

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76036

REFUGEE APPEAL NO 76037

AT AUCKLAND

<u>Before:</u>	M A Roche (Chairperson) S L Murphy (Member)
<u>Representing the Appellants:</u>	The appellants represented themselves
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	26, 27 & 28 June 2007
<u>Date of Decision:</u>	15 November 2007

DECISION DELIVERED BY SL MURPHY

[1] These are appeals against decisions 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 appellants, nationals of the Russian Federation. The wife is in her late teens and the husband is in his 30s.

INTRODUCTION

[2] The appellants arrived in New Zealand on 23 June 2006 and each claimed refugee status on 20 July 2006. They were interviewed by the RSB on 24 August 2006 and decisions declining their claims were delivered on 20 March 2007. It is from those decisions that they have appealed to this Authority.

[3] The appellants each claim to be at risk of harm at the hands of state authorities due to their involvement in publishing an article exposing major environmental problems resulting from a factory in their town. The central issue in

this case is the credibility of the account.

[4] The appellants will be referred to as “the husband” and “the wife” respectively, and “the appellants” when referred to jointly. Because the appeals arise from the same claimed set of facts, it has been appropriate to hear them together, with the evidence of each appellant being taken, by consent, into account in respect of both appeals.

THE APPELLANTS’ CASE

[5] The following summarises the evidence of the appellants before the Authority. Its credibility is assessed later.

[6] The husband's early childhood was unremarkable. He attended primary and secondary school in Moscow, finishing in 1990. Following a year working as a mechanic, he commenced military service. In the course of his military service, he married. His military service concluded in 1993. After working for a few months in a trading role, he started a university course the following year. The next five years were spent pursuing a diploma of journalism. He graduated from this course in 1999.

[7] Unable to obtain employment as a journalist, the husband commenced work as a manager in his friend’s real estate business in CD, a town situated about an hour’s drive from Moscow, commuting between Moscow and CD.

[8] While working for the real estate business, the husband maintained his interest in journalism, and made contact with the local newspaper, “the CD newspaper”. Over the next few years, the CD newspaper published a number of articles written by him, on topics such as activities to do in one’s summer holidays, and the economic downturn in the region.

[9] At the end of 2002, the husband's marriage dissolved and he started living permanently in CD. His two young sons remained living with his wife in Moscow. He moved into a house and met the wife, who lived in the other half of his house with her grandmother, from whom he rented the house.

[10] In 2003, a large factory, run by the EF multi-national company, opened in the precincts of CD town. It was heralded as being the solution to the local economic problems and unemployment. The company marketed the factory as

utilising sustainable resources and environmentally friendly processes. However, upon commencement of operations, locals were concerned to note the amount of smoke that emitted from the factory and, shortly after its opening, local residents started noticing a variety of disturbing changes to the environment. In the mornings, the leaves of trees would be coated with a chemical-like substance, to the extent that people started putting plastic coverings on their plants overnight. Similarly, when it rained, puddles would have a greenish, purplish hue. Bronchial problems started manifesting among the local population, and those living close to the factory moved away in droves leaving the adjacent village nearly empty.

[11] In February 2004, the husband started working permanently for the newspaper and was appointed Deputy Editor. During his employment with the newspaper over the next two years, he wrote about 15 articles. However, the majority of his time was spent on non-journalistic duties such as laying out the paper for publication. In addition to the husband and the editor, two other journalists worked at the newspaper.

[12] The CD newspaper received about 200 letters to the editor about the EF factory monthly, but published only three or four of them.

[13] In September 2005, the husband decided that the environmental situation was such that a comprehensive journalistic inquiry into the factory was warranted. He approached the chief editor with his idea. She categorically opposed it, saying that the region was reliant on the plant for its economic survival. The husband felt that her attitude stemmed from links the newspaper had with the state. The founder of the newspaper was closely associated with the district mayor. The newspaper had a record of publishing articles upon the request of the mayor, including positive articles about the factory at the time it opened. Further, the office space in which the newspaper was located was in a state-owned building, which was rented to the newspaper at approximately 10 per cent of market rental.

[14] Convinced that the factory spelled environmental disaster for the CD town, the husband ignored the opposition of the editor and proceeded to embark on a comprehensive investigation of the factory. As a journalist, he had built up a range of contacts in the town. The wife, who had grown up in the town, also had a large number of useful associates.

