

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 75981**

**REFUGEE APPEAL NO 75982**

**REFUGEE APPEAL NO 75983**

**REFUGEE APPEAL NO 75984**

**AT AUCKLAND**

<b><u>Before:</u></b>	S L Murphy (Chairperson) C M Treadwell (Member)
<b><u>Counsel for the Appellant:</u></b>	J Hindman
<b><u>Appearing for the NZIS:</u></b>	No Appearance
<b><u>Dates of Hearing:</u></b>	30 & 31 January 2007
<b><u>Date of Decision:</u></b>	19 March 2007

---

**DECISION**

---

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellants, nationals of Kyrgyzstan.

**INTRODUCTION**

[2] The appellants are a married man (hereinafter referred to as “the husband”) and woman (hereinafter “the wife”) and their two children.

[3] In accordance with s141B of the Immigration Act 1987, the parents have represented the interests of their children throughout their refugee claims.

[4] The family arrived in New Zealand on 14 January 2006 and lodged claims for refugee status on 26 January 2006. They were interviewed by the RSB on 24 March and 12 April 2006 and decisions declining their claims were delivered on 2 November 2006. It is from those decisions that they have appealed to this Authority.

[5] The case centres on threats and violence suffered by the family on account of their Uyghur ethnicity and their conversion to Christianity.

### **THE APPELLANTS' CASE**

[6] The appellants were born in the then USSR, in what is now Kyrgyzstan. They are both of Uyghur ethnicity and are physically recognisable as such. The wife's parents immigrated from China and she spoke some of the Uyghur language as a child.

[7] As Uyghurs, the husband and the wife were both born into the Muslim faith, but neither practised their religion whilst growing up under the secular Soviet regime.

[8] Neither adult appellant suffered particular discrimination whilst growing up in the city of Bishkek. However, the collapse of the Soviet Union in 1991 saw an upsurge in nationalism which increasingly resulted in the empowerment of those of Kyrgyz nationality and a corollary marginalisation of minority groups such as the Uyghur.

[9] The appellants married in 1991.

[10] The first discrimination that the husband experienced was in his public service job in 1994. In that year, his Russian manager was replaced by a Kyrgyz man, who started dismissing non-Kyrgyz employees. Initially, he did not dismiss the husband because he was a high-performing employee. However, he treated the husband poorly and after a period made him redundant.

[11] The husband then started working for a small private business, on the invitation of a friend who worked there. He did not suffer racial discrimination in

that position, and earned well, but experienced some difficulties resulting from his lack of knowledge of the Kyrgyz language.

[12] In 1996, the husband used some savings and money borrowed from relatives to buy an apartment. After the purchase was completed, it transpired that the vendor, a Kyrgyz woman, did not have clear title to the property, which was still under mortgage, and that the documents she had used to procure the sale were forged. The husband was unable to get title to the property and lost his money. He approached the police about this but the police maintained that there was no crime involved, in spite of the transaction being clearly fraudulent. The husband complained to the prosecutor's office, to no avail. He could theoretically have pursued the matter through a civil action in the courts, but could not afford the fee. He believes that the Kyrgyz woman may have paid a bribe to secure police co-operation, and that the bribe, in combination with his Uyghur ethnicity, had resulted in the failure of the police to prosecute the woman. After two years of trying to retrieve the money, he realised he would not achieve a just outcome and abandoned the matter.

[13] In 1996, the husband's mother died and left her house to the husband, to the anger of his half-brothers. The half-brothers, although themselves half Uyghur, identified as Kyrgyz, and had always disapproved of the husband's marriage to his wife on account of her being Uyghur. The death of their mother resulted in them becoming openly hostile to her. They demanded that the husband marry someone of a different ethnicity, threatening to take the house from him if he did not. Around this time, one of the brothers claimed that the wife had broken a window on his car. He threatened to assault her in such a way as to not leave a mark, then elbowed her in the stomach. The wife did not complain to the police, believing they would not help her as the brother concerned worked for the police.

[14] In 1997, the wife started work as a hairdresser. She experienced some discrimination from clients in her work.

