

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 70208/96

S F

AT AUCKLAND

<u>Before:</u>	E M Aitken (Chairperson) P Millar (Member)
<u>Counsel for Appellant:</u>	S Singh
<u>Representative for NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	2 December 1996
<u>Date of Decision:</u>	16 May 1997

DECISION DELIVERED BY P MILLAR

This is an appeal against the decision of the Refugee Status Branch of the New Zealand Immigration Service (RSB), declining the grant of refugee status to the appellant, a citizen of the Russian Federation.

INTRODUCTION

The appellant's counsel was given until 13 December 1996 to produce an original of an official document relating to the appellant's change of nationality. This document was received by the Authority on 13 December 1996 and has been taken into account in the preparation of this decision.

On 8 April 1997 the appellant's counsel was provided by the Authority with certain country information. Comments on those materials were provided to the Authority by counsel in a letter dated 21 April 1997. These comments have been taken into account in the preparation of this decision.

THE APPELLANT'S CASE

The appellant arrived in New Zealand on 31 December 1994 and applied for refugee status on 23 February 1995. The appellant is a 40 year old married man and arrived in New Zealand with his wife aged 36 and his two children, S, aged 16 and A, aged 12, both daughters. He applied for refugee status on 23 February 1995 and he was interviewed by the RSB on 23 May 1995. The RSB declined his application by letter dated 31 July 1996 and it is from that decision that the appellant now appeals to this Authority.

The appellant was born in Z village, Khazakhstan, in the former Soviet Union. His parents are of German ethnicity and the appellant considers himself to be ethnic German. The appellant does not know where his father was born nor when. His mother was born in 1932 in the Crimea. His maternal grandmother's grandfather was born in Germany and then came to Moscow, before settling in the Crimea. The appellant explained that generations of ethnic Germans have come to live in Russia over the past 200 years and he believes that his parents' ancestors migrated to Russia in that period.

The appellant does not know why but a few months after his birth his parents were divorced. The appellant was the only child of the marriage and his name at birth was SJF. The appellant lived with his mother in Khazakhstan until 1963 when they went to live in V in Russia. In 1969 they moved again to the village of T, also in Russia, which was 800 kilometres from V. The appellant's mother moved to this village as she had become acquainted with her second husband whom she married in 1969. In 1970 the stepfather arranged for the appellant's name to be changed and his new name became SJM. The appellant's birth certificate was altered to show his new name as well as showing the name of his stepfather as his parent. On the birth certificate the appellant's stepfather's nationality was shown as Russian and the nationality of the appellant's mother was shown as German. The appellant's stepfather, in effect, adopted the appellant but the appellant could not recall if court proceedings were commenced to have this done.

The appellant said that in V he was often ridiculed because of his German ethnicity. When he played games with other children in the village, he was called both a "fascist" and a "Hitler". He received this abuse both at and outside school. The appellant said that when he was playing with matches, the owner of a nearby

shop came out and said that he would beat the appellant because he was German and the Germans had burnt Russian villages before.

A few months after the appellant's name was changed, the family moved to the town of SG. The appellant continued his education in SG but did not tell anybody that he had changed his name.

In 1973 the appellant completed his high school education and in that same year he applied for enrolment at the Leningrad Military Academy. As part of his application the appellant undertook and completed an examination after which he was told by an officer from the academy that his parents did not have the same nationality and, although he was a good man, he had chosen the wrong parents. His application for entry was unsuccessful. While the appellant did not know how the academy knew that his mother was ethnic German, he believes that this was the reason his application did not succeed.

In that same year, 1973, the appellant commenced work as a tool maker at the NSM Company in SG. He worked for that company until 1975 when he commenced his military service. The appellant's military service was carried out in the city of B B and was completed in 1977 when he then enrolled at a university in KH. In 1978 the appellant married his wife and in 1981 their first daughter was born.

In 1982 the appellant graduated with a degree in mechanical engineering and he then commenced work as an engineer with the AFP Company in SG. In 1984 his second daughter was born. The birth certificates of both daughters specified the appellant's nationality as Russian.

