

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76275

AT WELLINGTON

<u>Before:</u>	M A Roche (Member)
<u>Counsel for the Appellant:</u>	R Woods
<u>Appearing for Department of Labour :</u>	No Appearance
<u>Date of Hearing:</u>	28 August 2008
<u>Date of Decision:</u>	25 September 2008

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the grant of refugee status to the appellant, a national of Myanmar.

INTRODUCTION

[2] The appellant arrived in New Zealand on a work permit in February 2007. Her employment relationship in New Zealand broke down and in February 2008, her employers attempted to force her to depart from New Zealand. She applied for refugee status in March 2008. She was interviewed by the RSB on 10 April 2008 and a decision declining her application was issued on 11 July 2008 leading to this appeal.

[3] The appellant claims to be at risk of being persecuted in Myanmar because she is a member of the Chin ethnic group, a Christian and a young woman. She also claims to be at risk because she provided assistance to insurgents in Chin State in 2005.

[4] The essential issues before the Authority are whether the appellant's claims are credible and, if so, whether she faces a real chance of being persecuted.

THE APPELLANT'S CASE

[5] What follows is a summary of the evidence given by the appellant at the hearing. An assessment of this evidence follows later in this decision.

[6] The appellant is a single female aged in her early 20s. She was born in Falam in Chin State where her parents were farmers. She had five siblings. All of her siblings are currently outside Myanmar. Four of them have joined the Chin refugee population in India while the fifth, her elder sister A, has been recognised as a refugee by the UNHCR in Malaysia and is currently awaiting resettlement to the United States.

[7] The appellant attended primary school and high school in Falam. After completing high school, she studied an accountancy course through distance learning at a university some distance from Falam. Although she was enrolled as a distance learner, in practice she was never sent any materials and her university course consisted of 10 days of intensive study at the university followed by exams in 2001 and 2002.

[8] In 2001 the appellant was recruited as a primary school teacher by the headman of AA village which was approximately 30 miles from her home in Falam. She met the headman at church and accepted his invitation to work as a teacher in AA. She resided there until mid-2005, living in a house in the school compound which was about a half a mile from the village. The appellant was one of four teachers at the school which had approximately 40 pupils. She taught her students to read and write in Chin and basic Burmese including the alphabet.

[9] While living in AA, the appellant only travelled home to Falam at Christmas time. This was because the journey had to be made on foot and took approximately two days. It was also hazardous to travel in Chin state because there were many military check points and there were many incidents of Chin women being abducted and raped by soldiers. Travel was safer at holiday times because so many people were travelling.

[10] Although the appellant's life was relatively uneventful prior to July 2005, she was aware that Chin people faced dangers. Like most Chin, she and her family were Christians and regularly attended church. From time to time soldiers would shut the church. There was also a 6.00 pm curfew imposed in Chin State so that people could not attend church in the evenings. Although the appellant was never

assaulted by soldiers, she was aware of regular incidents that occurred when Chin women and girls would be abducted and raped or when young people would be forced by the military to work as porters.

[11] In mid-July 2005, a group of approximately eight strangers came to the AA school compound in the evening asking for food. The appellant and the other teachers complied with their request and provided them with food. The following morning the teachers were woken by a boy who had been sent by the village headman to warn them that there were soldiers in the village asking about the strangers from the night before and instructing them to leave. A man named B arrived shortly afterwards and told the appellant that the headman had asked him to escort her home to Falam.

[12] The appellant travelled to Falam with B. She stayed there for one night and then left for Rangoon where she stayed with a Chin man by the name of C. C lived in Rangoon and worked as an agent arranging for people to leave Myanmar. While she was in Rangoon, C arranged to have a passport issued for her and arranged an introduction for her to an employment agency in Singapore.

[13] In October 2005, the appellant departed Myanmar for Singapore where she worked as a maid. She stayed in this position until January 2007. During this time she was able to speak to her parents on the telephone on one occasion and to get news of them from a neighbour on another. Through these telephone calls the appellant learnt that her parents were well.

[14] The appellant's employment conditions in Singapore were very unpleasant. However, the terms of her work visa did not permit her to change her employment without first returning to Myanmar. Accordingly, in January 2007, she returned to Rangoon for six days to arrange a new visa for Singapore. She stayed with C for two days and then with one of his associates. After she went to stay with C's associates, his son came and told her that C had been arrested and that she should leave Myanmar again immediately in case documents relating to her were discovered at C's place.

