

AT AUCKLAND

Appellant:	AH (China)
Before:	A N Molloy (Member)
Counsel for the Appellant:	E Griffin & D Manning
Counsel for the Respondent:	No Appearance
Date of Hearing:	14 November 2011
Date of Decision:	30 November 2011

DECISION

INTRODUCTION

[1] The appellant is a national of the People's Republic of China. Her appeal turns upon whether she is at risk of being persecuted in China on account of her Uighur ethnicity and her desire to practise her Muslim faith.

[2] She appeals under section 195 of the Immigration Act 2009 (the Act) against the decision of a refugee and protection officer of the Refugee Status Branch of the Department of Labour, declining to grant her either refugee status or protected person status.

[3] In order to address the statutory issues common to all appeals of this type, the Tribunal will first outline the account presented by the appellant on appeal. It will then assess the appellant's credibility, before making findings of fact upon which her appeal is determined. The Tribunal will then outline the legislation governing such appeals before assessing the appellant's claim for refugee status and protected person status.

THE APPELLANT'S CASE

[4] The appellant was born and raised in city A in the Xinjiang Uighur Autonomous Region (XUAR), in the north-west of China. Her parents and younger sibling still live there.

[5] The appellant is of mixed Uighur and Uzbek ethnicity, although she and her family identify as Uighur, and are treated as Uighur. She completed 14 years of education in Mandarin, which she speaks as her first language. The appellant also speaks Uighur but is unable to read or write that language.

[6] The appellant's claim relates to the systemic discrimination to which she is subjected as a person of Uighur ethnicity. It particularly concerns the way that the government's laws and the manner in which society operates in city A inhibit her ability to manifest and practice her faith as a Muslim.

[7] For many years, the state has taken steps to prevent the public expression of faith. This has had the effect of undermining her parents' ability to manifest their own faith or to foster the appellant's understanding of her religion. Her father rarely attends the mosque and, when he does, does so discreetly. He cannot risk his attendance becoming known to his employer or his position in the company would be jeopardised. The mother and the appellant are prohibited by the Chinese government from attending the mosque because they are women.

[8] The appellant was prohibited from praying at school or at college because this was not permitted. Nor was she able to wear the Islamic head covering at school, under threat of expulsion, or in public, because of the harassment levelled against Muslims by the Han populace and the police. Her family have no access to ongoing religious education within the community: it is not possible for Muslims to meet for religious purposes either at the mosque or elsewhere. The appellant's family has no means by which to pass on an understanding of the faith other than in the home, and even there, the social environment intervenes at times. For example, in the past when the family tried to pray before sunrise this has led to harassment from alert members of local communities, who enquire why the household lights were on so early in the morning. In this environment the appellant has rarely been able to perform daily prayers at the five prescribed times.

[9] It is not only in the religious sphere that the appellant experienced discrimination. During the last five years of her education the appellant studied

toward a diploma in education. For that purpose, she was transferred into a stream occupied entirely by Uighur students, to whom the academic programme was pitched at a lower level than the equivalent course taught to students of Han ethnicity.

[10] During the final year of her study, the appellant was required to complete a practical component. However, like all of the other members of her class, the appellant found it difficult to find a school willing to accommodate her. Many of the Uighur students from areas outside city A went back to their home towns and cities in order to obtain positions within Uighur schools. That option was not open to the appellant. After being rejected by a succession of schools to which she applied, she finally obtained a position through the intervention of a man of Han ethnicity who worked with her father.

[11] Her difficulties did not end there. The appellant was burdened with an intense schedule of classes to teach. She received no mentoring or ongoing training and she was not paid for her work. The combination of workload and her lack of experience proved too much. She left after a comparatively short period.

[12] The appellant then found it difficult to gain the necessary accreditation that would allow her to graduate from her course. She finally secured the school's confirmation that she had completed the practical requirement when her father's contact again lent assistance, but she never received her outstanding pay. Only about half of her class of more than two dozen Uighur students graduated. The remainder were unable to find any school through which they could complete the practical requirement.

[13] The appellant then began to apply for permanent teaching positions. She approached several schools both formally and informally, without success. Her difficulty was again partly due to her ethnicity, although by that time she had begun to focus her attention upon travelling to New Zealand, where she had been accepted for an English language course.

