in which an anonymous Christian immigrant in Israel is reported as stating that it is difficult to be a Christian in Israel and a Russian Orthodox priest, interviewed by the article's unnamed author, stated that stones had been thrown at the windows of a Christian man's house and that he (the priest) had been verbally abused by the neighbours of a congregation member when he went to visit him. The article also states that many new Christian immigrants in Israel attempt to conceal their religious identity for reasons relating to employment and personal safety: "Christian immigrants forced to hide their identity" *Hot News Network*

(2 June 2005) www.aad-online.org/2005/English/7-July/2-7/3-7/2.htm.

[84] Some of the material filed by counsel addresses a section inserted in the Israeli Penal Law in 1977 which makes it illegal to offer or receive benefits as an inducement to convert. The United States Department of State *International Religious Freedom Report: Israel 2006* (15 September 2006) (DOS Religious Freedom report) notes that no reports existed of attempts to enforce this law during the reported period and that missionaries are allowed to proselytise. Allegedly, there is also a three-year prison sentence for any Jew who converts although no copies of this law or evidence that such a provision has ever been enforced was provided. The DOS Religious Freedom report also notes discrimination against non-Jewish citizens and residents in the areas of employment, education and housing. Much emphasis is placed in counsel's submissions on a further anti-proselytising law that was introduced to the *Knesset* in 1998 but never passed.

[85] The issue of discrimination against Christians in Israel is made more complex by the fact that the majority of them are Arabs who experience difficulties at the hands of Muslims within their ethnic community: Heather Sharp: "Holy Land Christians' decline" *BBC News* (15 December 2005). At the hearing, the Authority commented to the appellants and counsel that the majority of country information provided about Christians in Israel concerned the treatment of Arab Christians who experienced mistreatment at the hands of Muslim Arabs. In her submissions of 15 September 2006, counsel stated that the appellants feared that their treatment would be the same as that meted out to Arab Christians. This assertion ignores the fact that violence against Arab Christians occurs within the Arab community to which the appellants do not belong.

[86] At the hearing, the wife gave evidence that her Israeli identity card had expired and that she would have to apply for a new one upon her return. There was some ambiguity in the evidence as to whether or not the wife's new identity card would record her status as a convert from Judaism. According to information submitted by counsel as item 28 in the numbered bundle (which appears to have been sourced from the Internet encyclopaedia, Wikipedia), while religion is not recorded on the identity card, the identity card of Jews contains both their civil and Hebrew date of birth. It is possible therefore to determine whether the holder of such a card is Jewish or not by virtue of the presence of a Hebrew date of birth.

[87] Counsel also provided a copy of the Population Registry Law 1965 pursuant

to which particulars and changes in the particulars of Israeli residents are entered in the Israeli Population Registry. Among the list of such particulars is religion although it is apparent from section 15 of the law that such change will not be accepted unless it is registered under "the Religious Community Change Ordinance (7)". An article supplied by counsel, *Converting from Judaism requires Faith* (28 December 2002) www.smh.com.au/articles/2002/12/27/1040511177301.html reports on litigation being brought on behalf of four Jewish-born Israelis by the Association for Civil Rights in Israel after they had been refused registration of their conversions to Islam without appearing before a special committee.

[88] No information has been submitted as to whether the litigation was successful, whether converts to Christianity face similar obstacles in registering their change of religion, or whether the 1965 Population Registry Law is strictly observed by the Israeli population or not. In the absence of such information all that can be said is that the wife might experience administrative difficulties in the event that she attempts to register her change of religion in the Israeli Population Registry. The suggestion that the absence of a Hebrew date of birth on her identity card would identify her as a Christian, thus leading to her being persecuted, is simply speculative.

[89] The DOS Religious Freedom report and other country information establishes the proposition that there are tensions in Israel between Jews and non-Jews, and between Christian and Muslim Arabs, that there is discrimination against non-Jews in Israel, that, since 1977, there has been a law making it illegal to offer inducements to convert away from the Jewish faith, and that there is some intolerance of, and occasional incidents of violence against, Christians, particularly Messianic Jews. The country information falls short of establishing the proposition that there is a real chance that the appellants will be persecuted in Israel by reason of their Catholic faith.