[15] In mid-1997, the wife was hospitalised with a gall bladder complaint. The Kyrgyz medical staff initially arranged for her to be operated on without examining her. The wife refused to be operated on. She was subsequently put on to a drip. She then she became very ill, lost consciousness and was clinically dead for a period. She understands that the medication used in the drip was past its use-by date. She believes that her substandard care was because she was Uyghur.

[16] In 1998, the wife's father was assaulted on the street by a Kyrgyz man. The man had asked him for a cigarette lighter, then asked his nationality. When he responded that he was Uyghur he was seriously beaten. After this incident he had a nervous breakdown and was hospitalised. The hospital staff refused to let the family visit the father. After a period, the wife managed to gain entry to his ward by pretending to be a doctor. Conditions in the ward were shocking. Her father was emaciated and appeared neglected, and he and the other non-Kyrgyz patients were segregated into separate wards. The wife removed him from the hospital immediately. His health never recovered and he died a few months later.

[17] From 2000, the wife worked at a café owned by her brother. The café served a mixture of local and Uyghur food. Customers at the café routinely insulted her because of her ethnicity and/or gender, often refusing to pay. On occasion, they would throw things at her. She did not tell her brother for fear of him violently confronting the persons concerned and thereby causing an escalation in the harassment.

[18] In mid-2002, the couple's two year-old daughter became seriously ill and was hospitalised. The child worsened in the night and appeared near death, however the nurses refused to call a doctor until the wife gave a US\$100 bribe. She believes that she would have been able to readily secure the services of a doctor if she was Kyrgyz.

[19] At the end of 2002, the wife was walking home from work one day when she was intercepted by two men who asked her to give them her jewellery. She refused and one of the men grabbed and twisted her arm. She managed to escape, but after she returned home her arm swelled up. She attended hospital the next day and was treated for a double fracture of the wrist.

[20] In 2003, the husband graduated from a correspondence course obtaining a professional degree. However he was never able to obtain work in that profession, apparently because he was Uyghur.

[21] In November 2003, the wife started attending the protestant Church of Jesus Christ, upon the invitation of a friend. A few months later, the husband also joined the church and they both became regular attendees. There were several parishes of the church in Bishkek. The head pastor for the city was Pastor Vasili Kuzin. He was generally based at another parish in Bishkek, but occasionally conducted services at the couple's parish.

[22] In May 2004, the family started receiving threatening telephone calls. The callers would usually speak Kyrgyz or poor Russian. They threatened that serious harm would befall the family if they did not attend the mosque as they were Uyghurs and therefore Muslims. The wife normally answered the calls as the husband was at work. Sometimes threatening calls would also be made to the husband's work place.

[23] The calls to the husband's work place alerted the husband's Muslim employer to his Christian conversion. Initially, his employer told him that he could continue working at the firm as long as he visited the church secretly. However, by the end of 2004, his attitude hardened and he informed the husband that he must choose between the church or his job. The husband accordingly left his job.

[24] After this, he worked as a casual labourer until his departure from Bishkek.

[25] On 24 March 2005, there was a revolution in Kyrgyzstan during which the then president, Akayev, was deposed. Persons from the countryside massed in Bishkek and there was rioting and looting. In the course of the rioting, the wife's brother's café was set alight. He is now in the process of trying to rebuild it. The wife's sister's shop, located in the Uyghur area, was also set alight and all the contents were stolen.

[26] After the revolution, the number and tone of the threatening calls to the family home intensified. As a result of this, the family sold their home and moved to rented accommodation in a different area in Bishkek in August 2005. They continued to receive threatening telephone calls after moving, notwithstanding that their telephone number had changed.

[27] On 19 September 2005, the husband was attacked by two or three Kyrgyz men while walking home from the shops. The men had the appearance of being from the countryside. In the course of the attack, he was beaten in the head and stomach.

[28] He was attacked a second time after returning from work approximately a month later, this time by three men. During the attack, he was repeatedly punched.

[29] A third attack occurred in November 2005. On this occasion, he was returning home after doing some repairs to a Baha'i church when five or six men

attacked him. This attack was particularly violent and at one stage he lost consciousness. One of the attackers was holding a screwdriver.

