

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO.73363/01

AT AUCKLAND

<u>Before:</u>	V J Shaw (Chairperson) P Andrew (Member)
<u>Counsel for Appellant:</u>	Appellant represented herself
<u>Appearing for NZIS:</u>	No appearance
<u>Date of Hearing:</u>	12 March and 6 June 2002
<u>Date of Decision:</u>	27 September 2002

DECISION

[1] These are appeals from decisions 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 appellant, a citizen of the People's Republic of China.

INTRODUCTION

[2] The appellant arrived in New Zealand on 9 July 1997. She filed a refugee claim on 19 March 1998. She was interviewed by the refugee status officer on 17 October 2000 and was notified that her claim had been declined in a decision dated 27 November 2001.

[3] The appellant was not represented before the RSB. After her claim was declined she instructed Loughlin McGuire to act for her, however by agreement that firm's involvement was confined to filing a notice of appeal and written submissions that merely outlined the appellant's claims.

THE APPELLANT'S CASE

[4] The appellant is a married woman aged 47 years. Her husband and 19 year old daughter remain living in China as do her widowed mother and two brothers. The appellant also has a younger sister who is a New Zealand resident.

[5] After completing her secondary education the appellant attended a technical college from which she graduated with qualifications in automotive instruments. Initially she worked in an agricultural chemical factory then in 1980 took up a position in a state-owned automotive instrument factory. Because of her qualifications and experience she held a responsible position, eventually being responsible for quality assurance for the entire factory. Her base monthly salary was around RMB700 plus an additional RMB2000 in various bonuses and subsidies.

[6] During 1995 a proposal came from the government to merge 23 factories into one work unit. The appellant's factory was among those selected for early merger. She and the other workers were opposed as the factory was profitable and their salaries above average even by the standards of a large city. According to the appellant, in retrospect, it was apparent that the real purpose of the merger was to pave the way for making workers redundant. Her own factory had around 500 employees while the 23 separate factories had some 20,000 employees in total. She understands from former colleagues that of the original workforce, only some 20 to 30 employees have been retained. She attributes this to the disruption to production that occurred during the merger process itself and the activities of the officials, many of whom she believes were concerned to pocket for themselves the assets of the former state companies.

[7] The appellant was a workers' representative with the official state union. However apart from holding discussions with the workers and agreeing to write to the higher authorities (which proved ineffectual) the official state union offered no real vehicle for voicing and protecting the workers' interests.

[8] Instead, the appellant and the other senior workers from the 23 work units developed an alternate structure which enabled them to liaise informally amongst themselves with a view to organising and directing the workers to fight the merger. Many of these senior workers already knew each other from a two week retreat of exemplary workers held in 1993. Leading workers from some 23 different

industries within the sector had attended, the appellant amongst them. At the retreat a group of workers had agreed to maintain contact so as to form a nucleus of activists able to collectively manage and voice the opinion of the workers. Once the merger plans surfaced in 1995 this network of senior workers became more formalised acting as an alternate union. In particular it ensued that workers' protests and general opposition to the merger was co-ordinated and that the workers criticism of the merger received considerable publicity in the media, including on television and in the major local papers. The appellant, along with a colleague Z, took a very pro-active role in organising the workers at her factory to resist the merger. The effectiveness of the workers' opposition across the 23 work units was such that the merger originally planned to take place over a 3 month period at the end of 1995 was not completed until 1997.

[9] The appellant's factory was to be merged with another factory situated in the suburbs and the site sold. The workers were uncertain when the merger agreement was to be signed. One day trucks arrived at the factory unannounced to move the factory equipment. All of the workers, apart from the Communist Party members, came out to the yard to protest. A number of workers started arguing with the truck drivers some of whom voiced their sympathy. Others spontaneously attempted to block the trucks from moving out of the yard. When some of the male workers attempted to pull the drivers from their trucks the situation became very tense. According to the appellant the workers knew they would not get anywhere with their protest, however, they felt the need to express their frustration and anger.

[10] The stand-off continued most of the morning and led to the management calling the Public Security Bureau (PSB). Once the PSB arrived the workers quickly disbursed, returning to the factory floor or going out to lunch. It was during the lunch period that the appellant decided to lock the factory gates. The PSB and managers were inside the factory holding discussions while most of the workers had left the yard. When they had been disbursing the appellant's colleague Z had given her a big lock which she presumes he had taken from the warehouse. Z was also a workers' representative and he and the appellant had been discussing how to handle the situation. When he gave the appellant the lock he told her to give it to the security guards and to ask them to lock the gate but the appellant said that she knew that the guards would not be willing to do this so she went and put the lock on the gate herself. She was not aware of being observed when she locked the gate.