[15] The son took her to the airport and she understands that he paid a bribe to an official to fill out the appropriate paper work to enable her to depart earlier than her booked flight. The appellant then returned to Singapore where her agent arranged a position for her working as a maid for the Singapore High Commissioner in New Zealand. In February 2007, she travelled to New Zealand

to commence this position. The agent in Singapore retained her national identity card.

[16] Once again, the appellant's employment conditions were unpleasant. Her employers placed restrictions on her movements, however, she was able to attend church and was also able to go to meetings held by a Chin cultural group in Wellington. In February 2008, her employer informed her that she was to leave New Zealand the following day despite her work contract and work permit still being valid. Her employers took her to the airport, however, she managed to telephone a Chin community leader in Wellington who obtained police assistance and managed to prevent the appellant's departure. After receiving legal advice in Wellington, she applied for refugee status.

[17] Through the Chin community in Wellington, the appellant has managed to establish contact with her sister A in Malaysia whom she speaks to at least monthly and her cousin in the United States. A has been recognised as a refugee by the UNHCR and is awaiting resettlement. Her cousin has also been recognised as a refugee by the UNHCR and has been resettled in the United States. She has learnt that A fled Myanmar with a group from her village after the villagers were threatened by the military that they would be arrested if they did not provide information about cattle smugglers in the area. Through A she has also learnt that her parents are well. The appellant has not been able to talk to her parents as they have moved to a part of Falam where there are few telephones. Neither she nor A have had any news of their other siblings, all of whom have fled from Chin state over the border to India to escape the risks posed to young Chin people by the Myanmar military.

[18] The appellant fears returning to Myanmar. She lacks her national identity card which she needs to travel internally and believes that this could cause problems for her. It is not certain that she will be able to retrieve it from the Singapore agent. She also believes that she will be of interest to the authorities for providing assistance to insurgents in AA in 2005. Finally, she fears that as a young Chin woman, she is at risk of abduction and mistreatment by the military in Myanmar.

Evidence of D

[19] D is a Burmese national. She holds refugee status and has been living in New Zealand for 25 years. She is currently employed by Refugee and Migrant

Services and has recently been involved in the resettlement of 180 Chin Christians from Myanmar in New Zealand. Through working with these UNHCR mandated refugees, she has gained an understanding of conditions in Myanmar for Chin.

[20] She has visited Myanmar on two occasions since coming to New Zealand and through these visits, together with contact with people still in Myanmar, has some appreciation of present conditions in Myanmar. Even though she travelled into Myanmar using a New Zealand passport on her two visits, she found the way she was treated at the airport by officials, as a Burmese person returning from the west, very frightening.

[21] D first met the appellant in September 2007. Having got to know her, D has no doubt that she is a member of the Chin minority and that she is a Christian.

[22] On 1 February 2008, the appellant telephoned her to inform her that her employer had booked a ticket for her to Myanmar the following evening. D contacted the minister of the appellant's church, Reverend Fraser Paterson, who went to the airport to assist the appellant and who arranged for her to have legal advice.

[23] D does not believe that the appellant could safely return to Myanmar. She said that it is uncommon for young people to return to Myanmar from the west and that members of ethnic minority groups have difficulty travelling in and out of the country. She does not believe that any Chin person should be forcibly returned to Myanmar because the Chin are targeted by the military. She stated that there has recently been an influx of approximately 30,000 Chin to Malaysia who have registered with the UNHCR. To her knowledge, travelling to Malaysia from Myanmar to seek refugee status is extremely risky and people who do it have usually spent up to a month in the jungle and paid large sums of money to agents.

[24] D provided some corroboration of the appellant's evidence concerning her "university education". She stated that the education system in Myanmar has become corrupt and dysfunctional and that a distance learning system that was set up approximately 20 years ago has collapsed. Although students enrol, they are never sent course notes and their "course" consists of them coming into universities for two week courses of study prior to their exams. She said that qualifications obtained in such a manner are worth nothing overseas and that because there is no longer a proper education system in Myanmar, the children of members of the military regime are educated overseas.

Evidence of John Fraser Paterson

[25] Mr Paterson is the minister of the Khandallah Presbyterian Church and has known the appellant since May 2007 when she began attending his church. Mr Paterson was present at Wellington airport on 2 February 2008 when the police were called to prevent officials from the Singapore High Commission from forcing the appellant to depart from New Zealand for Myanmar. He subsequently assisted her to obtain legal advice.

