

**AT AUCKLAND**

<b>Appellant:</b>	<b>AG (China)</b>
<b>Before:</b>	D L Henare (Member)
<b>Representative for the Appellant:</b>	The appellant represented himself
<b>Counsel for the Respondent:</b>	No Appearance
<b>Date of Hearing:</b>	8 June 2011
<b>Date of Decision:</b>	27 July 2011

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**DECISION**

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**INTRODUCTION**

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour, declining the grant of refugee status to the appellant, a national of the People's Republic of China who resides in Hong Kong.

[2] The appellant claims that he faces a real chance of being persecuted upon return by reason of his profile with the police, government authorities and a triad gang. The Tribunal finds that on the threshold issues of credibility and well-foundedness, the appellant's claim fails.

**THE APPELLANT'S CASE**

[3] The account which follows is that given by the appellant at the appeal hearing. It is assessed later.

[4] The appellant is aged 39 years. He was born in Z city in Y province. His family shifted to Hong Kong when he was approximately nine years old.

[5] The appellant's father is deceased and his mother continues to reside in Hong Kong. He has seven siblings with whom he has no contact.

[6] The appellant completed 11 years of education and achieved a school leaver's certificate. Upon leaving school he worked for a time in a hospital and then for a shipping company. He then formed his own company utilising crews from his employer to transport waste materials to mainland China.

[7] The appellant married and a son was born. He cannot recall when the marriage took place other than that it was "a long time ago", nor can he say when he and his wife divorced.

[8] In the past 20 years, the appellant attended demonstrations in Hong Kong and in Z city, to protest the events of 4 June 1989 in Tiananmen Square. He has never been a member of any political group.

[9] In 2000, the appellant worked as a security guard at a hotel in Hong Kong. One evening, following a dispute between the appellant and his work colleagues, he used a key to gain access to the office of the personnel manager with the intention of searching for personal information about these colleagues. He located the information, read and returned it. The appellant was the only security guard working that evening.

[10] The next day, the appellant was confronted by the personnel manager and admitted that he had entered his office. He was not dismissed although he expected to be so.

[11] The next day and on subsequent days, he noticed that up to five or six men were following him. He believed that they were police because of their smart casual dress and because one of them dropped his card on the floor after they followed him to a hospital. The logo on the card looked like the logo on a police badge.

[12] The appellant suspected that the personnel manager had instructed the police to follow him. However, he did not contact the manager to enquire whether he was responsible for reporting him to the police, nor did he make any enquiry of the police.

[13] Having been followed for about one to two weeks, he resigned from his employment and went to Z city. The appellant stayed with his fiancée in a house owned by his mother, on the outskirts of the city. He telephoned the personnel manager to enquire about the final payment of his wages.

[14] The appellant soon noticed that he was being followed by persons whom he suspected were police of high rank from Y province. He noted that they were dressed very smartly, unlike the local police who worked in the village "who looked like beggars". They did not question him. He did not approach them.

[15] One day he left home in the morning to attend a funeral. He returned home in the early evening. Later that night, his fiancée told him that she had been raped by two men. They told her they were policemen and warned her not to say anything or they would kill her. The fiancée told the appellant that the policemen told her that they had implanted devices into both their bodies. They did not give reasons why they had installed such devices. They did not say when they had done this, what they had installed or where such devices were located in their bodies. The appellant told his fiancée to report the rape to the local police, but she refused to do so. She did not seek medical attention. The appellant believed that she had suffered the rape because the police were after him.

[16] The appellant thinks it is possible that the implantation was made when he and his fiancée had inexplicably slept, without waking, for three days.

[17] The appellant separated from his fiancée because he could not protect her and he has had no further contact with her.

[18] The appellant returned to Hong Kong and visited a doctor because he experienced headaches and pain in his bones and stomach which he attributed to the implantation of the device. However, he did not tell the doctor of his belief that a device had been implanted in his body. He was prescribed painkillers.

