

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 70097/96

IF

AT CHRISTCHURCH

<u>Before:</u>	G J X McCoy (Member)
<u>Counsel for Appellant:</u>	In Person
<u>Representative for NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	1 October 1996
<u>Date of Decision:</u>	26 March 1997

DECISION

This is an appeal against the decision of the Refugee Status Branch (RSB) of the New Zealand Immigration Service declining on 15 May 1996 the grant of refugee status to the appellant, a national of Russia.

THE APPELLANT'S CASE

The appellant is a 43 year-old Russian citizen who arrived in New Zealand by air on 19 May 1995 to join a Russian fishing vessel. Upon arrival in New Zealand the appellant joined his ship which he worked on until 4 October 1995. Then, on 21 November 1995 he lodged an application for refugee status. He was born in the Ukraine and lived there until 1991 when he moved to Russia with his family. He now holds Russian citizenship. The appellant is twice divorced. He has a son and daughter from his first marriage. He remarried and divorced his second wife only two days before he left for New Zealand. A copy of the formal order for divorce was presented to the Authority.

LIFE IN UKRAINE

The appellant said he now feared returning to either Russia or Ukraine. Prior to going to live in Russia the appellant had been involved in security, protecting orchards. He said the economy was deteriorating and this helped him decide to move to Russia. His mother and two brothers live in the Ukraine and one of his brothers is, as a result of radiation from the nuclear reactor explosion at Chernobyl, suffering from anaemia.

The appellant stated that he was also motivated to leave Ukraine because his own family was getting sick as a result of the radiation. His wife and daughter became ill. They had seen various consultants but to no avail. He therefore took the opportunity, when it came, of relocating to Russia. When asked if it was possible for him to return to the Ukraine the appellant stated that he believed Russia and the Ukraine would soon amalgamate.

MILITARY DUTY IN UKRAINE : MOVE TO RUSSIA

In 1991 the appellant was one of many able-bodied adults required to attend army headquarters in K. The appellant said K was 600 kilometres from Chernobyl. An army battalion was being formed to clean up after the Chernobyl disaster. The appellant did not go. To avoid going he moved to Russia. He went to Sakhalin Island in maritime Russia. On Sakhalin Island life was much better. His wife and daughter improved and the appellant said they had as such recovered from their previous illnesses.

EVASION OF MILITARY DUTY IN RUSSIA

The appellant's essential thrust in this part of the appeal was that he feared returning to Russia because he would be imprisoned for his failure to undertake military service in Russia. The earlier avoidance of military duty in Ukraine was, the appellant stated, by contrast far less serious. In support of his claim the appellant stated that his ex-wife had gone to an office in Russia, in 1996, to collect money that the appellant had sent her from New Zealand. At the office she was advised that the appellant was a betrayer of the Russian system. The appellant was unable to produce any further and better particulars of the office, the official or the detail of the conversation.

In April 1995 the appellant received papers requiring him to attend at a military base in a few days time. For Russians this was a common occurrence as regular checks were made on people and they were sometimes called up for reserve military exercises. However, the appellant was told by a friend that an attachment was to be organised to fight the war in Chechenya. The appellant told the Authority he did not want to fight in that war. His son had already been called up and he felt that he was too old to go. But, the appellant did go along to the military base as required. Upon enquiry the military officials denied that the attachment being formed would be involved in the Chechen war. The appellant was totally suspicious of their answers.

The appellant told the Authority he was not a conscientious objector. He said he did not object to do military service as such. He would do his military duty to protect his country against any aggressor but he did not want to take part in "genocide" in his own country. That was a reference to military service in Chechenya.

The appellant talked to the second-in-command of the military base. That officer said he was ordered to form a battalion of all those born in a certain year, namely the appellant's year of birth, for an unspecified reason. The appellant told the officer "I am not going". He was told that if he refused the laws of military service would be applied to him. The appellant said "If my country is attacked I will take up arms" but he protested against being involved in the destruction of Chechenya.

Thereafter the appellant went into hiding. He found out that the battalion was being sent to Chechenya as he feared most. When the Authority asked the appellant how he knew the battalion was going to Chechenya he said "People knew it was going to Chechenya". The Authority pressed the appellant as to how he knew this battalion was going to Chechenya and the appellant's answer was "friends of friends" had told him. The appellant did state that if he had paid the correct amount of money he would not have to go and perform his military obligations. The appellant stated that he never did in fact find out how much it would cost as a bribe to be "overlooked" for military service.

The Authority asked the appellant if he still had any call-up papers. He said "No - what would I keep them for!"

The appellant stated that he had in fact previously served in the army between 1971 and 1973. Serving in the modern Russian army was acceptable the appellant said, as long as it did not indulge in civil war in the fight against Chechens. The appellant said that many of his friends were living in Chechenya or had left for Chechenya.