[90] Given the comments of Father Brady, noted earlier in this decision, the prospect of the wife becoming involved in missionary work or organised proselytising in the future is speculative. In any case, proselytising is permitted in Israel, there is only a restriction on offering and receiving inducements to convert. The appellants have suggested that a law exists that prohibits Jews from converting. If such a law exists, there is no evidence that it is currently enforced.

[91] Persecution is defined in refugee law as the sustained or systemic denial of

basic or core human rights such as to be demonstrative of a failure of state protection: *Refugee Appeal No 2039/93* (12 February 1996) and *Refugee Appeal No 74665/03* [2005] NZAR 60.

[92] The appellants may experience difficulties in connection with their Catholic faith in Israel. Such difficulties were encountered by the husband during the period the appellants resided in Israel and included difficulty attending church (because there was no suitable church within the region in which they resided) and some job discrimination. The wife has received a letter from her mother informing her of a single incident where a woman wearing a crucifix was attacked in public. There have been reports, such as the one noted at [83] above of incidents of hostility towards Christians. The Authority does not consider that the difficulties the appellants may expect to face in Israel by reason of their membership of the Catholic religion will amount to being persecuted.

Difficulties experienced in Israel by immigrants from the former Soviet Republic

[93] The appellants have not been alone in their disappointment in Israel. The difficulties faced by immigrants to Israel from the former Soviet Republics have been well-documented. See for example, Canadian Immigration and Refugee Board, Research Directorate *Israel: Jews from the Former Soviet Union* (February 2003). At [3.2] this report documents the adjustment difficulties faced by Jews from Russia (known as Olim) and notes that these include unemployment, difficulties in obtaining housing, and difficulties in obtaining work commensurate with their qualifications and experience.

[94] A *BBC News* article published in November 2004 notes that approximately one million “Russians” have emigrated to Israel since 1990 but that factors such as poor employment prospects, discrimination and the fear of terrorism have led many to return “home”. The article notes a study which found that between 2001 and 2003, at least 50,000 Israeli citizens returned to the former Soviet Union: Lucy Ash “Israel faces Russian brain drain” *BBC News* (25 November 2004).

[95] The treatment experienced in Israel by immigrants from the former Soviet Republics has formed the basis for claims to refugee status made in Canada, Australia and the United Kingdom. In the decisions from these jurisdictions viewed by the Authority, none of the claims have succeeded, the decision-makers concluding in each jurisdiction that the treatment of immigrants from the former Soviet Union in Israel does not amount to being persecuted and does not therefore

engage the Refugee Convention.

[96] Similar claims have been brought to this Authority without success. For example, see *Refugee Appeal Nos 70083 and 70084* (20 February 1997) and *Refugee Appeal No 74514* (11 March 2004).

[97] One of the appellants in *Refugee Appeal Nos 70083 and 70084* was, like the husband in this appeal, a non-Jew and a practising Christian who had obtained Israeli citizenship through her Jewish spouse. Like the husband in this decision, the Russian Christian appellant in *Refugee Appeal No 70083 and 70084* had also been unable to find a church at which to attend religious services and therefore practised her faith at home. In its decision, the Authority reviewed country information concerning the treatment of immigrants from the former Soviet Union in Israel and concluded that, based on both the country information and the appellants' accounts of their experiences in Israel, they did not face a well-founded fear of being persecuted in Israel by reason of their national origin. In reaching this conclusion, the Authority found that the harassment and discrimination the appellants experienced in Israel by reason of their Russian origin and Christian religion did not amount to being persecuted.

[98] Similarly, in *Refugee Appeal No 74514,* the Authority found that while the appellant in that appeal had experienced discrimination and some harassment in Israel including being subjected to racial taunts and assaults which did not result in significant injury, his difficulties, even when considered cumulatively, did not amount to being persecuted and that there was not a real chance of him being persecuted should he return to Israel.