In 1985 German nationals living in the former Soviet Union were allowed to return to Germany and the appellant decided to reclaim his original nationality and leave Russia. In 1988 the appellant's relatives migrated to Germany, however, he was unable to do so at that time because his nationality was recorded on official documentation as Russian. The appellant was told that when he was 16 years old he had asked to be listed as Russian and therefore, could not change his nationality back to being German.

While working for the company, the appellant was promoted to the position of senior engineer and his salary increased accordingly. In 1992 the appellant was

earning 1,000,000 Roubles per month and in terms of income he regarded himself as being in the “middle level”. The appellant said his family had a good flat which had been issued to them by the government. In 1992 the company was divided into small private groups owned by individuals. The appellant and another colleague worked together in one of these groups which they jointly owned. The appellant said that he paid a “symbolic amount” to purchase equipment for the business and, depending on the amount of work available, the group employed from five to six people. As time went on the appellant received more work and his income increased.

In May or June 1992 two people came to the appellant’s work place and asked for money. They did not say who they were and the appellant could not say where they were from. The appellant’s neighbour was a Mafia boss and while there had been some small misunderstandings between them in the past, prior to this occasion, the appellant had never been approached by mafia or criminal groups to pay money. The appellant refused to pay and, soon after, windows in his office were damaged, his car tyres were flattened and he received threatening telephone calls in which he was asked when he would pay money as requested.

In the same year a new constitution was adopted in Russia and the appellant thought he had a better chance of regaining his original nationality through the court system. He consulted a lawyer who commenced proceedings for him. During the proceedings the appellant’s lawyer called on officers from the Militia and the police to appear at court. However, no appearance was made by any officers from either organisation. On 18 April 1994 the High Court ordered, in effect, that the appellant could regain his original nationality. Neither the militia nor the police appealed against the decision.

The appellant expected that he might have trouble from the general population and the authorities when his name was changed back to his original name, however he wished to get away from Russia and he thought that with the coming of Perestroika he would be free to do so and would not encounter difficulties.

The appellant’s counsel produced a document entitled “Determination” and submitted that this document was the court order. The document refers to the history of the appellant’s name changes and his adoption by his stepfather. It also refers to a certificate of name change dated 7 April 1994 noting that the appellant

changed his name from SJM back to SJF. The document states:

“DETERMINED

Establish fact of belonging to German nationality to, [SJF], born [date of birth], in [Z] village, [A] region, [K] District.

The decision is the basis to issue passport to [SJF], with a notation in the margin, nationality “German”.

On 30 April 1994 the appellant’s wife went to the bank, where she once worked, to request that her work record be changed to be consistent with the court decision. She brought along her marriage certificate, a certificate of name change and her old internal passport. She went to the manager’s office and there saw the manager and an officer from the FSK. The FSK officer asked her why she wanted to change her documents and who had been leading the court proceedings. The appellant’s wife asked why she should answer his questions. The officer said that the court decision was not enforceable and the documents could not be changed. The bank manager told the appellant’s wife she just wanted to go Germany to get money and she could stay in Russia. The FSK officer took the appellant’s wife’s documents from her and told her to see him on 5 May.

When the appellant came home from work that day he found his wife upset and shaking. That evening two FSK officers came to the appellant’s home. One of those officers was the officer who spoke to the appellant’s wife at the bank. The officers came into the appellant’s home and asked a lot of questions including why he had changed his name. The appellant told them that he had not broken any laws, he was not a criminal and did not want to see the officers in his home. One of the officers said that the appellant talked too much and asked the appellant if he was “feeling freedom or what”. The officers then left. The appellant’s wife also gave evidence at the hearing and she told us that the two officers asked questions about family relatives and where they were living. The appellant’s wife told the officers that they should investigate the Mafia and one of them replied angrily that he knew what his activities should be.

On 5 May 1994 the appellant and his wife went to the FSK office and were interviewed by the same two officers. The appellant and his wife were kept there the whole day and the appellant was asked about his parents, his working activities and what he observed in the army during his military service. The appellant was asked why he did not want to live in Russia, was told to think about what he was doing and not to talk too much.

After this interview, the appellant began to receive threatening telephone calls at his home. The calls were received two to seven times per day. The caller threatened that the appellant had a beautiful wife and daughters and there were people who could abuse them. The appellant thought the FSK were involved in making these telephone calls and as a result of these calls his wife became extremely nervous and close to a "breakdown".