[26] Having got to know the appellant, Mr Paterson has no doubt that she is a devout Christian.

Documentary evidence

[27] At the hearing four affidavits were filed. These were as follows:

Affidavit of E sworn 13 August 2008

[28] In his affidavit E stated that he was the co-ordinator of the Falam Refugee Organisation in Malaysia and that he had applied for refugee status in Malaysia after experiencing problems with the government and being accused of involvement in the conversion of Buddhists to Christianity.

[29] E stated that he had met the appellant and her parents in Falam in 1999. He also described the mistreatment of Chin Christians by the Myanmar military government. He stated that the appellant left Myanmar after soldiers came to AA enquiring about the strangers who had passed through the village whom the appellant and other teachers provided with food. He did not state how he had come to have knowledge of these events.

Affidavit of A sworn 15 August 2008

[30] A stated that she is the sister of the appellant and that she and the appellant had four other siblings. She stated that she had been recognised as a refugee by the UNHCR and was underwaiting resettlement to America. She provided details of the events that led to her own departure from Myanmar after being given a deadline by some soldiers for providing information about cattle smugglers to them. She stated that the Chin people are the slaves of soldiers in

Myanmar and that they are seen as enemies because they are not Burmese, they do not speak Burmese and they do not follow the Buddhist religion.

[31] The final two paragraphs of A's were identical to that of E's affidavit and described the events that led to the appellant's departure from Myanmar.

Affidavit of G sworn 19 August 2008

[32] G stated that he is the first cousin of the appellant on her mother's side and that he was granted refugee status by the UNHCR in Malaysia in March 2007 and had subsequently been resettled in America.

[33] G described conditions in Myanmar for Chin people and the abuses carried out against them by the military and also described the events that led to him leaving Myanmar and claiming refugee status. G stated that he heard that the appellant had had a problem with the military government while she was a school teacher in AA village. He did not state how he had come to know of this or provide any details of what had happened to the appellant.

Affidavit of H sworn 21 August 2008

[34] H stated that he is the president of the Chin community in Atlanta. He stated that he was granted asylum in the United States in January 2004 because he had experienced problems with the military government of Myanmar after supporting pro-democracy activists publicising the issue of drug trafficking amongst law enforcement officers. He stated that he had met the appellant's parents (whom he named) at Falam in Chin state.

[35] Counsel for the appellant filed written submissions dated 22 August 2008. Further written submissions were filed on 5 September 2008. The submissions addressed the refugee status of the appellant's sister A and cousin G and provided country information concerning the national identity card in Myanmar.

THE ISSUES

[36] 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."

[37] 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

Credibility

[38] Prior to determining the framed issues it is necessary to make an assessment of the appellant's credibility. Contrary to the Authority's Practice Note, no written statement detailing the appellant's claim was filed prior to the hearing. Neither was a written statement provided to the RSB. The appellant was interviewed at the RSB using a Burmese interpreter. Subsequent to the interview she claimed that she and the interpreter had difficulty understanding each other. In her response to the interview report she denied making some of the statements attributed to her at the interview and corrected a number of other matters. Prior to the hearing before the Authority, her counsel requested that a Chin interpreter be used because the appellant had limited fluency in Burmese. At the hearing the appellant gave her evidence in Chin with no difficulty.

[39] Because of the difficulties the appellant appears to have had with the Burmese interpreter, little weight can be placed on her RSB interview which, perhaps because of the communication difficulties at that interview, was brief. This, together with the lack of a written statement, means that there is little against which the evidence given by the appellant at the hearing can be tested. That being said, it is noted that her evidence at the hearing was consistent with the details that were recorded on her file such as her biographical details and her description of things such as the distance between AA village and her home. It is also noted that the risks the appellant faces in Myanmar arise from her personal

characteristics rather than from her actions or events in which she has been involved.

[40] The appellant's account is consistent with country information concerning conditions in Chin state and, there being no proper reason to reject it, is accepted for the purposes of this decision. In accepting the account, the Authority places little weight on the corroboration of her account provided in the affidavits given that no information was provided to the Authority as to how the deponents learnt of these events.