[15] In the course of the investigation, the husband uncovered a raft of concerns relating to the factory. Through a friend who was the head of credits and loans in

the AB branch of a major bank, the husband learned that the mayor and a high-ranking regional politician both held personal bank accounts with the bank. The mayor and that politician had both been instrumental in the decision to locate the plant in AB. Irregularities in the account records indicated that bribes had been received by both parties in the period prior to the decision to locate the factory in AB. In particular, a large amount of money of unknown origin had been credited into the bank account of the mayor's wife. The husband's contact at the bank was happy to give him the information because she had a personal interest in exposing the factory; her husband had died of cancer at the end of 2004.

[16] In the course of the investigation, the husband struck up a friendship with the deputy head of the local administration, GH. GH had an interest in discrediting the current mayor, as he was himself seeking mayoral office. Through GH, the husband made contact with a woman who had managed the first stage of the EF plant's construction. Through her, he learned that the director of the factory had been prosecuted by the environmental prosecution office and fined 5,000 roubles for breaches of environmental laws, after an attempt at launching criminal proceedings against him had been blocked by the administration. This information, which had never been publicised, seriously undermined the favourable material published by the company regarding its environmental record.

[17] The husband also learned, through material from the hospital, that the incidence of cancer had increased by about 50% since the factory's opening, and the incidence of asthma by about 70%. Birth defects became rife and the orphanage became overloaded with abandoned children with fused or stunted fingers and toes.

[18] Through another contact, the husband learned that the factory had extremely high annual emissions of toxic chemicals, being 18 tonnes of ammonia, 12 tonnes of formaldehyde and 13 tonnes of anhydride.

[19] After gathering together the material from his investigation, the husband made an appointment to meet the mayor. He put together a draft of his article, minus the allegations of corruption on the part of the administration. The husband was hoping that the mayor would see reason and stop a planned expansion of the factory that had recently been authorised. The husband was aware that closure of the factory was not possible, so he aimed his communication at persuading the mayor to agree that the factory should not expand further. When the husband

showed the mayor his draft article, he became angry and refused to discuss the matter.

[20] The following day, the editor of the newspaper called the husband into a meeting with the founder of the newspaper and the newspaper's lawyer. The founder of the newspaper told the husband that the mayor had telephoned him about his meeting with the husband. The husband was then told that the newspaper depended on the district administration, and that he must not discredit the administration through the article. They threatened the husband with dismissal, but told him that he could avoid those consequences in the event that he wrote a favourable article about the EF factory to replace the negative one. The husband claimed that he would do so. However, he decided to secretly continue investigating the factory, with the intention of writing the exposé that he had originally planned.

[21] The day after the meeting, on 17 January, the wife received threatening calls on her home telephone. She was told that the husband should stay away from "this business", and warned that her husband's legs would be broken if he continued his investigation. The wife became very frightened, particularly when the calls continued nightly throughout that week, and asked the husband to stop his investigation. However after the husband reminded her that her mother had died of leukaemia the year after the factory had opened, she agreed to allow him to continue the investigation.

[22] In February the appellants were married.

[23] On 9 March, the husband met with the editor and showed her a copy of a favourable article on the EF factory that he had written. The following day, the editor handed back to the husband an edited draft of the article. After laying out the newspaper, including the favourable article, the husband handed it to the editor for final review before publication, in accordance with the usual procedure. The editor approved the publication and returned it to the husband. The husband then replaced the favourable article on the factory with his exposé. The husband took the newspaper to be printed on 15 March and it was printed with his exposé on the factory included at page 4.

[24] Although the publication was dated 16 March, it was delivered at the newspaper office on the evening of 15 March. Some delivery boys collected the newspaper the evening before it went into circulation.

[25] On 16 March, the editor looked through the newspaper after arriving at the office. After reading the husband's article, she became enraged and ordered the newspaper to be withdrawn from publication. However 1,000 or 2,000 issues had already been distributed out of a total of approximately 10,300. The remainder were withdrawn from publication.

[26] The husband arrived at work that morning with his wife. When he arrived at the newspaper offices, he was met by two policemen, who took him to the CD police station. There he was taken to the head of investigations, who admonished him and advised that he would be detained if he continued to be involved with matters that were not his business. In an attempt to justify his actions, the husband explained to him the corruption on the part of the mayor and high-ranking politician that his inquiries had uncovered. The head of investigations was clearly interested to learn about these matters and his attitude toward the husband softened. He then allowed the husband to leave, gave him his business card and asked him to keep in touch.