[14] The appellant's attention had been focused offshore as a result of the ongoing discrimination to which she had been subjected as a Uighur, but also by various specific events which had led to a growing sense of unease on her part.

July 2009 demonstration

[15] In late June 2009, an incident in Guangdong Province, in the south-east of China, led to the deaths of several Uighur people. The appellant became aware of this as a result of various posts on the Internet and in chat rooms. She also became aware of misleading reports about the incident emanating from the Chinese government. When it became apparent that there was to be a peaceful demonstration in city A on 5 July 2009, to protest about the deaths, the appellant decided to attend.

[16] At first the demonstration was peaceful. However, when the Chinese authorities dispersed the protestors the situation deteriorated rapidly. The appellant fled home. The next two or three days were punctuated by outbreaks of violence between the Uighur and Han communities, and the police.

[17] The appellant was distressed by her experience and frightened by the level of violence during that period. Her parents were dismayed that she had placed herself in jeopardy by attending the demonstration. She remains convinced that the Chinese authorities may identify her as a participant in the demonstration by virtue of closed circuit television cameras that line the route from her home to the area where the demonstration took place.

False accusation

[18] A further incident in September 2009 unnerved the appellant. She and her family members were shopping when a woman of Han ethnicity falsely accused the appellant of stabbing her with a syringe.

[19] A spate of similar incidents occurred in city A and throughout Xinjiang around that time. The accusations sometimes appeared to be made in order to foment outrage against Uighur, and on other occasions appeared to be aimed at obtaining compensation for the so-called victims of the "attacks".

[20] The appellant and her accuser were taken to the local police station for questioning. The woman who made the accusation eventually admitted that there was no truth in her claim, and the appellant was released without charge. There have been no further ramifications arising from that incident, however it added to the appellant's growing sense of unease.

[21] Against this background, the appellant began to solicit invitations to undertake further courses of study from educational institutions in New Zealand.

She left China in late October 2010 and travelled direct to New Zealand. She lodged a claim for refugee status and protected person status at the end of December 2010.

[22] After interviewing the appellant in March 2011, an officer of the Refugee Status Branch of the Department of Labour issued a decision declining her claim for refugee status and protected person status on 28 June 2011. It is from that decision that the appellant now appeals.

Events since the appellant arrived in New Zealand

[23] Since her arrival in New Zealand, the appellant has taken the opportunity to study her faith. She has attended courses at a tertiary institution and now attends a weekly session on Sundays, where basic religious instruction is provided. She is acquiring a greater understanding of the basic tenets of her faith than was possible in China. The appellant has had the opportunity to develop a proper understanding about how and when she should pray, and is now able to pray five times daily as required. She has adopted the wearing of the Islamic headscarf, which she had only ever previously been able to wear in the privacy of her own home in China. She has also been able to observe the obligation to fast during Ramadan. In China, this was only possible during the weekends or in vacation periods, as Uighur students were pressured to eat and drink at school during Ramadan.

[24] The appellant wishes to continue to explore her faith. She wishes to be able to manifest her faith as a fundamental part of her Uighur ethnicity. She claims that this would be impossible if she were to return to China.

[25] The appellant remains in telephone contact with her family in China. In August this year, her mother told her that three police officers arrived and enquired about the appellant's intended date of return to China. The appellant does not know why they visited or why they are interested in her, but is concerned that it may relate to her attendance at the demonstration in July 2009.

Assessment of the Appellant's Credibility

[26] Before turning to address the various issues identified it is necessary to determine whether the appellant's account is credible. In short, the Tribunal finds that it is. The appellant's evidence was straightforward, consistently recounted

and consistent with country information available in connection with Uighur. She answered questions spontaneously and did not appear to be embellishing her account.

[27] The appellant's claim to be Uighur is at odds with the designation in her passport as an Uzbek. However, she explained that her parents are of mixed Uzbek/Uighur ethnicity, and that the two communities are interlinked by their faith and the closeness of their ethnicity. Her claim is consistent with country information, which states that the Uzbek in China are Muslim and number fewer than 15,000. The Uzbek language is closely related to Uighur and the Uzbek live primarily in Xinjiang Province. They are frequently known to intermarry with Uighur and, according to one source, it is difficult to distinguish between the two: "Uzbeks" (no date) *Everyculture*, everyculture.com/Russia-Eurasia-China/Uzbeks.