The appellant was asked what punishment he could be liable for, for avoiding military service. He feared "that he might be imprisoned for three years" for failure to comply with his military obligations. He said because of that "I am now perceived as a traitor to both Russia and the Ukraine".

The Authority enquired as to why the appellant had divorced his wife precisely two days before he left Russia. The appellant said the official reason given in the divorce papers was that they were not compatible - that is that there were irreconcilable differences between them. The appellant said that was not true and was only a ruse, so that his wife would not be in jeopardy because of any actions that might be taken against him or his family in Russia.

The Authority asked how the appellant could leave Russia if the military had in fact been looking for him. He said that they were not well co-ordinated and he was able to leave. The appellant was asked specifically from what day was he in default of his military obligations and he said "from the beginning of April 1995". The appellant said in Russia "nobody wants to come to New Zealand". He further added "only criminals come here with a criminal past". The appellant was referring to those people on board Russian fishing vessels. The appellant said he did not have to pay a bribe to get on the ship. He said he could get a job very easily, because he had had an international visa, as he had previously been to Japan as a Russian sailor.

The appellant stated that he took a position on a vessel before leaving Russia. He did not have any problems leaving Russia as they did not enquire as to his unfulfilled military obligations and any checks that were done were very slow because of bureaucratic entanglement. The appellant said to avoid being detected before leaving Russia he would sleep in his car and away from his home so that if there was a surprise military police attendance at his home, he would not be found. The appellant did state that on one occasion officials came to his home and told his wife that if he did not honour his military obligations he would be

imprisoned. This was the only occasion that the military ever visited his home looking for him.

SON AND ARMY

The appellant's son was called up for military service in Chechnya. He was first called up on 1 April 1995 but that was deferred until May and he actually enlisted on 23 May 1995. The appellant complained he had not received any letters, as expected, from his son. The appellant said he had written four letters from New Zealand to his son in the army but there had been no response. The last time he ever saw his son was on 18 May 1995.

RELIGIOUS DISCRIMINATION - MORMON FAITH

The second limb of the appellant's case was that there was a real chance of religious persecution if he were returned to the Ukraine or Russia. He had been baptised a Russian Orthodox and in October 1995 converted to the Mormon faith. His conversion occurred whilst in New Zealand and just prior to filing his refugee status application.

The appellant stated he might be a victim of religious persecution. He said that when aged 15 he had been humiliated at school because he was a practising member of the Russian Orthodox Church. The appellant said that these experiences had been etched into his mind as people would abuse him for his religion.

In particular the appellant relied upon that fact that Mr Lebed, a prominent Russian politician, had declared that the Mormon faith was an unacceptable religion.

On this issue the appellant called as a witness EG, a leader of the Mormon Church in Canterbury. She is a New Zealand citizen who has lived here for 16 years. She told the Authority she had received many letters written by Mormons in the Ukraine and Russia. None were produced to the Authority. These correspondents said they were afraid to go to Church and that they had to practise their religion at home. She also referred to the comments of Mr Lebed reported by the BBC. These had been made a few months prior to the hearing of this appeal. In that report Mr Lebed had singled out the Mormon religion for adverse comment. The witness stated that Mormons were the subject of discrimination and persecution

across Russia. Although she herself had left Ukraine 20 years ago she said that now the Mormon faith is a very popular religion in Ukraine and Russia. There were large numbers of recent converts to the religion. The witness believed that Mr Lebed would be a future dictator of Russia. As a result of his comment she was afraid for the safety of Mormons in Russia and Ukraine.

DELAY IN FILING REFUGEE CLAIM

The appellant was asked by the Authority why he delayed six months in applying for refugee status once he had in fact arrived in New Zealand. The appellant said that there were many problems on board, in particular there were drunken fights amongst the crew and some had been arrested for fighting. The appellant said his contract ran until December 1995 but he left the ship in October 1995 and then lodged his application for refugee status the next month.

The appellant also stated that his six month delay in applying for refugee status from the time of first arriving in New Zealand was because he was analysing the position. He said he now had no family, he was just "a splinter" He effectively had no son, no daughter - he is a grandfather and had never seen his grandchildren.

LETTERS FROM RUSSIA

He stated that the only person from Russia who sent him any letters was his ex-wife and the appellant complained that sometimes letters he was expecting never arrived. The appellant said he occasionally telephoned his ex-wife. The appellant produced a letter in support from his former wife and it referred to the fact that the military had been looking for the appellant and that the war in Chechenya was taking a terrible toll of people everywhere. The particular letter relied upon by the appellant, from his former wife, seemed to the Authority to be self-serving as the letter begins with the phrase "Greetings from I your former wife". To the Authority it seems striking that the former wife would have to describe herself as a "former wife". This letter appears to have been written for the Authority.