[19] When the appellant returned to Hong Kong, he was telephoned by the personnel manager who offered him work at the hotel. The appellant declined to do so.

[20] The appellant noticed that upon his return to Hong Kong he was followed again. He believed they were police of high rank because of their smart dress. Membership of the group of police officers changed frequently. This surveillance continued for two years.

[21] The appellant complained to the Hong Kong police about “my treatment and my situation”. He believes that his father was killed in December 2002 by the police because of his complaints. Since then, he has written many letters to the authorities requesting an investigation into his father’s death. He received advice in 2009 from the coronial court that there would not be an investigation. He believes that his son has also been killed by the police, but knows no details.

[22] Between 2004 and 2009 the appellant trained as an electrician and a carpenter. He is licensed in electrical wiring and renovation. He has found it difficult to get business opportunities and considers “the cards are useless to me”.

[23] Approximately seven months before the appellant’s arrival in New Zealand, he worked as a driver for a laundry company delivering towels to shops. He soon learned that the company was controlled by a triad gang. His employer, AA, was the son of the boss of this triad gang. AA told him that the personnel manager of the hotel in which he had been employed in 2000 was also a member of the triad family.

[24] Some triad members moved into the ground floor of his building so as to assert their power over him. They beat him following a quarrel he had with the owner of a brothel who claimed he had stolen a towel. He believes he cannot be free of them because he knows too much about them.

[25] The appellant departed Hong Kong and arrived in Auckland on 5 August 2010. He claimed refugee status on arrival.

[26] In September 2010, the appellant was arrested by the New Zealand Police after he had been assaulted for holding a placard in Auckland which denigrated the Chinese authorities. He was later released without charge. The appellant also wrote to the Chinese Consulate explaining why he had protested, with the hope that the Chinese government “will understand my situation and the situation of the people”.

[27] The appellant subsequently stood outside an Auckland police station and distributed leaflets advocating political reform in China. While there, he was approached by two persons who said they were from the Chinese Consulate. They threatened him and told him he would face consequences upon return to Hong Kong.

[28] The appellant believes that, upon return, he will be arrested by the police and/or other government authorities because of his protests in New Zealand. In consequence of these activities, he believes that the authorities are also aware of his claim for refugee status and protection and will arrest him. He also believes a certain triad gang will pursue him and eventually kill him.

### **Documentary evidence**

[29] The Tribunal and the appellant have been provided with the files of the RSB.

[30] Prior to the appeal hearing, the appellant submitted an undated statement, received on 25 March 2011, attaching a number of articles. They included an extract about a triad gang from *Wikipedia*, and an extract from *Wikipedia* about Szeto Wah (22 December 2010), leader of the Hong Kong Alliance In Support Of Patriotic Democratic Movements in China who, amongst other things, was removed from the committee drafting Hong Kong Basic Law, after the Tiananmen Square protests.

[31] All of the information provided by the appellant has been read and considered by the Tribunal.

### **JURISDICTION**

[32] Pursuant to section 198 of the Immigration Act 2009, on an appeal under section 194(1), the Tribunal must determine whether to recognise the appellant as:

- (a) a refugee under the Refugee Convention (section 129); and
- (b) as a protected person under the Convention Against Torture (section 130); and
- (c) as a protected person under the International Covenant on Civil and Political Rights ("the ICCPR") (section 131).

## THE REFUGEE CONVENTION – THE ISSUES

[33] 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."

[34] In terms of *Refugee Appeal No 70074* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

## ASSESSMENT OF THE APPELLANT'S CASE

### Credibility

[35] It is accepted that the appellant subjectively believes that his account of being persecuted by the Hong Kong and Chinese police is truthful.

[36] However, a subjective belief alone is insufficient to ground a finding of refugee status. The appellant must establish that he faces a real chance of being persecuted for a Convention reason. That is an objective assessment, regardless of his subjective belief. See *Refugee Appeal No 70074/96* (17 September 1996).