[11] The locked gate was quickly discovered and the manager subsequently came to the workers and demanded that the worker who had locked the gate reopen it. When no one volunteered to do so, he assured the workers that provided whoever was responsible came forward and unlocked the gate, no action would be taken against them. Despite this assurance the appellant did not own up as she was not confident that there would be no reprisals against her. The lock was soon dismantled and the factory premises cleared over the next few days. The appellant and her fellow workers were left with no option but to transfer to the new factory site. Although their nominal salaries remained the same there was a reduction in bonuses and subsidies while substantial transport costs were incurred because of the distant location.

[12] The appellant recalls that the merger with the other factory occurred around the end of 1995 and that everything was functioning normally again, albeit at the new factory site, by the Chinese New Year 1996.

[13] The appellant encountered no particular problems during 1996 apart from the fact that she was aware that the issue of the locked gate had not been forgotten by the management as whenever there was a general staff meeting, the factory general manager raised the matter stating that the person responsible should give him or herself up. This made the appellant feel nervous. Her colleague Z was also arrested and briefly detained for 15 days ostensibly because of his involvement with the Guang Yin Fa Mun religion but the appellant believes the real motivation was his role in the workers' protests.

[14] Feeling concerned about her position, the appellant sought the advice of her uncle who had been a manager in her original factory and after the merger had been appointed a director of the proposed new conglomerate. According to the appellant, her uncle had a degree from one of the older universities which was highly respected. He told her that she may well be in trouble and warned her against owning up. He assured her he would try to help her if he heard anything but in the meantime she should keep silent and "play it by ear" to see if anything developed.

[15] The appellant was issued with a valid passport during March 1997. It was her intention to visit her sister in New Zealand as she had begun to feel that her situation at work was becoming increasingly unfavourable. She had no difficulty obtaining the requisite authorisations for the issuing of the passport as these were

provided by her uncle. At this time nobody had accused her of locking the gate however, the appellant said she felt increasingly insecure. She felt that somebody was bound to know that she was responsible. As the person responsible for quality assurance, it was her job to pick faults in the work of others and if she did her job strictly this could give rise to offence thereby providing a motive for someone to report against her. Apart from the matter continuing to be raised at staff meetings held every few months, one worker in particular who worked in the production area would often talk to her insinuating that the gate matter was being raised again.

[16] Just before April 1997 the appellant was advised by the company director that she was to take leave for one month. She made enquiries with her uncle as to the reason for this. He advised that he had asked the security section and the reason given was that if she was not working in the factory they would be better able to talk to other workers to try and find out what was going on. Later, just before she left China, her uncle advised her that he had learned from the security section that a worker had told the management that it was the appellant that had locked the gate. Later when she was in New Zealand, her husband also passed similar information to her sister.

[17] When the appellant returned to work at the end of April 1997 she found that her responsibilities were being shifted to others so that by the end of May she had little or nothing to do. Again no explanation was given to her. She said she did not ask as it was obvious and there was no room for her to protest. "Kicking you after the event" was how the Communist Party operated. At that stage the redundancies had not yet started. There were a few workers that were on long-term sick leave and she assumed that in her case the management was trying to cover up cosmetically what was happening so that she would not be too alarmed. She believed that they were trying to find out as much evidence as they could against her as they did not feel confident to prosecute.

[18] Through her contacts in the medical clinic she managed to obtain a medical certificate which enabled her to take sick leave. She said she was not prepared to simply ask for leave in order to visit her sister in New Zealand as during June the local PSB and some members of the street committee had visited her home and even her daughter's school asking for her. She decided against telling anyone about her proposed travel to New Zealand as she was afraid that this might speed up the investigation into herself and she would not be allowed to leave.

[19] The appellant left China in early July 1997. She has continued to maintain regular contact with her husband and other family members primarily by telephone with occasional letters. She said that initially she had written letters to her family in China but ceased to do so when she became concerned that they may have been tampered with. Most letters, she said, reached their destination within two weeks, however, one letter had taken a month to arrive which had concerned her and thereafter she had primarily used the telephone.

