REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 72189/2000

REFUGEE APPEAL NO. 72190/2000

REFUGEE APPEAL NO. 72191/2000

REFUGEE APPEAL NO. 72192/2000

REFUGEE APPEAL NO. 72193/2000

REFUGEE APPEAL NO. 72194/2000

REFUGEE APPEAL NO. 72195/2000

AT AUCKLAND

Before: S Joe (Member)

Representative for the Appellant: R Ho

Date of Decision: 17 August 2000

DECISION

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[1] These are appeals against the decisions of a refugee status officer of the

Refugee Status Branch of the New Zealand Immigration Service ("the RSB"), declining the grant of refugee status to each of the above appellants, all citizens of Tuvalu.

INTRODUCTION

[2] The seven appellants referred above belong to the same family unit comprising the parents and their five children (hereinafter referred to as "the appellants"). One of the appellants, the eldest son, arrived in New Zealand on 11 December 1995 and was granted a three year work permit under the provisions of the Tuvalu work scheme. The father subsequently arrived in New Zealand on 6 December 1996 and similarly obtained a three year work permit. His wife and remaining four children remained in Tuvalu until 22 November 1999 when they, too, came to New Zealand. All of the appellants filed individual applications for refugee status with the RSB on 14 June 2000 and were interviewed in respect of their applications by a refugee status officer on 27 June 2000. In each case a decision in respect of their individual applications was delivered on 4 July 2000, declining their applications. Formal notices of appeal were lodged by Mr Richard Ho of R&C Ho Limited in respect of each appellant. Subsequently Mr Ho wrote to the Authority advising that the appellants had since instructed Ms Christina Keil of Keil Associates to act on their behalf in their respective appeals.

[3] Accordingly, on 19 July 2000, the Secretariat, on behalf of the Authority wrote to Ms Keil in respect of each of the appellant's appeals, noting that, pursuant to s129P(5)(a) & (b) of the Immigration Act 1987, except in those cases where an appellant was not interviewed by the RSB (unless the appellant was given an opportunity to be interviewed but failed to take that opportunity), the Authority has a discretion whether to give the appellant the opportunity to attend an interview. In exercising its discretion, the Authority will consider whether an appeal is *prima facie* manifestly unfounded or clearly abusive. Where that is the case, the Authority may determine the appeal without giving the appellant an interview (see also *Refugee Appeal No 70591/98* (5 August 1998)).

[4] The Secretariat, on behalf of the Authority, went on to state that if the Authority indeed considered, *prima facie*, that the appellant's appeal was manifestly unfounded or clearly abusive, the appeal could be determined without giving an interview. The Authority specifically stated that the basis of each appellant's fear is substantively the same. In relation to environmental and

economic difficulties they faced in Tuvalu these fears could not be said to be for reason of "any one of the five Convention grounds in terms of the Refugee Convention, namely race, religion, nationality, membership of a particular group and political opinion". The Authority specifically noted that all Tuvalu citizens face the same environmental and economic difficulties and therefore it appeared that there was no real chance that the appellants were differentially at risk of persecution for any of the five Convention grounds.

[5] Ms Keil, as representative for the appellants, was invited to provide the Authority submissions in respect of the matters raised in the Authority's letter and any other evidence to support the appellants' refugee claims by Wednesday, 9 August 2000. She was specifically advised that following this deadline, the Authority, unless persuaded otherwise by the submissions and evidence made, may consider and determine the appeal on the documents and information available to it, without giving the appellants the opportunity to attend an interview before the Authority.

[6] Ms Keil responded to the Secretariat's letter on 31 July 2000 noting that in or about early July 2000 R & C Ho Limited instructed the Authority that her office was acting counsel in respect of the appellants' refugee appeals. Ms Keil further advised that R & C Ho Limited would now be conducting their appeals and that the Authority's files that were sent to her office would be uplifted by R & C Ho Limited that day. Accordingly on 31 July 2000 the Authority wrote to Mr R Ho and the appellant on similar terms as in its previous letter to Ms Keil's office, inviting submissions to be filed with the Authority by Friday, 11 August 2000. In response, Mr R Ho filed submissions with the Authority on 8 August 2000, noting that all of the seven appellants are from the same family and that their circumstances are substantially the same. Accordingly, one combined submission was made by Mr Ho in respect of all seven appellants. This being the case, the Authority considers it appropriate to jointly hear all of the appellants' respective appeals together and to determine their appeals in this one decision. Further, all of the information submitted by Mr Ho has been considered by the Authority in determining these appeals.