Not long after the interview at the FSK office, the appellant urgently requested a loan from his bank, something he had done in the past without difficulty. The supervisor at the bank said that no credit would be provided and also asked why the appellant needed a loan when he wanted to go to Germany. The appellant thought that the bank did not lend him money as it decided to simply "put [him] down". According to the appellant if a person could not work and had no money then they could not leave the country and therefore the suspension of credit was connected to the authorities' attitude towards him wanting to leave Russia. The appellant did not think a bank manager would dare to go against the FSK if the FSK had requested that the bank suspend credit to the appellant.

On approximately 17 May 1994 the appellant was beaten severely by a number of people and warned not to complain to the authorities or he would be beaten again. The appellant had to go to hospital to have his injuries treated. He asked his neighbour, referred to earlier as being a Mafia boss, about his knowledge of the matter. This person told the appellant that as he did not have any bruises, it was not like "one of his boys". The appellant went to see "Militia No. 6" to complain but the officer at the station simply said "you are alive not dead".

Because of these problems, at the end of May 1994, the appellant sent his wife and two children to his mother's home in K which was 100 kilometres from Vladivostok and 900 kilometres from SG.

At around the same time the appellant applied for a new passport and received it the following day. The appellant's international passport was produced to the Authority and it specifies the appellant's nationality as Russian. The appellant explained that in the international passport his ethnicity is not important. The appellant produced an internal passport to the Authority which specified his nationality as German. The passport also contained details of his Propiska. The international passport was issued by the Department of Internal Affairs in SG and,

according to the appellant, it would be normal for an applicant to be interviewed to be issued with the passport. The appellant did not know if this department would make enquiries with the FSK in dealing with applications for passports. He thought that they might have only if the appellant was travelling as a high level scientist.

The appellant said that while his wife and two daughters were away, he began to be visited by Mr S O. This person had fought in the former Soviet army in Afghanistan and the appellant believes that this person is responsible for a secret service group and was always travelling with his "followers" and taking money from people. The appellant said that Mr S O would park his car outside the appellant's home and he had other veterans of the war in Afghanistan in the car with him. Mr S O would ask the appellant why he wanted to go to Germany. Mr S O would also tell the appellant that if he stayed in Russia, the bank could be made to provide the appellant with a loan. The appellant had never mentioned to Mr S O that he was intending to leave Russia and therefore believed that Mr S O had been talking to the FSK. According to the appellant's wife, on her return to SG, the trouble started again with threatening telephone calls being made.

The appellant's difficulties continued at work as he could not obtain credit from the bank. His children still attended school, however, he was afraid for them. The appellant felt that his telephone at work and at home was tapped. The appellant called the telephone exchange to complain about the threatening calls and was told that there was interference on the line. The appellant also thought that his group's business operations were being controlled. However, the appellant believed that there was no point in complaining to the FSK about these matters as he thought that someone in a middle position in the organisation was controlling the trouble. He did not contact his lawyer to discuss these problems.

The appellant went to a number of travel agents to try and obtain a visa to enter Germany. He had considered taking advantage of the agreement between Germany and Russia referred to earlier but did not pursue this option as it would involve sending documents to Germany and there would be great delay in processing the application. The appellant said that he had an aunt in the Ukraine who had been waiting for four years trying to emigrate to Germany through this process. The appellant was very scared for his family and he could not wait any longer.

When the appellant tried to obtain a visa to enter Germany, his request was declined as the whole family was travelling and this was not allowed by the German authorities. The appellant considered going to Australia, however, the Australian officials would not allow the whole family to enter the country. Finally, the appellant found a travel agent who could obtain a visa for New Zealand and the appellant decided to come to this country.

In December 1994, the appellant sold all of his possessions including his flat. The family stayed with the appellant's mother-in-law until later that month when they left for KH where they were to catch a plane to New Zealand. After they had sold the house, and before going to KH, the family was still followed by Mr S O. Mr S O visited the family twice in that time and threatened the appellant.

The officials took some time to check the appellant's documents when he and his family were at the airport waiting to depart for New Zealand.