[20] During the period after her arrival in this country up until April 1998 the appellant said that she had learned from her husband that persons she understood to be plainclothes PSB officers had made enquiries of her, including coming to speak to her husband at his work unit. Apparently, they had told her husband that they needed to speak to her about some matter that had occurred during the factory shift. Her husband had advised them that the appellant had left China. He also told them that his relationship with her had deteriorated. This was not true but he had said this was the case so that the authorities would not harass him further. As far as enquiries during the period between 1998 and 2000 were concerned, the appellant could recall one occasion when an old woman from the street committee had inquired of her daughter about her whereabouts.

[21] During 1998 the appellant's uncle was made redundant apparently because of his having provided the necessary authorisations which had enabled the appellant to acquire a passport and travel to New Zealand. The appellant was quite sure that her uncle's redundancy had to be connected with her own case because, as a senior engineer, he should not have been made redundant and importantly, the major redundancies which eventually saw almost all workers losing their jobs, did commence until around 2000. The appellant confirmed that her uncle is presently lecturing part-time in a tertiary institution and appears to have no other problems.

[22] More recently, around the end of October 2001, the appellant's mother was visited by some plainclothes detectives from the PSB. They asked her if the appellant was still in New Zealand and why was she staying in this country for so long. They told her mother that they wanted the appellant to return as quickly as possible as they wanted to resolve the matter concerning the shifting of the factory.

[23] The Authority queried with the appellant why it was that the PSB would be at all interested in pursuing what was a relatively minor incident of a locked gate during a factory protest in 1995. In response she stated that she had obviously angered the authorities and frustrated persons in power. The matter may not seem consequential but it was to the managers involved. They can hold grudges and they have connections which enable them to get the PSB to do whatever they want. The Authority suggested to the appellant that most of the management from her old factory would presumably have now been made redundant and the key director who still held his position, had probably faced many more serious protests in recent years in respect of making 20,000 workers redundant. In response the appellant suggested that her problems stemmed from the fact that she was one of the first protesters. She and her colleagues had definitely created a lot of trouble for the managers through contacting television and other media and being resistant to the merger policies. They had, she said, been quite troublesome.

[24] The appellant also mentioned in her evidence that her husband has reported to her that a friend of his had been watching news on a Chinese Sky channel broadcast through the internet. The friend had reported that he had seen a news item concerning the hunger strike held in early October 2000 to protest the exclusion of asylum seekers from the government's concessional programme for those unlawfully in New Zealand and that the appellant had appeared in the news item. The appellant told the Authority that she had initially been part of the protest but on about the third day her sister had dragged her away as she had been concerned about her health. The appellant's husband had warned her that she should not be protesting against the New Zealand government.

[25] From the beginning of 1999 the appellant has been attending a Yi Guang Dao temple. In China, she and her husband considered themselves to be Buddhists and had regularly visited a local temple. An aunt, a university professor, had introduced her to religious writings mainly of a Buddhist nature which had helped stimulate her interest in religion. After she came to New Zealand, friends had told her of the Buddhist temple and she had become a regular attendee. In particular, she attends on the first and fifteenth day of the Chinese lunar month, a teaching session on Friday as well as various special ceremonies throughout the year. The Friday sessions are mainly devoted to talking about religious principles, especially about spiritual cultivation and the abandonment of materialism so as to achieve purity. According to the appellant Yi Guang Dao followers must cultivate

themselves so as to be free from sin which is necessary if one is to achieve reincarnation.

[26] Apparently the appellant did not initially realise that the temple she was attending was a Yi Guang Dao temple. Rather, she thought it was a Daoist temple. It was not until sometime later, when attending a special three-day programme that she learned of the sect's real character and realised that she was involved with Yi Guang Dao, a religion banned in China. After learning of this the appellant wrote a letter to her husband telling him of what had happened and asking him about the extent to which Yi Guang Dao is banned in China. This is the letter which she had referred to earlier in her evidence as having taken one month to reach her husband when all previous letters had taken no longer than two weeks. The appellant had told her husband in her letter that spiritually speaking she had been very well supported by the temple and without the support of religion she did not know if she could maintain living here. She had been burdened by many worries and stresses. It was only through the teachings in the temple and reading her religious books that she had become clearer in her own mind as to the deeper meaning of life and no longer felt worried about worldly matters. Yi Guang Dao used a lot of ancient Confucius and Taoist doctrines which had given the appellant insight into her own culture. Her husband had advised that she must not write about Yi Guang Dao again as if her involvement became known to the Chinese authorities it would be evidence against her for a further prosecution.