[41] It is noted that the RSB raised concerns about the identity of the appellant given her use at times of an English Christian name which is not the name in her passport and given a two year discrepancy between the dates of birth she has provided in her passport and the date of birth in her confirmation of claim to refugee status. In explanation, the appellant has claimed that she uses the English name because it is easier for westerners to pronounce. She also claimed that a false 1982 date of birth was recorded in her passport because she otherwise would not have been permitted to leave Myanmar given that there are restrictions on the travel out of Myanmar of young women in an attempt to combat trafficking.

[42] This explanation is supported by country information. The latest United States Department of State Report notes that to address the problem of trafficking in persons, the Myanmar government hindered or restricted international travel for women particularly those under 25 years of age: United States Department of States *Country Reports Human Rights Practices for 2007: Burma* (2008).

[43] Two affidavits have been filed by members of the appellant's family while another two affidavits, from Chin community leaders in Malaysia and America state that the appellant's parents are known to them. All name the appellant [by] the name that appears in her passport. The Authority considers these affidavits together with the credible explanations provided by the appellant for the adopted western name and the falsified date of birth in her passport, allay concerns regarding her identity.

Well-foundedness

[44] At this point it is relevant to consider country information concerning the treatment of the Chin minority in Myanmar.

Country Information

[45] Myanmar has an estimated population of 54 million. Since 1962 it has been ruled by a succession of authoritarian military regimes dominated by the majority ethnic Burman group. The country has a poor human rights record. The most recent Department of State report on Burma (Myanmar) summarised the current situation in the country in the following terms:

“The government's human rights record worsened during the year. The regime continued to abridge the right of citizens to change their government. Government security forces killed at least 30 demonstrators during their suppression of prodemocracy protests in September, and they continued to allow custodial deaths to occur and committed other extrajudicial killings, disappearances, rape, and torture. In addition, regime-sponsored, mass-member organizations such as the Union Solidarity and Development Association (USDA) and regime-backed "private" militias increasingly engaged in harassment, abuse, and detention of human rights and prodemocracy activists. The government continued to detain civic activists indefinitely and without charges, including more than 3,000 persons suspected of taking part in prodemocracy demonstrations in September and October, at least 300 members of the National League for Democracy (NLD), and at least 15 members of the 88 Generation Students prodemocracy activists. The government continued to prohibit the International Committee of the Red Cross (ICRC) from working unhindered in conflict areas and visiting prisoners privately. The army continued its attacks on ethnic minority villagers in Bago Division and Karen and Shan states to drive them from their traditional land. The government abused prisoners and detainees, held persons in harsh and life-threatening conditions, routinely used incommunicado detention, and imprisoned citizens arbitrarily for political motives. NLD General Secretary Aung San Suu Kyi and NLD Vice Chairman Tin Oo remained under house arrest. The government routinely infringed on citizens' privacy and restricted freedom of speech, press, assembly, association, religion, and movement. The government did not allow domestic human rights nongovernmental organizations (NGOs) to function independently, and international NGOs encountered a difficult environment. Violence and societal discrimination against women continued, as did recruitment of child soldiers, discrimination against ethnic minorities, and trafficking in persons, particularly of women and girls. Workers' rights remained restricted. Forced labor, including that of children, also persisted. The government took no significant actions to prosecute or punish those responsible for human rights abuses.” United States Department of State *Country Reports on Human Rights Practices for 2007: Burma* (11 March 2008) (the DOS Report).

[46] There is a long history of conflict between the military regime and ethnic minorities in Myanmar. The 1962 military coup, which gave rise to the era of authoritarian military regimes in Myanmar, was followed with a crackdown on ethnic minority political leaders and pro-democracy activists. This was met with armed opposition in ethnic border areas, marking the beginning of “an endless cycle of war and ethnic insurgency which has engulfed the country into its present day”. Although a majority of armed ethnic opposition groups have signed cease-fire agreements with the regime, a number of ethnic minority parties have refused to do so, including the Chin national front. According to the 2007 report of the

United Nations Special Rapporteur on areas populated by the Chin, government-led counter insurgency operations continue and are characterised by high intensity violence and oppression involving the use of excessive force and fire arms and severe abuses of the human rights of unarmed civilians. These abuses include sexual violence against ethnic minority women: Chizom Ekeh and Martin Smith *Minorities in Burma* Minority Rights Group International (October 2007).

[47] The appellant is of Chin ethnicity and is from Chin State. The *Minorities in Burma* report states that:

“A Chin State was created in 1974 but remains impoverished and under-developed. Tensions with the military government deteriorated from the late 1980s when armed opposition spread in the India border region. The Chin State has become increasingly militarised, with worsening reports of violations of human rights that have gone unpunished. There has been an increase in reported cases of forced labour, summary killings and arbitrary arrests against local Chins by the SPDC security forces.