[27] The husband was good friends with two high-ranking police officers in the AB branch, which he felt gave him a level of protection in his discussions with the head of investigations.

[28] After the meeting, the husband returned to work. He was met by the chief editor who promptly dismissed him. Although under employment law he had a further month in which he could remain in the position, whilst seeking alternative work, the husband decided to leave forthwith.

[29] The following day, the husband left his apartment to meet with a friend to discuss what had happened. Upon returning to his apartment, he was stabbed in his left side by a stranger wielding a knife. Because he was wearing a leather jacket the blade was somewhat buffered. Consequently the wound he received, although reasonably serious, was not fatal. The husband now has a three inch scar on his left side. The wife learned of the attack through neighbours and came down to assist the husband. He was subsequently taken to hospital in an ambulance, where he received treatment for three days. The wife did not visit him, on the husband's advice, because of the poor standard of Russian hospitals, but they communicated by mobile phone.

[30] The day after the husband was admitted to hospital, a local policeman came to the ward. The husband understood that the medical staff had reported

the assault to the police. The husband told the police officer about the attack, and also gave him a brief outline of the circumstances behind the attack, including his article on the EF factory.

[31] The husband was discharged after three days in hospital. The day after his discharge, he went to the local police station to ascertain whether any progress had been made on the investigation into the attack. He discovered, however, that the police had not commenced a criminal investigation. The policeman to whom he spoke claimed that the police had tried to find the attacker. However it was apparent that they had, in fact, undertaken no enquiries. The husband lodged a further complaint with the police, seeking a criminal investigation into the attack. The police declined to undertake an investigation, saying it was not possible to locate the attacker, and that registering the complaint would impact adversely on their crime resolution statistics.

[32] After the husband returned home, he decided that he would endeavour to publish his article elsewhere. He was aware of a national newspaper in Moscow that encouraged investigative journalism and arranged a meeting with one of the department managers at the newspaper on 14 April. When leaving his apartment to attend that meeting, two men emerged from a car, and one of them put a gun to the husband's side. The men then forced the husband into their car, put a bag over his head, and drove him to a cottage.

[33] While in the car, the husband was pushed, shoved and sworn at by the men. He was taken to the basement of the cottage and the bag was removed from his head. Shortly after this, the head of the investigation department of the CD police and the head of the internal affairs for the CD area entered the room. They were clearly aware that the husband was on the way to a meeting with the newspaper. He was warned that he had one last chance to hand over the material on the EF factory within three days and was told that, after doing so, he must leave CD town. They warned him that if he did not do so, he could get arrested on any "suitable criminal charge". Towards the end of the meeting, the men started making threats towards the wife, saying that if and when the husband ended up in jail, they would "look after" her.

[34] After about half an hour, the husband was taken back to the car. He was driven again with a bag over his head to the outskirts of CD where he was deposited onto the roadside.

[35] After his abduction, the husband resolved to take his case to the President of the Russian Federation. He was confident that the President would assist him as he was determined to stamp out corruption and generally trying to uphold the "image of a decent and honest person". The husband was hoping that highlighting the issues of corruption would result in dismissal of the CD mayor.

[36] On 15 March, the day after the husband was abducted, he and his wife went to Moscow, in preparation for their visit to the President's office. They stayed with the husband's grandmother.

[37] On 17 March, the husband and his wife delivered a letter to the President's office, together with a description of events and some of the materials the appellants had gathered in the investigation.

[38] A week later, the husband received a call from an official from the Federal Security Service (FSB) who arranged for the husband to attend a meeting at the FSB office the following day. When the husband arrived at the FSB office, he was taken to meet a senior investigator. That man displayed an aggressive attitude toward the husband. He berated him for acting unlawfully, impeding the economic development of the country and undermining the structure of the state. He said that the EF company had a number of international agreements that had resulted in investments flowing into Russia, and referred to future plans to process other materials at the factory. He asked the husband to make all the remaining documents available to him and said his superior would be making a decision as to whether to start further proceedings against the husband. The husband tried unsuccessfully to persuade him as to the merits of the article, telling him about the dramatic environmental worsening in the CD area and the deterioration of the health of the local inhabitants. He also referred to the obvious signs of corruption in the area.