[37] The claim advanced by the appellant, of being pursued by the Hong Kong and Chinese police, is so implausible that it is incapable of belief. His written statement was an incoherent stream of consciousness, devoid of reality.

[38] The appellant's account of harm by the police to his father and his son is incomprehensible. It is implausible that the police would put the appellant under surveillance for two years without any evidence of wrongdoing and never question him, yet cause harm to his father and son. The appellant's assertions are thoughts devoid of any links to reality.

[39] Notwithstanding the appellant's genuinely held belief that he has been followed by the police both in Hong Kong and China, and that they implanted a device in his body, the Tribunal finds that the claimed persecution is fantastical.

[40] As to the balance of the appellant's claim – his assertion that he was the subject of adverse interest by a triad gang in Hong Kong and that he has protested against the Chinese authorities since his arrival in New Zealand, such claims are accepted.

**Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Hong Kong?**

*The triad gang*

[41] The appellant produced an article detailing various criminal activities of a triad gang.

[42] While the Tribunal acknowledges that the appellant may be genuinely fearful of triad crime, any risk to him is speculative only and falls well below the level of a real chance. The reality is that the appellant had a run-in with a triad gang over a towel. The incident was of such modest moment that it is unlikely that he would even be remembered now, some two years later, let alone be the object of adverse interest. Further, he can seek the protection of the authorities in Hong Kong. Finally, if more need be said, any trouble the appellant faces in the future, as a result of the criminal activities of a triad gang, would not be for a Convention reason and accordingly, he would not enjoy the protection of the Refugee Convention.

*Protests by the appellant*

[43] The appellant also expressed concerns that his protests in Hong Kong, Z city and Auckland, including his letters to the Chinese Consulate, have brought him to the attention of the authorities. As a result, he believes that he will be persecuted by the authorities upon return. Moreover, he says, the Chinese government is aware of his refugee and protection claim because of his protests here.

[44] The Tribunal has considered the United States Department of State *Country Reports on Human Rights Practices for 2010: Hong Kong* (8 April 2011) (the "DOS

report”) which shows that human rights, particularly rights to protest, are respected in Hong Kong.

“The law provides for freedom of assembly and association, and the government generally respected these rights in practice. The government issued the required “Letter of No Objection” for public meetings and demonstrations, and the overwhelming majority of protests occurred without serious incident. Government statistics indicate that between July 1997 (Hong Kong’s return to China) and June 2010, an average of seven to eight “public events” occurred every day.”

[45] Concerning the annual demonstrations of the 4 June events in Tiananmen Square, the DOS report states:

“Well over 100,000 persons joined the annual vigil commemorating the June 4 Tiananmen massacre, the highest turnout in many years. Approximately 30,000 persons joined the annual July 1 democracy march. Both events were conducted peacefully.”

[46] The *Six-monthly Report on Hong Kong 1 July-31 December 2010* presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs (March 2011) also confirms the exercise of basic rights and freedoms by Hong Kong people.

“Events over the reporting period highlighted the value Hong Kong people place on their rights and freedoms. The press, public and Legislature continued to speak out regularly on human rights issues, including issues of concern in mainland China. Such freedom of expression was particularly evident in marches, demonstrations and blanket media coverage of the Nobel Peace Prize award to Liy Xiaobo.”

[47] There is no evidence that the appellant’s attendance at demonstrations in Hong Kong or Z city have caused him any difficulties with the authorities in the past. Indeed, he concedes that he was never arrested for such protests, notwithstanding that he continued to live in both cities for a considerable time.

[48] There is no corroborative evidence of the letters the appellant claims to have written to the Chinese Consulate. He provided only a vague account of their content. In the absence of a clear explanation of the contents of the letters, it is impossible to gauge whether they might have provoked an adverse reaction and the Tribunal declines to speculate.

[49] As to the appellant’s demonstration in front of an Auckland police station, where he distributed leaflets, he produced a page of statements advocating political reform which he claims represented the content of the leaflets. He says that he was spoken to there by two people claiming to be from the Chinese Consulate, who threatened him.