The living conditions of Chin State are continuing to degrade. Land confiscations for tea and jatropha plantations controlled by the army have increased. The army continues to force Chin villagers to work against their will and often without pay on these plantations.

The Chin also have difficulty in accessing state schools, and Chin advancement is also held back by restrictions on education in their own language and discriminatory employment policies. Chins also complain of restrictions on the construction of places of worship and public manifestations of religion, especially in the Chin hill areas.”

[48] The DOS Report notes that during 2007:

“Wide-ranging governmental and societal discrimination against minorities persisted. Animosities between the country's many ethnic minorities and the Burman majority, which has dominated the government and the armed forces since independence, continued to fuel active conflict that resulted in serious abuses during the year. The abuses included reported killings, beatings, torture, forced labor, forced relocations, and rapes of Chin, Karen, Karenni, Rohingya, Shan, Mon, and other ethnic groups by SPDC soldiers. Some armed ethnic groups also may have committed abuses, but on a much smaller scale than the government army.”

[49] Conditions in Chin State are described in the following terms in a briefing paper prepared by Christian Solidarity Worldwide following a visit to the India-Myanmar border in September 2007:

“Conditions in Chin State are now so bad that many Chin people have been forced to flee. According to the CNC, approximately 100,000 Chins have fled to India, 27,000 to Malaysia, 1500 to the USA and hundreds more to Europe, Australia and Canada. The total number of Chins who have left Burma is estimated to be 130,866. The Chin population remaining in Chin State is 533,140, while approximately 700,000 Chins are in other parts of Burma such as Sagaing Division, Magwe Division, Arakan State and Rangoon. The Chin people who have left Burma have done so for a variety of reasons, but primarily to escape the continuing brutal oppression, forced labour, exploitation, sexual harassment, religious persecution, rape, forced marriage, forced conscription, poverty and lack

of health care, education and job opportunities. Chin State is widely regarded as the poorest and most deprived part of Burma. Forced labour, for example, not only results in cruel and degrading treatment, but causes indirect destruction of crops, as villagers are unable to farm and harvest if they are providing forced labour to the military. There is no education beyond Grade 10 (age 15), and no universities. There are 184 nursery schools, 1167 primary schools, 83 middle schools and 25 high schools, according to the CNC. There is a shortage of teachers. Often teachers spend two or three days a week working on their farms and they force the children to help them, instead of providing education in the classroom. Many people cannot afford to pay for education.” Christian Solidarity Worldwide *Briefing Burma: Visit to the India –Burma Border* (14-21 September 2007) (“the Christian Solidarity report”).

[50] The Christian Solidarity report noted that the delegation had obtained firsthand accounts from victims of human rights violations who had fled Chin State across the border to India and who provided accounts of torture, attempted rape, forced marriage, imprisonment, forced labour, religious persecution and the deliberate sale and promotion of crude industrial alcohol. The report also noted that the conditions in prisons and prison camps in Chin state are reportedly even more inhumane than in notorious Myanmar jails such as Insein where international intervention has reportedly resulted in some amelioration of conditions. The report notes that practices such as the shackling of prisoners with tight irons were worse than elsewhere in Myanmar as there are no outsiders to witness and report on such practices: Christian Solidarity report pp6-7.

[51] The Chin are predominantly Christian. According to various reports, the government authorities have harassed Christians and promoted Buddhism amongst the Chin in an effort to “Burmanise” the Chin.

[52] The most recent United States Department of State religious freedom report on Myanmar notes that the authorities have attempted to prevent Chin Christians from practising their religion, although reportedly the authorities have recently moved away from a campaign of forced conversion to Buddhism and instead focused on enticing non-Buddhists to convert to Buddhism by offering charity or bribery: United States Department of State *International Religious Freedom Report: Burma* (14 September 2007) p9.