When the appellant left Russia he still had a partner working in the business. The appellant was able to quietly leave the business as no money was owed to the bank. The company continued to have problems with the Mafia for not making payments and the partner eventually closed down the company.

The appellant's wife received letters from her mother after the family arrived in New Zealand. Her mother told her that Mr S O had called a few times and the mother told Mr S O that the family had gone overseas. The mother has not written since about any problem with this person.

The appellant also said that if he was returned to Russia he could not stand the life there and he would have no work nor money. He said that he would need a Propiska and the problems brought on by his nationality would only occur again. He said that he would kill himself because of the troubles he has experienced.

The appellant was asked why he could not live in the town where his mother presently lives. He said that he would need a work permit and he would need to apply in SG to change his propiska. However, he said that if he went to Vladivostok and bought a flat there he could go to the Militia and be registered at that place but this would be very expensive.

THE ISSUES

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

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

In terms of Refugee Appeal No. 70074/96 Re ELLM (7 September 1996) the principal issues are:

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
2. If the answer is Yes, is there a Convention reason for that persecution?

Because the issue of relocation arises in this case, the decision of this Authority in Refugee Appeal No. 523/92 Re RS (17 March 1995) requires two additional issues to be addressed:

- (a) Can the appellant genuinely access domestic protection which is meaningful?
- (b) Is it reasonable, in all the circumstances, to expect the appellant to relocate elsewhere in the country of nationality?

ASSESSMENT OF THE APPELLANT'S CASE

In order to assess the appellant's case, a credibility finding must first be made. Having seen and heard the appellant and his wife, we have no reason to doubt the veracity of their evidence which has been consistently given throughout the refugee determination procedure. We find therefore both the appellant and his wife to be credible witnesses.

Discrimination prior to the Court order

While the appellant received taunts at school and other verbal harassment due to his German ethnicity, we note that the appellant received a full school education. Although unable to enrol at the military academy, he nevertheless obtained a tertiary education being awarded a degree in mechanical engineering. The appellant was able to avoid further mistreatment through having his name changed and a different nationality recorded on his official documentation. In view of those matters, up until the court order made in April 1994, we are satisfied that while the appellant did receive some discriminatory treatment based on his ethnicity, such treatment cannot be said to amount to persecution.

Activities of criminal groups

The attacks on the appellant's factory from 1992 appear to relate to the activities of Mafia-like organisations.

We refer to the following comments from a report entitled "Russia - Profile of Asylum Claims and Country Conditions" (Refworld August 1996 at pp13 - 16) by the United States Department of State, Bureau of Democracy, Human Rights and Labour:

"One difficulty in reviewing asylum claims by individuals asserting mistreatment by criminal groupings is establishing whether there is any relationship between the mistreatment and the individual's ethnic, political, religious or other affiliation. For the most part criminal groups target individuals believed to have, or able to obtain, financial assets. Targets include businessmen, small and large, individuals who travel abroad frequently or who have relatives abroad - all suggesting access to foreign currency...

But it appears unlikely that criminal groups would target individuals in order to punish them for their religious or political beliefs, although they may accept the stereotypical view that certain groups including Jews and some groups from the Caucasus region, are likely to be wealthier."

This information was provided to the appellant's counsel who submitted that the appellant, as a wealthy businessman of German nationality, was a target for mafia groups. We note that the attacks on the appellant's factory commenced well before he reverted to his former nationality and at any rate neither the appellant nor his counsel produced any evidence that the appellant's business has been targeted by these groups due to any ethnic, political, religious or other affiliation the appellant may have held or be seen to hold. In view of these matters we are satisfied these incidents bear no relation to the Convention and are more

appropriately matters for the domestic law of the Russian Federation (See Refugee Appeal No. 763/92 Re AS (15 June 1994)).

Difficulties following the Court order

Following the court order in April 1994 the appellant and his family encountered the following difficulties:

1. Threatening behaviour from FSK officers.
2. Threatening telephone calls.
3. Surveillance and threats from Mr SO.
4. The attack on the appellant on 17 May 1994.
5. Suspension of credit for the appellant's business.

The appellant could not produce any evidence directly linking the telephone calls, the assault in May 1994 and the suspension of credit to any state authorities. However the appellant claims that FSK officers are responsible for these matters.