[50] There is also evidence on file that, prior to his RSB hearing, the appellant protested in Auckland with a placard allegedly denigrating the Chinese authorities. He was assaulted by some Chinese people for these comments, arrested by the police and released without charge.

[51] The appellant submitted photographs of his demonstration to the Tribunal, which he says were posted on a Chinese website. Two photographs provide side views of him; a third photograph provides a back view, with commentary referring to him as “a man of Chinese descent wearing a poster of English writings”. There is also a photograph of a poster beside a bowl containing coins, seeking financial support.

[52] Notwithstanding the appellant’s protest recorded on a website, it does not name him. The photographs submitted by the appellant do not provide a clear identification of him. He was released by the New Zealand Police without charge.

[53] Again, these incidents do not establish a real chance of serious harm if the appellant returns to Hong Kong. The most significant, on its face, was the confrontation with two persons claiming to be from the Chinese Consulate. It is impossible to gauge, however, whether the persons really were from the Consulate, whether (if they were) they knew his identity, whether (if they did) they have taken any steps beyond merely warning him off, whether (if they did) any records created would be associated with him if he returns to Hong Kong and whether (if they were) the Hong Kong authorities (who tolerate a far higher degree of political dissent than China, including political protests) would even be interested.

[54] In the result, the degree of speculation required is such that it cannot be said that the appellant faces a real chance of serious harm on account of his political protests in New Zealand, if he returns to Hong Kong.

[55] Finally, there is no evidence that the Hong Kong authorities are aware of the appellant’s claim for refugee status and protection. There is no evidence that he has any record with the authorities. There is no conceivable reason why the appellant should be of any interest to any government authority in Hong Kong.

[56] The appellant does not have a well-founded fear of being persecuted in Hong Kong, in which (although it is a semi-autonomous region of China) he is able to reside. The first issue is answered in the negative. It follows that the second

issue as to whether there is a Convention reason for that persecution, does not arise.

### **CONCLUSION ON REFUGEE STATUS**

[57] For the reasons outlined above, the Tribunal finds that the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention.

[58] Refugee status is declined. The appeal is dismissed.

### **THE CONVENTION AGAINST TORTURE – THE ISSUES**

[59] Section 130(1) of the Act provides that:

"A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand."

[60] The issue for the Tribunal is whether there are substantial grounds for believing that the appellant would be in danger of being subjected to torture if deported from New Zealand to Hong Kong.

### **ASSESSMENT OF THE CLAIM UNDER THE CONVENTION AGAINST TORTURE**

[61] The evidence before the Tribunal does not permit a finding different to that in respect of the Refugee Convention. It does not establish substantial grounds for believing that the appellant would be in danger of being subjected to torture if deported from New Zealand.

[62] The Convention Against Torture has no application to the appellant's circumstances and so his claim for protection under this limb must fail.

## **THE ICCPR – THE ISSUES**

[63] Section 131(1) of the Act provides that:

"A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand."

[64] The issue arising is whether there are substantial grounds for believing that the appellant would be in danger of being subjected to arbitrary deprivation or cruel treatment if deported to Hong Kong.

## **ASSESSMENT OF THE CLAIM UNDER THE ICCPR**

[65] Pursuant to section 131(6) of the Act, "cruel treatment" means cruel, inhuman or degrading treatment or punishment but, by virtue of section 131(5):

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

[66] Again, based on the same factual matrix as established above in respect of the refugee claim, the Tribunal is satisfied that the appellant has not established substantial grounds for believing that he would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand to Hong Kong.

## **CONCLUSION**

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

- (a) is not a refugee within the meaning of the Refugee Convention;

- (b) is not a protected person within the meaning of the Convention Against Torture; and
- (c) is not a protected person within the meaning of the ICCPR.

[68] The appeal is dismissed.

"D.L.Henare"

D L Henare  
Member

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