[27] Apart from this one letter to her husband the appellant says she has not told other family members of her adherence to Yi Guang Dao. Her mother would be especially concerned if she knew. The appellant does though speak and write of general religious and philosophical matters with her family members. For instance, she said that earlier this year she had written two letters to two of her siblings both of whom are undergoing treatment for cancer. She had sent the two letters along with a letter to her husband and photos from Christmas 2001 in one envelope addressed to her husband at his work unit. She talked in her letters to her siblings of the need to try to relieve themselves from the stress and burdens of living especially in the later stages of their disease and of the importance of finding a deeper meaning of life.

[28] The Authority asked the appellant how returning to China where Yi Guang Dao is proscribed, would effect her religious practice. She spoke of an adherence

to a duty to spread knowledge of the principles of Yi Guang Dao, to continually practice, meditate, and learn about the religion as well as a duty not to engage in certain behaviour or eat certain foods. She says she has no hesitation telling friends about her religion and trying to convince them to believe. She agreed, however, that her religion was not simply about proselytising and confirmed her husband and family were all Buddhists.

[29] The main problem she envisaged for herself if she tried to continue on her religious path in China was that in order to fully practice Yi Guang Dao it is necessary to attend a temple or an appropriate environment in which to practise. She explained that through teaching she acquires knowledge of principles. This allows her to then modify herself and that if she was to return to China she would be cut off from any source of learning about her religion. Although she had always been a Buddhist she said she had never had the luxury of such good teaching and learning. She had been blind in that she had been without knowledge of the real principles behind what she was doing. She did not know how to solve problems or what to do when faced with obstacles. While it would still be possible to live in accordance with fundamental Yi Guang Dao principles such as kindness to others, she would never be able to go beyond her current level through participation in learning or ceremonies. Yi Guang Dao involves a target or goal. The minimum goal is not to be condemned at the end of one's life. The appellant is uncertain if she can achieve eternal peace but at the very least she says she does not wish to be condemned. While she is able to continue her religious practice she is looked after and everything is well but if she betrays God her situation would not be all right. Ever since she has believed in Yi Guang Dao she has felt calm. She is no longer subject to the trials and stresses that she had been going through. It is, she says, well-known that one must have spiritual well-being in order to live.

[30] In support of her claim the appellant produced two letters from two members of the Yi Guang Dao Temple which confirm that she joined at the beginning of 1999 and is a key member of the group. She is said to have never been absent from any of the gatherings although she lives far away from the venue, to always help in the organisation of religious activities and to have impressed with her devotion to Yi Guang Dao.

[31] The appellant believes the Chinese authorities could be aware of her Yi Guang Dao practice in New Zealand because of the letter she wrote to her husband around mid-1999 which mentioned this fact. She is concerned that if this

may be so because of the delay in the letter reaching her husband. She is concerned that if the Chinese authorities do have knowledge of her involvement with Yi Guang Dao she will certainly be punished. The principles of Yi Guang Dao, she believes, are contrary to the principles of Communism. She points to the current treatment of Falun Gong practitioners, who she says have never done anything against the Chinese authorities apart from practise truth and kindness to others. It is, she says, the fundamental principle of Taoism and Yi Guang Dao to have all people united. If this was so no one would wish to be a Communist.

[32] The Authority put to the appellant that if the authorities had intercepted her letter as she suspects, it seemed peculiar that they would not have indicated their knowledge of her activities to her husband. However the appellant did not think that this would necessarily be the case. Based on her experience of China she believes such information would not always be produced. It would only be brought out and used against her in court when she was being prosecuted for something else.

[33] Towards the end of the hearing the Authority asked the appellant about the reference in written submissions prepared by her representative (the appellant and her representative had agreed that the representative would not attend the appeal hearing) to the appellant having in her possession a letter received from her uncle. The appellant told the Authority that she had shown this letter to her representative but he had not wanted it but that she had brought it with her to the appeal hearing anyway. No translation of the letter had been obtained. The Authority asked her why she had thought the letter significant and had wanted her representative to know about it. She stated that her uncle had been dragged into her problem because of his trying to help her. During January 2002 she had received a letter from him in which he had told her that the authorities had classified her offence as a political one. Besides the letter from the uncle, the envelope had also contained a letter written by her mother and one written by her husband, it apparently being the practice of the family to include more than one letter in an individual envelope. The appellant said that generally the family communicated with each other on the telephone. However, in this case, letters had been written to her because after her refugee claim had been declined she had been feeling very down and that she had spoken to her husband about it. The family had therefore written in an endeavour to comfort her.