[53] Counsel for the appellant has submitted that the appellant’s risk profile as a Christian and a Chin is also exacerbated by her gender. At [22] of his opening submissions he states that the government of Myanmar uses sexual violation as a weapon of war against ethnic minorities. In making this submission he relies on the following quotes from Refugee International *No Safe Place: Burma’s Army and the Rape of Ethnic Women* (April 2003):

“In fact, the current regime’s well-documented failure to respect basic human rights has led to specific, grievous human rights abuses against women. Such violations include state-sponsored rape (such as rape by military personnel) and sexual assault, forced labor, prostitution and trafficking, unequal access to education and healthcare, forced relocation, and political oppression. The SPDC’s consistent use of military power and violence to maintain control results in widespread human rights abuses against all the people of Burma. However, the women of Burma suffer double burdens—and, in the case of women from the ethnic nationalities, triple—because of their ethnicity.” (pp43-44)

“Reports by numerous credible human rights organizations indicate that rape occurs not only as a form of “entertainment” for soldiers, but also as part of a strategy to demoralize and weaken ethnic nationality populations. Some evidence indicates that soldiers use rape to coerce women into marriage and to impregnate them so they will bear “Burman” babies, known as a campaign of “Burmanization.” (p45)

“The Burmese military uses rape on a widespread basis against women from many of Burma’s ethnic nationalities. These rapes are not a deviation committed by rebel soldiers; they are part of a pattern of brutal abuse designed to control, terrorize, and harm ethnic nationality populations through their women.” (p58)

[54] In a similar vein, a report titled “Unsafe State: State Sanctioned Sexual Violence against Chin Women in Burma” published by the Women’s League of Chinland in March 2007 alleges that there is a campaign of brutal sex crimes against Chin women being carried out by the Burmese army. This report documents 38 cases of rape committed by the Burmese army during the five years prior to its publication and details instances where some victims were murdered, gang raped, tortured or raped in the presence of their local communities. “Burmese Junta Sanctions Rape of Chin Women: Report” *Mizzina News* (27 March 2007).

[55] Counsel has submitted that the appellant’s risk profile as a young, Chin, Christian woman is further exacerbated by her current lack of a national identity card. In her evidence, the appellant stated that her national identity card had been retained by her employment agent in Singapore and that it would be necessary for her to return to her home state to apply for another one, which is problematic because it is not possible to travel through Myanmar without a national identity card.

[56] Following the conclusion of the hearing, counsel was invited to file further country information concerning the national identity card. The following quotes were included in counsel’s submissions of 4 September 2008:

“All residents in Burma are required to carry national identity cards, showing their citizenship status, normal place of residence, date of birth, name of father, and so on. Since 1990 these cards are also required to contain information on the holders’ ethnicity and religion... As possession of these national identity cards is mandatory in order to buy train or bus tickets, to register with a local council

outside one's normal place of residence, to vote in any future election, or to enrol in institutions of higher learning, those without such cards face severe restrictions on their freedom of movement." On line Burma/Myanmar Library, Facts on Human Rights Violation in Burma: 2002-2003, chapter 12.

"Citizens and permanent residents of the country were required to carry government-issued national registration cards that often indicated religious affiliation and ethnicity. There appeared to be no consistent criteria governing whether a person's religion was indicated on the identification card. Citizens also were required to indicate their religion on certain official application forms, such as for passports." DOS Report section C.

"(...) during the Burma Military Regime even ordinary people has to carry identity card. Traveller who do not carry or forget to carry identity card is stopped and questioned as though he/she is insurgent or corroborator or insurgent. For politician of opposition party travel is extremely restricted... (Sic.)" Colonial Rule and The Burma Military Regime.

[57] The appellant may be able to retrieve her national identity card from her employment agent in Singapore. However, this is by no means certain given that the employment relationship arranged by the agent ended in acrimony and some embarrassment for the Singaporean High Commissioner. The above country information indicates that if she cannot retrieve it, she will face problems in Myanmar if she attempts to return to Chin state.

[58] The Authority also notes that the appellant's passport is expired. This is another matter which can give rise to difficulty on return to Myanmar. Country information indicates that to return to Myanmar without a valid passport could place her at risk as those who return with an expired passport are liable to be jailed immediately. The United Kingdom Home Office *Border and Immigration Agency Operational Guidance Note on Burma* notes at paragraph 3.10.13 that the Burma Immigration (Emergency Provisions Act 1947) section 3, subsection 2 states:

"No citizen of the Union of Burma shall enter the union without a valid union or Burma passport, or a certificate in lieu thereof, issued by a competent authority and, if a citizen violates this provision, he is automatically liable to be punished with imprisonment for return which may extend from a minimum of six months to a maximum of five years or with a fine of a maximum of K.1500 or with both under the terms of section 13, subsection 1 of the same Act."