[28] Accordingly, the Tribunal accepts that the appellant is a Chinese national. It accepts that she is of Uighur ethnicity and that she is Muslim. It accepts that she encountered discrimination in various areas of her life in China. This affected her education and her employment prospects, and prevented her from developing her faith and from manifesting her faith in any meaningful way.

[29] The Tribunal accepts that she attended a demonstration in city A in June 2009. It is accepted that the police have enquired about the appellant since her departure from China, however there is no credible evidence that the Chinese authorities are or might become aware that she attended the demonstration. The Tribunal finds that the police interest is most likely indicative of the invasive interest the Chinese authorities take in the whereabouts of those who have left China.

[30] The Tribunal also accepts that the appellant was the subject of a false accusation by a Han woman in September 2009, and that she was the subject of a police inquiry which exonerated her.

[31] The appellant's claims will be assessed upon this basis.

Material and Submissions Received

[32] Prior to the hearing of the appeal counsel forwarded a memorandum of submissions and a bundle of country information, together with a supplementary statement signed by the appellant, under cover of a letter to the Tribunal.

ASSESSMENT

[33] Under section 198 of the Immigration Act 2009, on an appeal under section 194(1)(c) the Tribunal must determine (in this order) whether to recognise the appellant as:

- (a) a refugee under the 1951 Convention Relating to the Status of Refugees (“the Refugee Convention”) (section 129); and
- (b) a protected person under the 1984 Convention Against Torture (section 130); and
- (c) a protected person under the 1966 International Covenant on Civil and Political Rights (“the ICCPR”) (section 131).

[34] The Tribunal turns first to the appellant’s claim under the Refugee Convention.

The Claim under the Refugee Convention

[35] Section 129(1) of the Act provides that:

“A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention.”

[36] 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.”

[37] 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 Claim to Refugee Status

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

[38] For the purposes of refugee determination, “being persecuted” has been defined as the sustained or systemic violation of core human rights, demonstrative of a failure of state protection – see *Refugee Appeal No 74665* (7 July 2004) at [36]-[90]. Put another way, persecution can be seen as the infliction of serious harm, coupled with the absence of state protection – see *Refugee Appeal No 71427* (16 August 2000), at [67].

[39] In determining what is meant by “well-founded” in Article 1A(2) of the Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), where it was held that a fear of being persecuted is well-founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective – see *Refugee Appeal No 76044* (11 September 2008) at [57].

Uighur in the XUAR

[40] In order to assess the appellant’s predicament it is necessary to have some understanding of the manner in which the Chinese state treats Uighur in the XUAR. This in turn must be viewed in light of the fact that the People’s Republic of China is “an authoritarian state in which the Chinese Communist Party constitutionally is the paramount authority”; The United States Department of State *International Religious Freedom Report: China* (8 April 2011).

[41] According to a report by Amnesty International *Uighur ethnic identity under threat in China* (April 2009) (the 2009 AI report):

“In 1955 the People’s Republic of China established the Xinjiang Uighur Autonomous Region in recognition of the Uighurs predominance in the region, a status which according to the Chinese Constitution entitles ethnic minorities to organs of self-government in order to exercise autonomy.”

[42] For some time that autonomy was fostered by the Chinese government. For example, during the 1980s it pursued liberal policies that allowed greater freedom of religion and expression to its citizens.

[43] The 2009 AI report states (at page 2) that Uighur in the XUAR experienced a sharp reversal from the mid-late 1990s, when the authorities:

“...embarked on an aggressive campaign against the “three evils”: “terrorism, separatism and religious extremism”.”

[44] The predicament subsequently faced by Uighur was addressed in a comprehensive report by Human Rights Watch *“Devastating Blows: Religious Repression of Uighurs in Xinjiang”* (April 2005) (the HRW report), which claims to be based on previously undisclosed regulations, policy documents and interviews in Xinjiang and elsewhere. That report was relied upon by the entity formerly responsible for considering appeals in connection with refugee status, the Refugee Status Appeals Authority (RSAA), in *Refugee Appeal No 75158* (27 June 2005). While the HRW report is now some six years old, it provides a useful starting point for an analysis of the appellant’s predicament.