THE APPELLANTS' CASE

[7] The basis of the appellants' refugee claim, contained in their respective refugee applications and records of RSB interviews, can be summarised as

follows:

[8] The basis of the appellants' fear, as stated already, centres on the environmental and economic difficulties they face living in Tuvalu. In summary, the appellants complain, *inter alia*, that their family property in Tuvalu becomes partially submerged in water during high tides and the coastlands of the island are suffering erosion. There was also a shortage of drinkable water and medicine. The economy of Tuvalu is very small. There are no employment opportunities there and the price of foodstuffs is high, as they are imported. The appellants complain of a shortage of transportation, medicine, medical treatment and higher education facilities on the island.

[9] In response to the Secretariat's letter of 31 July 2000, in which the Authority stated that the Authority considered, having reviewed his file, that the appellants' appeals are *prima facie* manifestly unfounded or clearly abusive, Mr Ho, on behalf of all of the appellants, submitted the following:

(a) The appellants have nothing left in Tuvalu, including no proper place to live. The lack of proper medical facilities, hygienic sewerage system, constant and safe water supplies, safe housing and transportation mean that life in Tuvalu is unsafe. There are no immediate medical facilities nearby and in case of an accident or severe illness, it is necessary to go to hospital by shipping vessel. This entails a journey of six hours. The unhygienic water and sewerage systems increase the risk of sickness and reduce the chance of survival. The mortality rate of a Tuvaluan is about 60 years.

(b) The islands are gradually sinking due to global warming and this adds to the appellants' fear. Constant high food prices and lack of employment opportunities mean that the family is frequently without food. The lack of higher education facilities for children mean that there is no hope of them breaking the poverty cycle.

(c) The appellants consider that the government of Tuvalu is negligent towards them and others who are from a lower socio-economic group and that such negligence amounts to persecution. The government has not taken appropriate action to provide or improve the facilities and the lack of government intervention is demonstrative of a failure to protect the appellants. Only a few, they submit, who are closely

connected to the government enjoy a better standard of living and are not persecuted by the authorities.

(d) The appellants seek to be included in the Refugee Quota as refugees. They are familiar with New Zealand, have family and friends here. They are working and do not draw on welfare support from the New Zealand government.

THE ISSUES

[10] 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."

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

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

(b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

[12] Even accepting the appellant's credibility, the Authority considers that this appeal must fail.

[13] Clearly, none of the fears articulated by the appellants *vis-à-vis* their return to Tuvalu, can be said to be *for reason of* any one of the five Convention grounds in terms of the Refugee Convention, namely race, religion, nationality, membership of a particular group and political opinion. This is not a case where the appellants can be said to be differentially at risk of harm amounting to persecution due to any one of these five grounds. All Tuvalu citizens face the

same environmental problems and economic difficulties living in Tuvalu. Rather, the appellants are unfortunate victims, like all other Tuvaluan citizens, of the forces of nature leading to the erosion of coastland and the family property being partially submerged at high tide. As for the shortage of drinkable water and lack of hygienic sewerage systems, medicines and appropriate access to medical facilities, these are also deficiencies in the social services of Tuvalu that apply indiscriminately to all citizens of Tuvalu and cannot be said to be forms of harm directed at the appellants for reason of their civil or political status.

[14] Mr Ho submits that the appellants are being persecuted because they are from the lower socio-economic group in Tuvalu. While this may be a statistical group, it is not, in the Authority's view, a particular *social group* in respect of which its members can be said to be persecuted in terms of the Refugee Convention. There must also be a nexus between the membership of the particular social group alleged and the anticipated persecution. On the facts of this case there is simply no evidence to suggest that the appellants are being persecuted by the Tuvalu government *for reason of* their membership of such a group.

[15] Accordingly, there is no real chance that the appellants are differentially at risk of persecution for any one of these five Convention grounds. Their fears in this regard are therefore not well-founded.

[16] For the sake of completeness, the Authority observes that the appellants seek to be included in the Refugee Quota and recognised as refugees. A distinction must be drawn between the Refugee Quota programme, (in which the New Zealand government accepts resettlement refugees selected by the United Nations High Commissioner for Refugees as either meeting the criteria for refugee status or being "persons of concern") and the statutory based refugee determination system, of which this Authority forms one part, whereby applications made by "spontaneous" refugee claimants are determined. The appellants' refugee applications fall within the latter category. The fact that the appellants are familiar with New Zealand, have family/friends here and are working are not relevant to the sole issue which this Authority has jurisdiction to decide. That is, whether the appellants fall within the definition of a refugee in terms of the 1951 Convention. For the reasons set out above, the Authority finds that the appellants do not, and therefore their respective appeals must fail.

CONCLUSION

[17] In conclusion, for the reasons explained:

(a) The appellants' respective appeals are *prima facie* manifestly unfounded or clearly abusive. It follows that the appellants will not be given the opportunity by the Authority to attend an interview.

(b) The appeals, as assessed on the papers, must fail.

[18] I find that none of the appellants are refugees within the meaning of Article 1A(2) of the Refugee Convention. In respect of each appeal, refugee status is declined. Accordingly, all of the appeals are dismissed.

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S Joe
Member