[99] In her submissions of 15 September 2006, counsel stated that refugee status has been granted in Canada to an Israeli citizen of Russian origin who had converted from Judaism to Christianity. She also included amongst her bundle of documents at tab 41, an Internet article from April 2005 in which it is asserted that, "in past years Canada has granted refugee status to many former Soviet Jews on the basis of their experiences of persecution in Israel": Adri Nieuwhof and Jeff Handmaker "Is Israel a Safe Haven for Jews?" (5 April 2005) www.countercurrents.org/pa-nieuwhof050405.htm.

[100] No decisions in which refugee status has been granted to Israel citizens who are from the former Soviet Union have been cited to or provided to the Authority. While the assertion has been made by counsel that refugee status has

been granted to such a person in Canada, in the absence of the decision or further information, the Authority is in no position to ascertain the basis for such a grant or whether the circumstances of the refugee in that case are particular to them, or analogous to either of the appellants in this appeal. Similarly, while the Internet article referred to above asserts that "many" former Soviet Jews have been granted refugee status in Canada, no evidence of such grants has been provided to or found by the Authority. Should the assertion in the article be correct, the exact basis for the alleged grants of refugee status is unknown. Without more, the Internet article is of little assistance.

[101] Given the absence of further information, the Authority must make a decision taking into account the evidence before it which includes the past experiences of the appellants. Although a decision about refugee status is predicated on what will happen in the future (is there a real chance of the appellants being persecuted if they go back?), past experience is an indicator of what may be expected to happen in the future. The husband, as a non-Jewish Olim and a Christian, suffered employment discrimination and, although unable to practise his profession, was able to find employment. The wife was able to obtain employment commensurate with her experience and qualifications. During periods of employment between jobs, she received financial support from the state that was sufficient for her needs. She was however subjected to occasional racial taunts.

[102] The Authority accepts that the appellants suffered discrimination and harassment by reason of their national origin in Israel. However, it does not consider that even viewed cumulatively, this discrimination and harassment can be regarded as being persecuted.

Sexual harassment experienced by the wife

[103] In a memorandum filed on 22 May 2006, counsel submitted the sexual harassment of the wife was at such a level that it constituted being persecuted and that a component of this was the failure of the Israeli state to intervene and protect her. Such failure is pertinent because of the well-established principle of refugee law that the absence of national protection is an element of "being persecuted". As against this, nations are presumed capable of protecting their citizens. Clear and convincing evidence is required to rebut this presumption and to demonstrate a state's inability or unwillingness to protect its citizens (see *Refugee Appeal No 523* (17 March 1995) and *Refugee Appeal No 74665* at [51]-[55]). This principle

has particular application where a refugee claimant comes from an open democratic society, with a developed legal system, which makes serious efforts to protect its citizens from harm.

[104] As noted in the summary of her evidence above, the sexual harassment the wife experienced in the course of her employment consisted of two incidents which occurred in late 1996 and June 2000 respectively. Both these incidents were similar in that on each occasion, the wife was subjected to sexual advances made to her by her immediate superior in the workplace and, on each occasion, her employment was terminated following her refusal of such advances.

[105] The wife complained to the police following the 1996 incident but received no assistance from them. She was also refused assistance by her trade union and by staff at *Naamat.* She did not complain to the police following the June 2000 incident, having little confidence in them as a result of their lack of response to her complaint in 1996 and to the complaints she had made about AB in May 1998 and September 1999.

[106] The two incidents of sexual harassment complained of by the wife do not constitute being persecuted. Even considered together, it simply cannot be said that she was in this regard subjected to a sustained or systemic violation of her core human rights. While no assistance was forthcoming to her when she complained to the police in late 1996, it is relevant that this complaint was made prior to Israel passing its Prevention of Sexual Harassment Law in 1998.

[107] Considerable time was spent at the hearing discussing the efficacy of this law with the wife and counsel and dissecting various commentaries on it. It was the wife's position that, despite the passage of the law, she would not receive protection from the state in Israel. She based this position on her experiences with the police in Israel and upon country information criticising the implementation of the law.