[45] According to the HRW report, Uighur in the XUAR fall into the same broad category of political concern as Taiwan and Tibet. The Chinese State perceives the strong sense of Uighur cultural identity as a threat to the rule of the Chinese Communist Party. In a sense, the very characteristics that led to the creation of the autonomous region have brought about the subsequent targeting of its populace. Once recent discoveries of oil were added to the mix, strategic and security concerns led to the development of stringent policies relating to the region. According to the HRW report (at p7):

“China’s efforts to control Uighur religion are so pervasive that they appear to go beyond suppression to a level of punitive control seemingly designed to entirely refashion Uighur religious identity to the state’s purposes. Non-Uighur groups are not perceived as presenting a secessionist threat for Xinjiang and are subject to less stringent controls. The other ethnic groups in Xinjiang have independent states outside China and are not perceived to have similar ethnonationalist aspirations. Among the major Islamic groups, only the Uighur do not.”

[46] The Chinese government has sought to undermine the combination of cultural, ethnic and religious identity that characterise Uighur in the XUAR. The HRW report refers to the fact that China, known for tight constraints on freedom of religion, has placed the Muslim faith of Uighur under “wholesale assault by the state” (page 3). The HRW report continues:

“Many [Uighurs] now desire greater autonomy than is currently allowed; others demand a separate state. Uighurs are thus seen in Beijing as an ethno-nationalist threat to the Chinese state. Islam is perceived as feeding Uighur ethnic identity, and so the subordination of Islam to the state is used as a means to ensure the subordination of Uighurs as well.”

[47] The HRW report notes (at p7) that religion and ethnic identity are, for Uighur, inextricably intertwined:

“For most Uighurs the paramount issue is not religion *per se*, but the perceived threat that religious repression poses to their distinct identity coupled with their

acute feeling of being colonised. They view the tight restrictions placed by the Chinese authorities on Uighur Islam as an attempt to debase their very identity, as Islam is an essential component of their traditional identity and culture.”

[48] The Chinese government has, over a period of time, adopted a range of measures as part of a specific policy to repress and subordinate Uighur and to subsume the populace of the XUAR into the ethnic Han mainstream. These include means such as undermining the use of the Uighur language and changing the balance of the populace on ethnic lines.

[49] According to the Minority Rights Group International report, *China: Minority Exclusion, Marginalisation and Rising Tension* (2007) (the MRG report), the government has implemented policy whereby even minority students begin to learn Chinese from the first grade at primary school, significantly undermining their opportunity to study and use their own language (at 27). At page 28 the MRG report states that:

“Uighur children are subject to an educational system systematically designed to deny them the opportunity and ability to learn their own histories and languages, and to practise their own religions and cultures”.

[50] Another significant policy relates to the migration of Han Chinese into minority areas. In recent decades, the Han-Uighur ratio in the capital of city A has shifted from 20/80 to 80/20: the United States Department of State 2010 *Human Rights Report: China* (8 April 2011) (the DOS report), section 6. The 2009 AI report states that:

“According to the latest Chinese census in 2000, there are more than 18 million people living in the XUAR of whom 47 per cent are Uighur, 40 per cent are Han Chinese and 12 per cent are other ethnic groups, including Kazaks...”

[51] The MRG report indicates that the discrepancy is greater in urban areas. It states (at page 24):

“Population transfers have an adverse effect on minority groups’ opportunities to benefit from economic development, and are a major source of cultural integration and assimilation in these regions. ...In XUAR, Han and Uighurs make up 41 per cent and 44 per cent of the provincial population respectively...[however these figures]...do not indicate the much higher proportion of Han Chinese in the autonomous regions’ major cities, including their capitals. Population transfers are a significant problem for the preservation of minority culture and identity.”

[52] The same report continues, at page 26:

“The massive influx of Han Chinese settlers and migrants into autonomous areas and their dominance of the public sphere has made it hard for minorities to preserve their distinct cultural identities. Through literature and practice the PRC regularly exoticises minorities, thereby portraying them as backwards and in need of modernisation”.