It was clear from the way the FSK officers spoke to the appellant and his wife that the officers did not approve of the appellant's decision to reclaim his German nationality, leave Russia and go to Germany. The officers' manner could best be described as threatening and the tone of their conversations with the appellant was tense. Furthermore the appellant began to experience the difficulties he complains of after his conversations with the FSK officers in early May 1994. Although the appellant did not have any further direct contact with the FSK after the interview on 5 May 1994, in view of the matters mentioned, it would seem that the threatening telephone calls, the physical attack on the appellant and the suspension of credit for his business were in some way connected with the negative attitude of the FSK officers toward the appellant's decision to reclaim his former nationality and leave Russia particularly as there appears to be no other logical explanation for them. The acts complained of may have been carried out either by certain FSK officers themselves or at their request. Alternatively it could be that the officers knew of these matters and acquiesced in their being carried out. Overall, while we do not know the precise role of the FSK in these matters,

we accept the appellant's assertion that the FSK in SG directly or indirectly took part in the harassment that ensued after his conversations with FSK officers in early May 1994.

Mr S O asked the appellant the same questions as those put to him by the FSK officers, including why he wanted to go to Germany and leave Russia. He told the appellant that the bank would provide the appellant with credit if he stayed in Russia. The appellant had never dealt with this person prior to the conversations in question. In view of all of those matters and the fact that this person commenced harassing the appellant and his family soon after the appellant's first dealings with the FSK officers, we accept that Mr S O was harassing the appellant either at the request of officers within the FSK or, at least, with their approval.

The appellant experienced harassment that amounted to a persistent invasion of his privacy as well as threats to his own life and the lives of his family. In our view these matters are of sufficient gravity to amount to persecution. The harassment experienced by the appellant and his wife was unrelenting and consistent over a period of approximately seven months until the appellant left SG. Notwithstanding the fact that two years have elapsed since the appellant left SG, given the unrelenting and persistent harassment experienced by the appellant and his family prior to leaving SG, and the fact that they actually chose to leave the Russian Federation, a matter of concern to the authorities in SG, we find that there is a real chance they will suffer persecution if they return to SG.

As to the perpetrators of such persecution, we note that law enforcement in the Russian Federation has undergone numerous changes since 1991. The FSK (the "Federal Counter Intelligence Service") was created in December 1993 as one of a number of organisations which took over the role of the former KGB. However this organisation appears to have been since disbanded and replaced by the Federal Security Service (FSB). As to the role of this body we note in its Country Report on Human Rights Practices for 1996 relating to the Russian Federation, (30 January 1997) the United States Department of State makes the following comments:

"The Ministry of Internal Affairs (MVD), the Federal Security Service (FSB), the Procuracy, and the Federal Tax Police are responsible for law enforcement at all levels of government throughout the Russian Federation; the MVD also oversees most of the prison system. In addition to its core responsibilities of security , counterintelligence and counterterrorism the FSB has broad law enforcement functions including fighting crime and corruption. The FSB operates with only

limited oversight by the Procuracy and the courts.....Some members of the security forces continued to commit human rights abuses.”

While the FSK may no longer exist we do not rule out the possibility that the FSB in SG may still employ the same FSK officers responsible for the harassment in question. We also note the comment made that there is only limited oversight of FSB operations and in our view this factor preserves the likelihood of officers from that organisation being able to abuse their powers to harass citizens with impunity as has occurred in the appellant’s case.

We note that the appellant did not complain about these matters to anyone within the FSK or any other government agency nor did he consult his lawyer to approach the courts for any assistance. However, we do not penalise the appellant for this as he did not have evidence to prove who was responsible for these acts and given what would have been the limited oversight of FSK operations at that time there was probably very little the appellant could do.

The appellant believed that he had encountered these difficulties because he had reclaimed his German nationality and because of his wish to leave the Russian Federation. As we accept that his troubles started after reclaiming his former nationality and expressing his desire to leave the Russian Federation, in the circumstances, we conclude that any future persecution the appellant may suffer if he returns to SG will be based on his nationality or alternatively adverse political opinions imputed to him as a result of his reclaiming his former nationality and his desire to leave the Russian Federation and live in Germany. His claim is therefore within the scope of the Refugee Convention.