[34] The appellant told the Authority that the letter from her mother relevantly mentioned a visit from the PSB and warned her to carefully consider her next step. She agreed to allow the Authority to arrange for all three letters to be translated. After receiving the translations the Authority reconvened the hearing to discuss their contents with the appellant.

[35] The three letters from the appellant's mother, husband and uncle were all written in early January 2002 and are too lengthy to reproduce. The salient points of each letter only will be mentioned. The appellant's mother refers in her letter to having received visits from factory officials, the PSB and the court as well as receiving a summons recording that the appellant had amassed a group of people and disturbed the peace to prevent the factory shift taking place. The mother expresses her surprise that the matter was being taken so seriously. She then goes on to encourage the appellant to think carefully of her situation. Although she knows the appellant misses her family if she returned to China she would be sentenced and imprisoned so could not be reunited with the family in any event. The mother finishes by noting that although it is tough to be overseas, the appellant at least has personal freedom which would not be the case if she returned home.

[36] In his letter, which is of some length, the appellant's husband relevantly reports that the appellant's former colleague, WG, had visited and asked after the appellant.

"A few days ago your colleague WG came to my place and asked after you. I send it had not been easy for you to stay in NZ. She asked me to advise you to keep dragging on in New Zealand. She said that the factory is still looking for you, that whatever labour union you people organised in the first instance was an illegal and counter-revolutionary organisation. The strike you people partook (sic) and the incident where you locked the gate during the shifting of the factory are still under investigation. In 2001, one of your colleagues by the name of Z who was involved in the disturbance with you (WG said that you will know who it is once mentioned to you) has been on trial. This is the latest situation at the factory. WG has applied for early retirement. She is also afraid that the problem at your workshop will drag her into this again. She reiterated that you should not return at all cost."

[37] The appellant's husband goes on to note that the appellant's problem has been going on for almost 5 years and that carrying on as they were was not really a solution.

"if you really come back and look at the current political climate in China, with one political purge after another, and recently the municipal PSB has issued a public document concerning "Family of fugitives persuading fugitives to surrender themselves. That day, people from your factory came to our house to have an

understanding of your situation. ... if you return it is certain that you will be sentenced. All the same the whole family cannot be in the same place. At the same time you will have to suffer the pain of the sentence. The family will also be affected because of you. Thinking about it how many 5 year periods are there? Brief pain is better than prolonged suffering. At least you will have a way out. Don't force all of us into a dead end because of this. I hope you will think carefully!"

[38] In his letter the appellant's uncle advises her that the disturbances caused by her and others in the union back in late 1995 had not been settled and that the appellant's home city has since classified the incident as a political matter.

"I have heard that the few colleagues of yours in the workshop who caused the disturbances with you, the majority of those have been sentenced by the public security authorities."

[39] The uncle goes on to note that the fact that he had protected the appellant and issued and authorised departure documents to her had led to his own dismissal at the factory in April 1998:

"You also knew that my position as a senior engineer was a permanent employment, from this you can tell the degree of seriousness of the offence you have committed. Your aunt said that thankfully you had since left the country, otherwise you would definitely be sentenced. I was asked to tell you not to return at all cost. My view is that you should try your best not to return, once you return you cannot escape sentencing. This will affect your family as well. From what your mother said the local PSB have frequented your home asking about whether you have returned."

[40] The uncle also relevantly mentions that occasionally people from the factory come to see him, their aim being to sound out the appellant's situation. However he tells them that he has lost contact for her for years and is not sure of her situation. He finishes by assuring the appellant that all his family miss her very much and advises her:

"Stay over there and don't worry, wait until the storm passes and then reassess."

[41] When the hearing re-convened on 6 June 2002 the appellant told the Authority that she and her husband write occasional letters although communication is more frequent by telephone. Her mother writes very infrequently. She had written in the period after her arrival but she and her family found telephone communication more convenient and she usually speaks with either her husband or mother on average about once a week. She had written a letter to her family on 6 January 2002 but they had never received the letter.