[53] This policy of assimilation has coincided with an increase in general discrimination against Uighur. For example, Amnesty International *China: Justice: The July 2009 Protests in Xinjiang, China* (2 July 2010) states (at page 8):

“Uighurs interviewed by Amnesty International – even those with high levels of education and training – testified to their difficulties in finding a job which they directly attributed to discrimination. Uighurs who were employed said they were paid a fraction of what their Han Chinese colleagues were paid for doing the same job. Some also reported that they were not allowed to speak Uighur at their work place...”

[54] The Minority Rights Group International *World Directory of Minorities* (update, July 2008) describes the gradual exclusion of Uighurs from both state-based employment and the rising private sector, as “stunning and statistically verifiable from a variety of sources” (page 2). It contrasts the unemployment rate of Han Chinese in Xinjiang, approximately 1 per cent, with the rate of Uighur: “a staggering 70 per cent”.

Religious restrictions

[55] Most significantly, the government has taken steps aimed at reducing the influence and importance of religion in order to undermine the cultural identity of the Uighur. Following terrorist attacks carried out by Muslims in the United States in September 2001, China has consistently portrayed Uighur in Xinjiang as the source of a serious Islamic terrorist threat. This perception is said to have become dominant with a Chinese public that lacks access to a free media, and is therefore unable to compare sources of information and come to independent judgments about this claim.

[56] According to another source, the authorities maintain tight control over mosques and religious clergy. It states that government employees in the XUAR, including teachers, police officers, state enterprises workers and civil servants risk losing their jobs if they engage in religious activity: Amnesty International *People’s Republic of China Uighur’s fleeing persecution as China wages its “war on terror”* (7 July 2004) pp3 and 5: (the 2004 AI report).

[57] According to the HRW report, mosques have been under government control and surveillance since the mid-1990s with the aim of discouraging attendance, especially by children or young adults (p5). Students and civil servants reported that it was impossible for them to publicly engage in any religious activity other than observing the Muslim ban on eating pork. Men are not permitted to wear beards and women are not permitted to wear head scarves.

[58] Some of the government's measures can be seen as specific attempts aimed to undermine the role of women in religious education. Women intending to study Islam must do so in a clandestine fashion (Radio Free Asia "Won't anyone listen to Justice?" (19 November 2008)) and, according to the Human Rights Watch report, Uighur women are afraid to teach their children religion in case any display of religious awareness on behalf of the children attracts the unwanted attention of authorities (HRW report, p59).

[59] There are also significant restrictions on religious education. Those who may teach scripture must be approved and there is a ban on religious activity among children. Any manifestation of religious education or even adherence is prohibited in schools (the HRW report, p60). Students are prohibited from performing even the most basic requirements of the Islamic faith such as reading the Koran, engaging in daily prayer or fasting during the holy month of Ramadan (HRW report p62). Studying religious texts or displaying one's religion through clothing or personal appearance is strictly forbidden at schools and also in government employment (the HRW report, pp60, 62; the MRG report pp29 and 30).

[60] The government also takes steps to ensure that traditional practises such as fasting during Ramadan are undermined by the provision of lunches for its employees, and the insistence that food is consumed. These are presented in the guise of measures taken for the welfare of employees, but are thinly disguised attempts to undermine Islamic practice.

Present circumstances in the XUAR

[61] According to the DOS report, authorities continue to implement repressive policies in the XUAR to target the region's ethnic Uighur population. It states that officials "continue to implement a pledge to crack down on the government designated three forces of religious extremism, splittism, and terrorism", and outlined efforts to launch a concentrated anti-separatist re-education campaign (section 6). It also states that:

"The government reportedly sought the repatriation of Uighur outside the country, who faced the risk of persecution if repatriated."

[62] The Congressional Executive Commission on China Annual Report for 2010 (10 October 2010) also states that religious freedom for Muslims in the XUAR continued to deteriorate:

“Authorities implemented various campaigns to restrict religious practice. This included campaigns to dissuade Muslim women from wearing veils, confiscating illegally printed religious books, restricting children’s freedom of religion undermining the ability to teach religion to children.”

[63] The United States Commission on International Religious Freedom, *USCIRF Annual Report 2011* (May 2011) also states that “religious freedom conditions continue to deteriorate”. It continues:

“In the XUAR and other areas of Xinjiang Province ... Following demonstrations and riots... Muslims...have experienced increased harassment, arrests and efforts to weaken religious adherence and cultural identity.”