[30] To the husband's recollection, the men at each attack were different, with the exception of one distinctively Asian-looking man who was present at all the attacks.

[31] After the third attack, the wife called an ambulance. She was told, however, that there was not enough petrol for it to come.

[32] The husband did not report the first or second attacks, assuming that the police would not help him. However, after the third attack, he realised that the men were trying to kill him so he attempted to enlist police help. He was referred to a government forensic medical expert who made a report on his injuries. He then gave the forensic report to the police. However, when he returned to the police station a few days later, the police advised him that they were very busy due to the high level of criminal activity at the time, and were not in a position to investigate the case, as it was a "minor" matter.

[33] The husband then appealed to the prosecutor's office. That office, however, sent him a letter a few weeks later saying that criminal proceedings would not be instigated because no crime had been committed.

[34] Frightened of further violence, the family left Kyrgyzstan for New Zealand the following month, in January 2006. Their agent misled them by saying that they would be obtaining New Zealand visas in their Kyrgyz passports. In fact, they were given false Czech passports in Dubai, which they were required to use to travel to New Zealand.

[35] Since arriving in New Zealand, the appellants have been attending a protestant church.

## **DOCUMENTS**

[36] The appellants presented the following documents in support of their case:

- i. copies of their Kyrgyz passports showing that they registered their house as being their permanent residence in February 1995 and deregistered it in August 2005;

- ii. a letter dated, 10 December 2005, to the husband from the Head of the Investigation Unit of the Department of Internal Affairs, Bishkek;
- iii. a statement, dated 16 December 2005, from the husband to the General Prosecutor;
- iv. a resolution, dated 26 December 2005, of the Assistant General Prosecutor of XY District, Bishkek, recording the decision not to investigate the assaults on the husband because no crime was made out;
- v. extracts from husband's Ministry of Health medical file; and
- vi. letters from the Session Clerk and Pastor of their church in New Zealand.

## **THE ISSUES**

[37] 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."

[38] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

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

## **ASSESSMENT OF THE APPELLANTS' CASE**

[39] Prior to assessing the framed issues, it is necessary to assess the credibility of the appellants. The Authority found both of them to be credible witnesses. There were some minor discrepancies in the husband's evidence, but the wife was able to corroborate her husband's account spontaneously, in a manner which

satisfied the Authority that both witnesses were truthful. The accounts are accepted.

[40] The risks faced by the appellants derive principally from their religious conversion and, to a lesser extent, from their ethnicity. We have assessed the situation for both groups below.

### **SITUATION FOR UYGHURS**

[41] In January 2002, the Council of the European Union Danish Fact-Finding Mission to Kazakhstan and Kyrgyzstan CIREA 2 (5263/02) reported that despite some incidents and the negative portrayal of Uyghurs in the mass media, Uyghurs were generally not persecuted. A few years later, however, in 2005, the International Helsinki Federation for Human Rights reported that the situation for Uyghur had degenerated markedly in the past few years, describing their level of harassment as “alarming”; ACCORD 2005, *Kirgistan: Allgemeine Information zur Sicherheitslage, Mensherechtssituation, Lage von Minderheiten; 2. Situation ethnischer Uiguren, insbesondere nach erfolgtem Machtwechsel* (6 June 2005) (ECOI).

[42] Uyghurs, together with Koreans and Turks, suffered disproportionately from looting and land seizures that occurred during the overthrow of President Akaev in March 2005; International Crisis Group *Kyrgyzstan: After the Revolution* (4 May 2005).

[43] Since the overthrow of the Akaev regime, the situation for Uyghur appears to have improved considerably, with no reports of discrimination against Uyghur in the 2006 year; United States Department of State Country Reports on Human Rights Practices for 2006: Kyrgyz Republic (6 March 2007).

[44] The appellants have faced some difficulties on account of their race. However, the nature those past difficulties, in combination with the apparently favourable current country conditions for Uyghur indicate that the appellants do not have a well founded fear of persecution solely on account of their ethnicity.