[42] The Authority questioned the appellant again about the background to the three letters referred to above. In response she stated that she had received the decision of the Refugee Status Officer declining her refugee claim. She had spoken to her family about this and told them that she did not wish to pursue her refugee claim further and was going to return to China. She said that she had expressed the view that she felt it did not matter if she had to spend some years in prison as she had already spent four years in this country she wanted only to see her family again and to be back home with them. She said that she had been unhappy in New Zealand and she had missed her family very much. Her religious practice had made the situation better in that it was part of the teaching that one should try to become more detached from emotional feelings. Even so this had not been easy as she had been married for a long time. She only had one life and some things were very difficult to bear with. It was because of her suggestion that she would return to China that her family had all written emphasising the seriousness of the situation and cautioning her to rethink the matter.

[43] WG, she explained, had been a good friend when they had worked together at the factory. WG kept in regular contact with her husband. As for her colleague Z he had been, like the appellant, an exemplary worker, a state union official and, along with the appellant one of the organisers of their workers' protests. She was aware that before she left China Z had been arrested and detained for some fifteen days. She understands from her husband that Z's trial resulted in a 3-4 years prison sentence. She is unsure why the authorities would have waited so long although believes the Chinese government really fears the workers. There is a special unit of the PSB which deals with these matters and the case has probably been reviewed. She thinks she would be the person that they would mainly be interested in but as they cannot obtain any conclusion in respect of herself they may have chosen to make Z a scapegoat.

[44] In her final remarks to the Authority on the first day of the hearing, the appellant said that she had come to New Zealand and only later had found out that if she returned to China she risked being imprisoned. Imprisonment would have had a very negative impact on her child and family. She felt that she had put them all in a very bad position. She believes that if returned to China she could be charged with any number of crimes such as obstructing justice or public order and that she would be punished with at least several years of re-education through labour. Even after she was released the impact on her child would continue.

THE ISSUES

[45] 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, as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[46] 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

[47] The Authority must first determine whether or not the appellant has given credible evidence.

[48] The appellant's account of events prior to her departure from China is accepted. Her evidence has been generally consistent and relatively understated. The Authority accepts that the appellant, since living in this country, has become a committed adherent to Yi Guang Dao. The sincerity of her account of the benefits she has derived from her practise of Yi Guang Dao was very evident.

[49] A major area of concern relates to the reliability of the appellant's latest claims that the PSB have maintained an interest in her and has evidenced an intention to punish her for her role in helping to organise the protests at her workplace during 1995 and early 1996.

[50] It had always been the appellant's case that in the period after coming to New Zealand she had been told by her husband of visits from the PSB on several occasions including to his place of work and that her uncle had warned her that the management had established that it was she who had locked the factory gates

and had threatened to have her punished. However this evidence related to the period 1997-1998.

[51] The fact that correspondence containing critical revelations should happen to arrive in the period immediately following the appellant receiving advice of the decline of her refugee claim and prior to her appeal hearing gives rise to some suspicion.

[52] We have carefully considered the three letters received from the appellant's husband, mother and uncle. The Authority has obvious concerns. However, these have to be balanced against various factors in the appellant's favour including the authentic flavour of the letters, especially those written by the husband and uncle and the fact that the subject and tone of the letters is consistent with the appellant's claim that they were written in response to her depressed state and advice to her family of her intention to return to China. The Authority also takes into account the fact that actual production of all three letters only came about at the urging of the Authority. During her evidence the appellant did not refer in any real detail to some of the important information contained in the letters. In general she appeared to be rather flat and resigned in mood. The appellant's early evidence has been found to be credible and seemingly free of embellishment. There was nothing in her demeanour that suggested deviousness. Nor could we detect any change when she gave evidence about the letters.

[53] Weighing up all these matters the Authority has decided to extend the appellant the benefit of the doubt as to the genuineness of the recent correspondence from her family.

[54] The Authority now turns to consider the issue of well-foundedness.

[55] The appellant played a key role, along with her colleague Z, in organising workers at her factory to oppose the proposed merger of some 23 work units involving some 20,000 workers almost all of whom have now been made redundant. The appellant was one of a group of senior workers from the various work units who created an informal alternate union to co-ordinate and promote the rights of the workers and to publicise their fight against the merger in the media.