OTHER SUPPORT

The appellant also produced character references suggesting that he had adapted to New Zealand life very well and that he was talented in animal husbandry. He was described as being courteous, respectful, honest, loyal and reliable.

As part of his case the appellant also referred to an incident in 1978 when people had gone on strike. He had been forced to walk on ice for 80 kilometres. Military tanks had been caught on the ice and the appellant thought there may be some memorandum, from the KGB prosecutor in the area, indicating that he had been part of the attempt to disrupt the transportation of fuel. The appellant has never seen a copy of any such memorandum.

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 (17 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?

ASSESSMENT OF THE APPELLANT'S CASE

The Authority accepted that the appellant had told a truthful account. Throughout, the appellant presented as a sincere man genuinely concerned for the welfare of himself, his former wife, son and grandchildren. His temperament was generally equable and yet determined although he emotionally told the Authority he would never leave New Zealand no matter what was decided.

The appellant's claim is based on:

1. His evasion of military service in Russia;
2. Religious persecution.

Evasion of military service obligations does not involve any Convention reason at all. A claim for refugee status would only be possible if there was a differential conduct in relation to the appellant because of a Convention reason. The appellant expressly denied any assertion of conscientious objection. He had previously been a soldier. He is willing to fight for Russia in any war to defend Russia but would not fight against Chechenya, which he perceives as a type of civil war. That war is now over.

The appellant may well be liable under military discipline for his evasion of call up duty. That is a matter of domestic law. The appellant asserted, without any evidence, that he might be liable for three years imprisonment. On the face of it there is nothing persecutory about such a sanction, but the Authority adds that there is no evidence that any term of imprisonment would be imposed.

The subjective desire not to serve in the Chechen war is irrelevant. The issue raised in this case is simply outside the terms of the Convention, as the Authority has repeatedly held, as it does not involve any differential conduct. The law being applied to the appellant is the same being applied to all evaders. This part of the claim fails *in limine*.

The second part of the appeal raises the issue of religious discrimination. The appellant only converted to the Mormon religion while in Lyttelton just prior to filing his claim for refugee status.

On the evidence, it is apparent that the Russian and Ukrainian governments have made some adverse comments about the Mormon faith. The text of Mr Lebed's interview was not produced. But, its content was an *en passant* reference as opposed to a systematic detailed attack on the religion. However, the true extent of the intolerance or otherwise of the Mormon religion is best demonstrated by the country conditions information.

In "Ukraine : Chronology of Events March 1994 - August 1995" a UNHCR publication of October 1995, it was stated that in March 1995 Jehovah's Witnesses in K were named by the head of the city's religious affairs commission as being "too persistent in their activities" and that Mormon missionaries had also recently been "barred from entering the city" (Express Chronicle, New Service 30 March 1994).

The Church of Latter-Day Saints (Mormons) has been recognised by the Soviet authorities for some years. Indeed the witness called by the appellant accepted that the Church was "very popular". Reports from the Associated Press are to the same effect stating that the Church is "flourishing" with three missions recently opened in Russia and Ukraine.

The Institute on Religion and Democracy (IRD), Washington DC 3 June 1992 indicated that there are no government restrictions on the operation of the Mormons in Russia. While the Mormons do experience problems they are not problems other than those faced by other religious organisations, such as interaction with the Russian Orthodox Church which objects to other churches evangelising in Russia. It is of course possible that smaller churches may perceive their difficulties as greater than those faced by larger more well-established religions.

The 1992 Department of State Country Report indicates that in Ukraine the April 1991 law permitting freedom of religion remains in effect. The 1993 Report States at 1116 "The State has not interfered with the registration of minority religions e.g. (Islam, Mormon, Jehovah's Witnesses and the Church of the Nazarene." Indeed the "US Department of State Country Reports on Human Rights Practices for 1995", a UNHCR publication states bluntly:

"The State has not interfered with the registration of minority religions requested by Ukrainian citizens."

But, the same document accepts that:

"Nonetheless, the treatment of foreign-based religious organisations still appears to be negatively prejudiced. Local governments, including in the capital city of Kiev, have set up bureaucratic roadblocks to the issuance of visas to non-Ukrainian Mormon missionaries wishing to proselytise in Ukraine."

On all the evidence there is some discrimination in relation to the Mormon faith in Russia and Ukraine. But, this discrimination does not amount to persecution. It is

not a systemic and deep-rooted attack on the existence of the religion. At most it is sporadic and uneven criticism because of the rapidly accelerated popularity of the religion.

But for the appellant this issue has no relevance at all. The mere fact that he has become a Mormon in New Zealand does not establish any real chance of religious persecution of him in Ukraine or Russia. Even taken together with the mild or occasional discrimination that may be evident, the Authority has not even any low-grade anxiety, on the evidence, that being a Mormon in either country is the beginning of religious persecution.

CONCLUSION

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 status is declined. The appeal is dismissed.

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Member