RELOCATION

Can the appellant and his family access genuine protection that is meaningful?

In our view the interest of the Russian authorities in the appellant is localised. On the facts we note no evidence of any harassment of the appellant’s wife while she and her daughters were staying with the appellant’s mother in K. We also note that the High Court in SG, an instrument of the state, issued the appellant with an order allowing him to revert to his original nationality. The Russian constitution also prohibits discrimination based on race, sex, religion, language, social status or other circumstances. It is clear, therefore, that the Russian Federation, at least

officially, does not penalise its citizens for changing their nationality, nor does it condone discrimination on the basis of nationality.

Following the hearing the Authority provided the appellant's counsel with a copy of an article entitled "Germany pays to keep ethnic Germans in Russia" printed in the New York Times on 9 May 1993. According to this article, in July 1992, the governments of the Russian Federation and Germany signed an agreement under which the German government agreed to finance a "magnet" settlement near the Volga river in central Russia to encourage ethnic Germans to remain in the Russian Federation instead of emigrating to Germany. Notwithstanding resistance from the local majority ethnic Russian population, the settlement was established in an area which was formerly inhabited by ethnic German peoples and formerly known as the autonomous Volga German Republic before it was disbanded by Stalin in 1941. The article states:

"The agreement signed in July 1992 by President Boris Yeltsin of Russia and the Chancellor of Germany, Helmut Kohl, aims to recreate the republic with German aid...

Germany's policy is clear, if optimistic. The interior ministry is providing increasing sums to try to better the lives of ethnic Germans where they live, to try to dissuade them from coming to Germany where they are not really wanted.

In the last three years, Germany has spent about \$240 million in predominantly German areas of the former Soviet Union and eastern Europe on housing, cultural centers, factories, bakeries and the like...."

In relation to one particular settlement the article states:

"A half dozen houses are finished. There is money for 58 more. A new bakery is turning out 1,000 loaves a day for about 4 cents a loaf; a new sausage factory uses sovkhos meat. There are plans for a new school, cultural center and health clinic."

The article goes on to refer to courses being organised in that location concerning rural construction and these are attended by both ethnic Russians and Germans. Graduates obtain diplomas with a German seal. The article also mentions that ethnic Germans still prefer to emigrate even though the German government provides assistance to establish and maintain these settlements. The article refers to an ethnic German woman from Kazakhstan claiming that she received verbal harassment and taunts (similar to those received by the appellant in his youth) due to her ethnicity. This person, according to the article, then left Kazakhstan to live in a magnet settlement.

While many ethnic Germans may prefer to attempt to emigrate to Germany, the existence of these settlements clearly shows that the Russian government has taken positive steps, albeit with the assistance of the German government, to provide ethnic Germans with an area where they can live among each other and also obtain employment as well as educational facilities. The existence of these areas leads us to conclude that the state is affording ethnic Germans protection required of the state and does not condone the ill treatment of these people.

In Refugee Appeal No 532/92 Re RS (17 March 1995) this Authority referred to and approved the decision of the Supreme Court of Canada in Attorney-General vs Ward (1993) 2 SCR 689) in which the Court held that the onus was on a refugee claimant to provide “clear and convincing” confirmation of a state’s inability to protect its citizens. Where such evidence was not presented the claim should fail as nations should be presumed capable of protecting their citizens. We note the submissions of the appellant’s counsel that the appellant and his family would suffer discrimination wherever they went in Russia. We note the article from the New York Times refers to resistance from the local Russian population to the establishment of the magnet settlements and also refers to at least one ethnic German’s account of verbal harassment received in Khazakhstan due to her ethnicity. Notwithstanding those matters, the Authority does not have before it, nor was it presented with, any information to suggest that, in general terms, ethnic Germans in the Russian Federation suffer serious discrimination or other mistreatment that could amount to persecution. The appellant’s counsel did not put forward any information of this nature apart from the appellant’s own testimony. In view of the government’s establishment of magnet settlements for ethnic Germans and given our finding that the persecution suffered by the appellant, or likely to reoccur to him, is restricted to SG, in the absence of any “clear and convincing” evidence as to the treatment of ethnic Germans in the rest of the Russian Federation, we are satisfied that the appellant has not discharged the onus upon him.