[39] At the end of the meeting, the husband was required to sign a document, promising that he would not leave the Moscow region. He was also told that he must surrender his passport, although he was not advised specifically how this was to be done.

[40] After the meeting, the husband felt that the situation was extremely serious. He and his wife therefore decided that it was not possible to return to CD. Accordingly, the husband contacted an old school friend who arranged an apartment for them in his own name in a different part of Moscow. The appellants

moved there on 26 April 2006. On the day they moved, in order to avoid being seen, they first went to the husband's father's house, waited until dark and then left the house by the back entrance.

[41] After the appellants had moved into the apartment, the wife's paternal aunt came to Moscow so that the wife could give her power-of-attorney over her apartment, to make sure the monthly rates were paid.

[42] The appellants remained in the apartment for approximately two months before departing Moscow. During this time, the husband made contact with a travel agency that he had been advised would be able to assist him in departing the country. He told the travel agency of his reasons for wishing to leave. The agency advised him that it would be easier to depart Russia by train than by air as trains receive less security checks. The travel agency organised false air tickets to be purchased for the appellants, which were submitted to INZ for the purposes of obtaining visas.

[43] The travel agency also booked train tickets to Finland for them. The husband understands no identification was required when the tickets were purchased. On 19 June 2006, the appellants travelled by train to Finland. When crossing the border the train did not stop. However border control officials came into the appellants' carriage and asked the appellants the purpose of their trip. The appellants advised that they were on their honeymoon. The officials checked their passports then left after making marks in the passport.

[44] The appellants stayed one night in Finland. On 20 June 2006 they flew to New Zealand, via Malaysia and Amsterdam.

[45] Since being in New Zealand the husband has communicated with his two sons, his father and a school friend in Russia. He uses an email address on a Russian website so his whereabouts cannot be established. His father and friend know that he is overseas, but do not know which country he is in.

[46] Since arriving in New Zealand the husband has learned from a friend who is in contact with his father that a summons had been issued against him. His friend has emailed him scanned copies of the summons from the FSB, his CD Newspaper Identity Card and his diploma in journalism. The husband has also heard that officials have been making inquiries for him at his grandmother's house.

[47] Two months prior to the hearing, the husband learned that his father had received a call two months earlier from local authorities seeking the husband. He had also received a call from the FSB.

The wife

[48] The wife has lived all her life in CD. She met the husband while he was renting half a house from her grandmother while she was still at school. She completed her schooling there in 2003. After completing her schooling she started a PC operating course at a school in CD, during which time she came to know the husband better and entered into a relationship with him.

[49] The wife's mother died of cancer in January 2004. The wife believes it was due to the pollution of the EF factory.

[50] In September 2005, while the wife was still undertaking her course, the husband organised for her to have a part time practical training course at the newspaper of which he was deputy editor. There, she worked as a type setter, for three days per week, initially independently. Later, she started helping her husband investigate the EF factory, helping him, for example, to type up interviews. She also acted "like a postman" for her husband on three occasions, collecting documents from people and bringing them to the husband. Because she had lived in CD all her life she was able to provide a number of useful contacts for the husband's investigation.

[51] The wife was dismissed from the practical training course on the day that the husband's article was published in the newspaper.

[52] The wife's college course was scheduled to end in June 2006, however she was allowed to take the exams earlier than the other students.

[53] While the appellants were in Moscow planning their departure, the appellant's aunt came to visit. The wife met with her and transferred her apartment through a notary public into her name. Her aunt gave her approximately a quarter of the amount that the property was worth. The wife sold the property on those terms because the apartment would have been seized if the wife had not paid for it for six months and the wife would have lost more money. The wife did not tell her aunt the problems she and her husband were facing and her aunt did not ask why she was selling the apartment quickly and at a low price, or anything about her future plans.