### **SITUATION OF CHRISTIAN CONVERTS**

[45] In 2002, it was reported that the conversion of Muslims to Christianity was causing conflict in Kyrgyzstan and that the residents of Bishkek were particularly



dissatisfied with the Church of Jesus Christ; “Conversions to Christianity Cause Conflict in Kyrgyzstan” *BBC Monitoring* (April 7 2002).

[46] An intensification in the mistreatment of protestants in Kyrgyzstan was reported in 2003, with apparent encouragement from the Ministry of Justice; Almaz Ismanov “Protestants in Kyrgyzstan Face Hostile Reception” *Eurasianet* (12 August 2003).

[47] Particular anger at conversions from Islam to Christianity has been reported in Southern Kyrgyzstan, for example in 2001 a group of ethnic Uzbeks from south Kyrgyzstan convened a kangaroo court to convict fellow Uzbeks who had converted to Christianity; Igor Rotar “Kyrgyzstan: Mob goes Unpunished as Intolerance of Religious Freedom Rises” *Forum 18 News Service* (27 September 2006).

[48] The situation has degenerated further over the past year, with reports of increasingly frequent attacks on Muslim converts to Christianity by lynch mobs, whose actions go unpunished; *ibid*.

#### **DO THE APPELLANTS HAVE A WELL FOUNDED FEAR OF PERSECUTION?**

[49] Whether a particular appellant is at risk of persecution for a Convention reason is a forward looking test; the decision-maker must undertake an assessment of the future risk to the person. Past persecution is not a prerequisite to refugee status. In some cases, however, past persecution may be indicative of the fate of a person upon their return; see *Refugee Appeal No 71404* (29 October 1999).

[50] Persecution has been defined by the Authority as “the sustained or systemic denial of basic or core human rights such as to be demonstrative of a failure of state protection”; Hathaway *The Law of Refugee Status* (1991) 104-108, as adopted in *Refugee Appeal No 2039/92* (12 February 1996) and *Refugee Appeal No 71404* (29 October 1999).

[51] It is clear from the appellants’ evidence that their conversion to the Christian faith has angered Muslims in the community. The persons concerned targeted the family for several years with repeated telephone threats in order to frighten them

into leaving the church. When those threats did not achieve their ends, they stepped up the campaign by targeting the husband with a series of attacks, the last of which was particularly violent. Such threats and attacks were in clear violation of various human rights including the right to liberty and security of person in Article 9 of the International Covenant on Civil and Political Rights (ICCPR) and the right to freedom of religion in Article 18 of the ICCPR.

[52] In this case, we find that the orchestrated campaign of threats and violence against the family resulting principally from their conversion to Christianity amounts to persecution.

[53] We further find that state protection would be unavailable to the appellants. There is widespread corruption in the police; United States Department of State *Country Reports on Human Rights Practices for 2006: Kyrgyz Republic* (6 March 2007) and past attempts by the appellants to enlist police help have met with no success. Moreover, the lynch mobs that are increasingly attacking Muslim to Christian converts are going unpunished, demonstrating an apparent police bias against Christian converts; “Kyrgyzstan: Mob goes Unpunished as Intolerance of Religious Freedom Rises” *Forum 18 News Service* (27 September 2006).

[54] We find that should the family return to Kyrgyzstan and continue their involvement with the Church of Jesus Christ, there is a real chance that the campaign of threats and violence against them will continue. The persons responsible for the mistreatment are clearly well-organised and have demonstrated an ability to track the family; the move to a different district in Bishkek saw no reprieve in the campaign. Moreover, there is no change in country conditions to suggest that the harassment would abate upon their return; to the contrary, there has been a degeneration in the situation for Christian converts.

[55] For the above reasons, the Authority finds that there is a real chance of the appellants being persecuted upon their return to Kyrgyzstan. Although only the husband was physically attacked prior to the family’s departure, the fact that threats were levelled at the whole family suggests that the attackers could readily change their tactics and target the family home. In light of this we find that there is a real chance of each of the husband, wife and children being persecuted.

[56] The persecution they risk facing is on account of their religion.

**CONCLUSION**

[57] For the above reasons the appellants and their children are refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeals are allowed.

.....  
S L Murphy  
Member