In our view the appellant and his family could relocate in another city or town either on the eastern seabord or elsewhere in the Russian Federation. We do not believe that the appellant would have a sufficient profile to be of interest to the authorities in areas other then SG. As stated above, we note that the appellant’s family lived without incident in his mother’s village of K which is some 900 kilometres from SG. The appellant said that to live in that village he would need a work permit and he would have to change his propiska in SG. On the subject of

propiska we note the following comments made in the Department of State profile referred to above (Refworld 5 August 1996):

“Under the Soviet system, individuals were required to be registered in the locality where they lived....registration permits(“propiskas” in Russian) were particularly difficult to obtain for the major cities such as Moscow and Leningrad....with the decline of the totalitarian system under Gorbachev, these restrictions were enforced even less rigidly, and in June 1993, the Russian Supreme Soviet abolished them...However many localities have preserved the system. In justifying its decision to ignore the new law representatives of the city of Moscow predicted that free movement would present the city with an annual influx of more than two million...

...Applicants who flee to their location of choice, would appear to have a wide selection of alternative locations. Even in principle the registration system is not applied everywhere. In many areas, including many areas of North West and South Central European Russia, and large parts of Siberia, individuals would not face serious bureaucratic obstacles to resettlement...”

In an IRBDC response to an information request dated 25 July 1995 the following comments are made on this matter:

“Currently a national propiska or resident registration system, maintained by the Special branch of the Ministry of the Interior, is in place throughout the Russian Federation including Vladivostok.

Residents are required to register themselves by declaring their place of residence with the appropriate local authorities. The registration is recorded either in a book or a computer and the resident received a stamp or seal in his or her internal passport indicating the resident’s permanent address.

When a propiska holder changes residence or moves to a different city in Russia the resident is required to denounce the old propiska and register the new address with the authorities in the new locale. The previous propiska stamp is cancelled and indicated as such in the passport, and a new stamp will be given when the new address is registered...

..The existence of a new propiska system in Russia is corroborated by a RFE/RL Research Report which states that “the new system of residence permits merely requires the registration of the place of residence; registration should no longer be a prerequisite for the provision of housing and other benefits and should also allow for an unrestricted choice in the place of residence” (1 July 1994, 43)..

The response goes on to comment that Department of State Country Reports state that authorities of larger cities were enforcing the previously existing propiska system targeting those who are not Russian and primarily persons from the Caucasus and Central Asia.

In its country report for 1996 referred to above the Department of State made the following comments on the propiska system:

“The constitution provides citizens with the right to choose their place of residence freely. However the government continues to restrict this right through residential registration rules that closely resemble the Soviet era “propiska” (pass) regulations. Although the rules were touted as a notification device rather than a control system, their implementation has produced many of the same results as the propiska system.

Citizens must register to live and work in a specific area within 7 days of moving there. Russian citizens changing residence in Russia as well as citizens of former soviet republics who decide to move to Russia often face enormous difficulties or are simply not permitted to register in some cities such as Krasnodar. The cost of registration is often prohibitive, far beyond the means of most migrants or refugees who usually do not register. In October the fee in Moscow was set at 500 times the legal minimum wage, or about \$7,500 (40 million roubles)....

The government and residents of Moscow and other big cities staunchly defend retaining registration as necessary in order to control crime, to keep crowded urban areas from attracting even more inhabitants, and to gain revenue. According to an MVD press release, during the first 6 months of 1996, one out of every four crimes in Moscow was committed by a non Muscovite. The President’s Human Rights Commission and many human rights groups have condemned the registration system as well as the requirement to register visits as infringements upon freedom of movement that create the possibility of arbitrary enforcement by corrupt local authorities.”

The Authority provided the appellant’s counsel all of the information presented above relating to the propiska and residence registration system. In response, the appellant’s counsel submitted that as the appellant is a qualified engineer it was not realistic for him to live in rural areas and, presumably, in order to obtain suitable employment, he would have to relocate to the large cities where the propiska or residence registration system was more strictly enforced. It was submitted that the appellant would have to “denounce” his old residence and this would create many difficulties for him and his family.