[108] The implementation of the Prevention of Sexual Harassment Law was noted in a United States Department of State Report discussed at the hearing which recorded that between January and October 2005, Israeli police opened 158 cases involving sexual harassment of which 137 were forwarded for prosecution. The same report notes an estimate made by non-governmental organisations in a report in March 2005 to the UN Session of the Commission on the Status of Women that 130,000 women in Israel between the ages of 25 and 40 had been

sexually harassed in the workplace: United States Department of State *Country Reports on Human Rights Practices 2005: Israel and the occupied territories* (8 March 2006).

[109] A Canadian report submitted by counsel notes some opinions on the effectiveness of the Prevention of Sexual Harassment Law and other laws intended to improve the status of women in Israel. These opinions include a 2002 quote from a former *Knesset* member to the effect that the laws have had no effect and suffer from loopholes and lack of enforcement.

[110] The same report, however, notes the prosecution, under the Prevention of Sexual Harassment Law, of a number of prominent Israeli men and that a major stumbling block in the enforcement of the law has been the failure of women to make reports of sexual harassment or to take up the option of suing their employers. It is significant that in the report, its authors state that they were unable to find any reports of police refusal to process or investigate complaints of sexual harassment from ex-Soviet Union immigrant women: Canadian Immigration and Refugee Board, Research Directorate ISR41658 *Israel: Protection available to female victims of sexual harassment in the workplace, including legal mechanisms; whether there are any reports of police refusing to process complaints of sexual harassment from ex-Soviet Union immigrant women* (2 June 2003).

[111] Israel has claimed at the United Nations that the high profile prosecutions noted above have raised public awareness of the law and the momentum of public change: Israeli Statement on Advancement of Women at the 59th UN General Assembly (14 October 2004).

[112] The wife was unable to obtain state protection when she was sexually harassed in her workplace in 1996. Since then, the Prevention of Sexual Harassment Law has been passed which has resulted in convictions and prosecutions including those of prominent figures in the Israeli establishment who may have expected to be protected from prosecution by their positions. The wife failed to file a complaint of sexual harassment when a second such incident occurred in June 2000.

[113] Her failure is understandable given the lack of assistance provided to her on previous occasions. However, it cannot be said that on the second occasion of sexual harassment that the state failed in its duty to protect her as she did not

invoke that protection. We find that unlike in 1996, the Israeli state does now offer protection against sexual harassment in the form of a law which is enforced. Should the wife return to Israel and should she suffer any further incidents of sexual harassment in the workplace, we find that state protection is available to her.

The threat posed to the appellants by AB

[114] The appellants believe that should they return to Israel they will suffer serious harm from AB who will be motivated to avenge the damage to his honour by the wife's refusal of his proposal. The Authority has found that their belief in this regard is genuinely held and accepts that the wife provided a truthful account of her experiences with AB.

[115] Counsel provided material both at and subsequent to the hearing concerning both "honour killings" of women in Arab communities in Israel, and serious crimes committed against women in Israel. An article provided by counsel in January 2007 concerns the kidnap and murder of a number of Israeli youths (both male and female) and the attempted kidnapping of two teenage Israeli girls. In the article, these crimes are linked to the practice of hitchhiking: "Is the murder of Maayan Ben-Horin an act of terrorism?" *The Seventh Channel* (11 January 2007). The material is of little relevance to this appeal concerning as it does, the treatment of Arab women by their own families and the victims of random and opportunistic crimes.

[116] The wife's various encounters with AB spanned the period between early 1997 and December 2001. The wife had stopped using his taxi service in March 1998 when AB invited her to dinner. In May 1998, he approached her at a bus stop and offered a free ride home. Believing AB was following her, the appellants then made their first complaint to the police about him. The police took a statement from the wife but no further action.

[117] One and a half years later, in September 1999, AB attempted to force the wife into his van leading to the appellants' second complaint to the police about him. The police took no action in respect of this incident but advised her to call them immediately should anything else occur. Despite this advice the appellants never again contacted the Israeli police about their harassment by AB.

[118] The wife next saw AB in a shopping plaza in May 2000, then again outside

a bank in September 2000. It was on this occasion that he made a threat to kill her and her husband. She did not complain to the police about this threat despite their earlier advice to her to contact them should she encounter difficulties from AB again.

[119] A year later, in October 2001, AB called at the appellants' home and told them that they had made the correct decision to sell their home and that they should leave Israel.