[56] During a stand off at the factory the appellant locked the factory gate in a futile attempt to stop the transfer of the factory equipment to the new site.

Although she was not formally charged with any offence she was progressively isolated over the course of the following year and by the end of May 1997 had been stripped of all duties and effectively made redundant. She left China soon afterwards without notifying her work unit, her uncle having provided her with the necessary work unit authorisations for obtaining a passport and exit visa.

[57] Just prior to her departure the PSB appear to have initiated enquiries concerning the appellant and in the period immediately after her departure further enquiries were made of her husband including approaching him at his work place. He informed the PSB that the appellant had left China and implied that the marriage had ended in the hope of avoiding further harassment.

[58] This sequence of events demonstrates that the appellant was viewed with increasing hostility and suspicion by the factory management. That her uncle, a senior, respected engineer holding a management position, was dismissed in April 1998 when his role in providing the appellant with the necessary documents to obtain a passport came to light is also indicative of the depth of hostility towards the appellant presumably because she was seen by the management to be one of the ringleaders of the protesting workers. More recently following the redundancy of almost the entire workforce from the original 23 work units subject to the merger, a number of the appellant's former colleagues, including Z, have been prosecuted by the PSB and sentenced to periods of imprisonment, in the case of Z, up to four years.

[59] There is evidence that the appellant is amongst those relatively small number of workers who have been singled out by the PSB for prosecution. In the case of the appellant the outstanding charges are in the nature of "amassing a group of people and disturbing the peace".

[60] Country material confirms that the Chinese authorities can meet attempts to establish independent trade unions with repression. Over the last decade the introduction of free market reforms and the progressive dismantling of the planned economy have seen a dramatic rise in the number and magnitude of labour disputes and workers' protests, most of which are illegal as the Chinese government continues to deny rights of freedom of association, expression and assembly. News blackouts are also a common response to labour disputes. Workers and labour leaders have been detained, harassed and imprisoned for taking part in such protests or publicising them. Refer to Amnesty International,

People's Republic of China, Labour Unrest and the Suppression of the Rights of Freedom of Association and Expression, April 2002 and *Detained and Imprisoned Labour Rights Activists*, April 2002, and Human Rights Watch, *Paying the Price, Worker unrest in North East China*, Vol. 14 No. 6 (C) - August 2002.

[61] The above reports record that labour activists can receive lengthy prison sentences. Human Rights Watch suggests that with respect to ordinary workers, the authorities adopt a relatively restrained approach in contrast to the aggressive campaign waged against individuals involved with the formation of political parties or Falun Gong adherents, perhaps reflecting the fact that labour unrest threatens the very legitimacy of the Chinese Communist Party in a way that other challenges do not. The appellant's role in the events of the protest during 1995-1996 was innocuous by our standards. However, as Human Rights Watch notes, such labour protests and in particular the effective utilisation of the media by protesting workers are viewed with extreme concern by the authorities.

[62] The available evidence suggests that of the many thousands of workers affected by the merger during 1995-1996 and ultimately made redundant only a very small number were targeted for prosecution and then only cautiously and, in the case of the appellant, after she had been effectively isolated from other workers. It is reasonable to assume that within the context of this particular dispute the appellant and those other workers targeted for prosecution were perceived by the authorities to be key players in orchestrating the protests. Given the political context and the manner in which the criminal law is utilised to punish those who endeavour to exercise their fundamental right of freedom of association and expression, the Authority accepts the appellant's contention that any charges brought against her would be seen by the authorities as political in nature and therefore likely to attract a prison sentence of up to four years of re-education through labour. Such imprisonment would be persecutory.

[63] The appellant's fears that she will suffer persecution in the event of her being returned to China are therefore well-founded. Such persecution would be by reason of her political opinions.

[64] In the course of her evidence the appellant referred in some detail to her being an adherent of Yi Guang Dao, a religion proscribed in China. She believes that this matter may have come to the attention of the Chinese authorities as a result of her having on one occasion written to her husband about her religious

practices and the fact that the letter took around a month to reach him instead of the normal two weeks. The Authority is not persuaded by this reasoning. In a postal system as vast as China's delayed and lost mail must be a common occurrence. In any event, given our findings above the Authority does not need to consider further the question of the appellant's religion.

CONCLUSION

[65] For the above reasons we find that the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

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V J Shaw
Chairperson