It is our view that the restrictions on residence are only of relevance in larger cities in the Russian Federation that have experienced influxes of peoples from other regions. We do not believe that the authorities in the appellant’s mother’s village or other smaller towns are likely to enforce restrictions on residence of the nature in force in Moscow. This information does not confirm the appellant’s suggestion that he would actually have to transfer his propiska from SG to another location. At any rate, there is no information before us that suggests that any refusal of the SG authorities to transfer the propiska would prevent the appellant from taking up residence in a smaller town such as the one in which his mother lives. While the appellant may have a greater chance of obtaining employment, commensurate with his qualifications, in the large cities, in affording protection to its citizens, the state is not required to provide the appellant with the particular type of employment he seeks but is required not to deny him any form of employment due to his

ethnicity. There is no evidence before this Authority that the Russian government carries out or condones the denial of employment to ethnic Germans. Indeed the government has established communities where ethnic Germans are encouraged to live, seemingly regardless of residence registration requirements, and where employment and educational opportunities are to be provided.

The appellant's counsel submitted that the appellant would need to show his internal identification card to any prospective employer, house rental agency, and school for his children. On presenting the card the appellant will be revealing his German nationality. Furthermore it was submitted that the authorities of any town the appellant moves to will question him to check his background. As we have no evidence that ethnic Germans are persecuted in the Russian Federation we do not accept that the authorities referred to, on becoming aware of the appellant's nationality, will cause the appellant serious harm. We note that after reclaiming his nationality the appellant was able to remain living in his residence in SG and his children remained at school.

The appellant's counsel submitted that the appellant as a German national would have to explain why he has been absent from the Russian Federation for two years. We note that the appellant left his country legally and with a valid international passport. There is no evidence to suggest that he is of interest to federal authorities nor is there evidence to suggest that German nationals in the position of the appellant would be regarded with suspicion for being out of the country for over two years.

The appellant's counsel further submitted that every male until the age of forty five years is required to register at the local military unit and because of this the appellant will be questioned by the authorities for his two year absence. We note that the appellant has already completed military service. Further there is simply no evidence that the appellant will be of any interest to military authorities for his stay abroad.

For the reasons given above we are of the view that the appellant and his family, if returned to the Russian Federation, can genuinely access domestic protection in that country which is meaningful.

Is it reasonable to expect the appellant and his family to relocate?

The appellant impresses the Authority as being an intelligent and resourceful person. We note that he is an experienced and successful businessman and while he has been away from his country for over two years he has managed to support and care for his family here in New Zealand.

The appellant referred to having to obtain a work permit if he was to return to the Russian Federation. There is no evidence before the Authority that the appellant would be prohibited from working because of his nationality or because of the attitude toward him of the FSK officers as it was in 1994. While employment opportunities may be limited in smaller towns and cities this does not make it unreasonable to expect the appellant and his family to relocate. The appellant's counsel submitted that the appellant is an engineer and it was unrealistic to expect he and his family to relocate to a small or remote area. We do not doubt the potential hardship and frustration faced by the appellant in having to relocate his family, including relocation to one of the ethnic German settlements, however, the question of reasonableness is not a matter of the claimant's convenience or the attractiveness of the relocation option but rather whether the appellant should be expected to make do in another location (Refugee Appeal No. 532/92 Re RS (17 March 1995). Once again there was no evidence put forward that the appellant would be denied the right to work and the existence of the magnet settlements provides a realistic option to the appellant notwithstanding the potential hardship of life there and the continued desire of many ethnic Germans living in the Russian federation to emigrate.

In view of our assessment of the appellant's character and experience we believe that it is reasonable to expect the appellant and his family to relocate.

CONCLUSIONS

1. Objectively on the facts as found there is a real chance that the appellant being persecuted if returned to SG in the Russian Federation.
2. There is a Convention reason for that persecution namely the appellant's nationality or, alternatively, adverse political opinions imputed to the appellant as a result of his reclaiming his nationality and attempting to leave the Russian Federation to go to Germany.

3. The appellant can genuinely access domestic protection if he relocates to another part of the Russian Federation.
4. It is reasonable in all these circumstances to expect the appellant to relocate elsewhere in the Russian Federation.

For these reasons, the Authority finds that the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee is declined. The appeal is dismissed.

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Member