[120] The wife's final encounter with AB occurred in December 2001 when AB approached her at a local café and made another death threat against her and her husband. Again, she made no complaint to the Israeli police about this threat.

[121] In 2001, Israel passed the Prevention of Stalking Law. Under this law protective injunctions can be issued against persons who engage in stalking. Information provided by Israel to the United Nations Committee on the Elimination of Discrimination against Women, stated that since 2002, 2,946 requests for restraining orders had been submitted to courts under this law with a distinct rise through the years showing an increase from 472 cases in 2002, to 1,307 cases in 2004: United Nations Committee on the Elimination of Discrimination against Women *Responses to the list of issues and questions for consideration of the combined fourth and fifth periodic report* 12 May 2005 CEDAW/PSWG/2005II/CRP.2/Add.7.

[122] The Authority finds that the appellants failed to avail themselves of state protection in respect of the threat posed to them by AB. Their final complaint to the police about him was made in September 1999. On this occasion it is acknowledged that the police failed to take any action despite the serious nature of the incident that had occurred. However, they were instructed to inform the police immediately should anything else happen.

[123] The appellants did not inform the police of the threats that AB made to kill them in September 2000 and December 2001. They had no confidence in the police and had been warned by AB not to report him to them. At the hearing they gave evidence that they suspected that the Israeli police were corrupt and may have links with AB. This evidence is speculative. It remains that they did not seek the protection of the Israeli police in regard to AB's death threats. Given this failure it cannot be said that the Israeli police provided no protection to them in respect of these threats.

[124] AB made no attempt to harm the wife or even have regular contact with her after the incident in September 1999. The evidence of the wife's encounters with him do not indicate he made any serious pursuit of her. Long periods of time passed between their encounters. After he threatened to kill her for the first time in September 2000, she did not see him again until October 2001. From the facts it does not appear that he was pursuing her, rather, taking the opportunity when he saw her to subject her to intimidation.

[125] Although AB's behaviour towards the wife frightened her, we do not find that the treatment she experienced from him amounts to being persecuted.

[126] We find that if the appellants returned to Israel, it is unlikely that AB would resume his intimidation of them. Some six and a half years have elapsed since their last encounter with him and the possibility is remote that their return to Israel would come to his attention should they follow the plan they previously made to relocate to another city such as Tel Aviv.

[127] However, even were AB to resume making sporadic threats against them, they would be able to avail themselves of the protection of the Israeli state. The behaviour AB subjected the wife to is now covered by the Prevention of Stalking Law which was not in force at the time the appellants made their two complaints to the police about AB. As the figures noted in [121] above show, this law is being enforced. In addition, such sporadic threats, while obviously disturbing to the appellants, do not constitute being persecuted as that term is understood in refugee law.

Conclusion

[128] The appellants find themselves Israeli citizens. As noted in this decision, their lives in Israel were characterised by disappointment, frustration and the unpleasant experiences the wife suffered, particularly the two instances of sexual harassment in the workplace and her sporadic harassment and intimidation by AB.

[129] Like other Olim they suffered discrimination because of their national origin. This included for the wife, racial taunts in the street. The husband suffered employment discrimination because of his non-Jewish status. The wife is now a Christian convert. This status further alienates her from Jewish society. As we have found earlier in this decision, she may face some discrimination in Israel on the ground of her religion.

[130] None of the experiences complained of by the appellants, even considered cumulatively, can be characterised as a sustained and systemic violation of their core human rights. Both appellants worked in Israel and during the periods the wife was unemployed she received an income from the state. Their income was sufficient to provide them with a comfortable standard of living. The husband was able to practise his religion at home. His difficulty in finding a place to attend mass arose not from any restriction placed on him by the state but from the fact that no suitable church was available.

[131] The circumstances of the appellants, should they return to Israel will be difficult, and maybe even unpleasant. However they do not face a real chance of being persecuted in Israel and therefore are not refugees.

CONCLUSION

[132] For all the reasons above the appellants are not refugees within the meaning of Article1(A) of the Refugee Convention. The appeals are dismissed.

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M A Roche
Chairperson