[59] The Operational National Guidance Note also states that Burmese citizens who fail to return to Myanmar on or before the date they are required to return (apparently time limits for exit are imposed on departure but these are not recorded in the exit stamp) risk of imprisonment on return to Myanmar in conditions which are reasonably likely to violate their rights under Article 3 of the European Convention on Human Rights. The plight of such a person will be aggravated should it come to the attention of the Burmese authorities that the

person is a failed asylum-seeker. Such a person is highly likely to be interrogated on return: *HM (Risk Factors for Burmese Citizens) Burma CG* [2006] UKAIT 00012, heard 29 November 2005, promulgated 24 January 2006 and noted at paragraph 3.10.14 *Burma OGN* (31 October 2007).

[60] It is possible the appellant may be able to renew her passport without difficulty. It is, however, apparent on the face of her expired passport that her work visa expired on 28 February 2008. No further visa is entered in her passport although the appellant received a work visa entered on a certificate of identity on 19 March 2008. The work visa which expired in February 2008 specified that the appellant was only permitted to work as a maid for the Singapore High Commissioner while in New Zealand. Her subsequent work visa contained no such condition having been issued so that the appellant could support herself whilst her refugee claim was being processed.

[61] Even should the appellant be able to renew her expired passport, there is some risk that the irregularity in her immigration status (the fact that she was in New Zealand without a visa or permit after her work permit expired) may come to the attention of the processing authorities. This irregularity may be sufficient in itself to arise interest in her on her return to Myanmar. Alternatively, it is possible that the Myanmar authorities may deduce from her "overstay", and subsequent issue of an unrestricted work permit, that she sought asylum in New Zealand.

[62] It is obvious on the face of the appellant's passport that she is from Chin State as her birth place is noted as Falam. She is similarly situated (young Christian and Chin) to the tens of thousands of Chin who form part of the current Chin refugee diaspora. The risk that the appellant may come to the attention of the Myanmar authorities on her return because of her passport, is accentuated by this profile and her lack of national identity card.

[63] Even if she is able to enter Myanmar without difficulty, country information suggests that travel to Chin State for a young Chin woman with a national identity card is hazardous and without an identity card may be even more so. Ethnic minority areas affected by conflict (such as Chin state) experience tight controls on personal movement including frequent military check points and monitoring by the Military Security Affairs (MSA) personnel: DOS report, page 16. These controls were sufficient to inhibit the appellant from travelling only 30 miles to visit her family more than once a year.

[64] In her evidence the appellant stated that the authorities had made enquiries with her parents regarding the whereabouts of their children, all of whom have departed Myanmar and sought refugee status abroad. The absence of all her other siblings is yet another factor that may attract interest in her return should she make it to Falam.

[65] Given the country information concerning the use of torture, interrogation conditions, the Myanmar authorities' lack of respect for human rights, the abuses perpetuated on members of the Chin minority, and Christian Chin women in particular, the Authority is satisfied that, should the appellant be returned to Myanmar, the fact that she overstayed her work permit in New Zealand, allowed her passport to expire while in New Zealand, and may lack a national identity card together with her profile as a vulnerable female member of an ethnic minority are sufficient that there is a real chance that she will be persecuted should she return to Myanmar.

[66] For clarity, the Authority does not consider that the appellant's risk at the border arises from her claimed activities (feeding insurgents) in Chin State in 2005. Given the scrutiny that Myanmar citizens face at the border, it is unlikely that she would have been able to depart Myanmar legally in 2005, return in 2007 for a week and again depart legally had her profile been such that she would attract interest at the border. Even if her account of C's arrest while she was back in Myanmar in February 2007 is correct, it is difficult to see why this would be a matter that would increase her own risk, particularly as she was not staying with him at the time. Although her evidence that a bribe was paid to facilitate her earlier departure is noted, it is also noted that country information indicates that bribery is *de rigueur* in all stages of obtaining a passport and departing Myanmar even for those travelling conventionally who have no problems with the Burmese authorities.

[67] Having found that the appellant has a well-founded fear of being persecuted in Myanmar, it is necessary to consider the second issue of Convention ground.

[68] The appellant's status as a member of the Chin ethnic minority places her at risk as does her status as a Christian. The most relevant Convention grounds are race and religion.

CONCLUSION

[69] For the above reasons, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"M A Roche"

M A Roche
Member