[64] Recent unrest in the area has brought about more stringent restrictions; see Radio Free Asia, “China: ‘End injustices’ says exile leader” (20 July 2011):

“China is placing restrictions on its Muslim Uighur population during the fasting month of Ramadan, following a string of violent attacks in its north-western region of Xinjiang. Restrictions were in place for government cadres, who risk losing pensions and other benefits. Private companies are offering lunches to Uighur Muslims, and any who refuse to eat could lose their annual bonus, or even their job, he added. ...the government has announced a ban on any religious activities during the Muslim holy month of Ramadan... “to preserve social stability...”

[65] It is against this background that the appellant’s predicament is to be assessed.

Findings

[66] The Tribunal has accepted that the appellant is a Muslim of Uighur ethnicity from a city in the XUAR. It accepts that she and her family have endeavoured to practise their faith in China within the confines of state policy, and that religion is an important part of her identity as a Uighur. While in China, the appellant was unable to practice her religion in any meaningful way, either in private or together with others. She was not permitted to attend the mosque, had no avenue by which to study or improve her understanding of her faith and was not permitted to outwardly manifest her faith, for example, by wearing the *hijab*.

[67] The Tribunal accepts that since coming to New Zealand the appellant has been attending study sessions to deepen her understanding of Islam. She is now able to conform to the requirements of prayer, both because she is free to do so and because she has acquired an understanding of how and why to pray. She has also adopted Islamic dress. The Tribunal accepts that these are the manifestation of her sincere desire to develop her knowledge of her religion, and accepts her claim that this is an ongoing process for her.

[68] If the appellant were to return to China, her ability to practise and manifest her faith would be severely impeded. While it would be possible for her to conduct her daily prayer ritual prior to sunrise and after sunset, her ability to pray during the day would be severely compromised. If she sought, for example, to adopt Islamic dress, pray five times daily and observe Ramadan, it is likely that she would be subjected to discrimination and harassment in the workplace. Her practice may exclude her from employment within the government sphere and this would significantly undermine her ability to work and support herself. It would also expose her to ongoing harassment by non-Uighur and by the Chinese authorities in their myriad forms.

[69] In short, the appellant would be denied the fundamental right to freedom of religion enshrined in Article 18 of the ICCPR, which provides that:

“1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

[70] As a Uighur in Xinjiang, the appellant would not be able to manifest her religion, in public or in private, alone or in community with others. This would amount to serious harm for the purposes of the Refugee Convention. While Article 18 (3) of the ICCPR provides that freedom of religion may be subject to such limitations prescribed by law as are necessary for the protection of “public safety, order, health or morals”, the pervasive policy of suppression implemented by the Chinese government transcends any such description.

Is there a Convention reason for the persecution?

[71] In the context of the XUAR, the appellant’s predicament is based upon her ethnicity and may also be viewed as political. It is however most obviously characterised as for reason of her religion. There is a clear nexus to a Convention reason.

Conclusion on Claim to Refugee Status

[72] The appellant has a well-founded fear of being persecuted for a Convention reason if she were to return to China. She is entitled to recognition as a refugee under the Refugee Convention.

[73] The Tribunal now turns to consider the appellant's claim to be a protected person under the Act.

The Claim under the Convention Against Torture

[74] 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."

Conclusion on Claim under Convention Against Torture

[75] The appellant is recognised as a refugee. By virtue of section 129(2) of the Act (the exceptions to which do not apply) she cannot be deported from New Zealand. This is in accordance with New Zealand's *non-refoulement* obligation under Article 33 of the Refugee Convention. Accordingly, the appellant is not a person requiring protection under the Convention against Torture. She is not a protected person within the meaning of section 130 of the Act.

The Claim under the ICCPR

[76] 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."

Conclusion on Claim under ICCPR

[77] For the reasons given, the appellant cannot be deported from New Zealand. Accordingly, she is not a person requiring protection under the ICCPR. She is not a protected person within the meaning of section 131(1) of the Act.

CONCLUSION

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

- (a) is 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.

[79] Refugee status is recognised. The appeal is allowed.

"A N Molloy"

A N Molloy

Member

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A N Molloy
Member