Documents

- [54] The documents submitted by the appellants included the following:
- (a) CD Newspaper identity card for husband.
 - (b) Scanned copy of summons requiring the husband to report the Moscow Office of the Public Prosecutor by 9am on 15 March 2006.
 - (c) Copy of husband's journalist identity card issued 3 February 2004.
 - (d) Copy of husband's diploma.
 - (e) Copy of wife's diploma issued 31 May 2006.
 - (f) Business card of Head of Investigations, CD Police.
 - (g) Email from friend dated 7 June 2006 saying that his father had called and told him that the FSB had called them seeking the appellant.
 - (h) Receipts for payment of air and train tickets Moscow-Helsinki dated 15 and 17 June 2006.
 - (i) Print outs from internet re EF factory.
 - (j) Medical certificate dated 29 June 2007.
 - (k) Article from internet dated 28 June 2007 referring to appellant.

THE ISSUES

[55] 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."

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

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

ASSESSMENT OF THE APPELLANTS' CASE

Credibility

[57] Prior to determining the framed issues it is necessary to make an assessment of the appellants' credibility. In spite of the consistent and highly detailed manner in which the husband's account was rendered, aspects of it were implausible. Moreover, the evidence of the wife differed in parts from her husband's evidence and her own previous evidence. These discrepancies and implausibilities, in combination with the lack of key corroborative evidence, and the results of an inquiry conducted by INZ in CD town, cause the Authority to reject the core account of the appellants. The following features of the claim were of particular concern to the Authority.

Newspaper article

[58] The appellants failed to produce to the Authority evidence central to their case, being the article on the AB factory, and were unable to provide satisfactory evidence as to why they had not produced it. The husband told the Authority that the article was on a disk which was at his grandmother's house. When the Authority asked whether he could obtain a copy of the disk, he provided a number of excuses as to why he could not. Initially, he said that his grandmother's sight was not great, that she would have difficulty in writing the address, and that he would have to reveal his whereabouts to her, the risk of doing which would be not "justified".

[59] When asked whether he could send his friend to get it from his grandmother's he said that his friend was "reluctant to help" (despite that friend having sent him other evidence) and reiterated that he would have to disclose his whereabouts. When the Authority then suggested that his friend send an electronic copy of the article, as the friend had done with respect to other evidence, he said "it's a lot for a computer to handle, seventy megabytes". He

later said that a copy could potentially be printed out from the disk at his grandmothers and sent over, but said that “its only a draft set up, it wouldn’t be a proof would it”. He then said that his intention was to send his father to CD town to obtain a copy of the article which his father would submit to the Authority after the hearing. The appellants subsequently submitted seven further documents on 5 July 2007, but the newspaper article was not included among them. The covering letter said, without explanation “unfortunately for now it will be impossible for us to provide any further evidence pertinent to the case”. No further correspondence has been received from the appellants.

[60] In addition to the appellants' failure to submit the copy of the article, evidence was obtained by the RSB which seriously undermined the appellants' claims regarding the claimed publication of the article. The husband told the RSB that that his article was included on page four of the 16 March 2006 edition of the CD newspaper and that the editor withdrew the paper from circulation after having seen his article. However, the RSB subsequently obtained, through the New Zealand embassy in Moscow, a copy of the 16 March 2006 edition of the CD Newspaper from the CD library, which had no article on the EF factory on page four, or indeed any other page. The copy obtained by the RSB was missing eight pages. The RSB office was advised by their contact at the embassy that these were the television pages.

[61] When the Authority questioned the husband about the existence of the copy of the 16 March newspaper and the absence of the article about EF factory at page 4, the husband initially responded by implying that the article was in the missing eight pages. When the Authority then pointed out that page four, being the page he claimed his article was printed on was present (and did not contain his article), he responded by saying that it is easy to change a newspaper. He then explained that he believed that when the newspaper was recalled by the editor it had to be replaced urgently with a new edition. He suggested that the missing eight pages were actually evidence that the newspaper had been changed quickly to remove his article, and at one point suggested that the missing pages evidenced that the newspaper had got under the control of the administration. The husband also took issue with the Authority's advice that the missing pages were television advertisements, saying “it wouldn’t take up eight pages” and that “the maximum it would take up is four pages”.

[62] The husband's explanation that his article was in the missing eight pages of

the newspaper is illogical given his evidence has always been that his article was printed on page four of the newspaper, which was present in the copy obtained by the RSB. It also runs counter to the advice received from the RSB by the embassy contact that the pages were the television pages, which the Authority has no reason to disbelieve.

[63] The explanation provided by the husband for the fact that the copy of the CD newspaper obtained by the RSB did not include his article on page four was that it was a replacement edition. However he was unaware that the edition had been published prior to it being provided to the RSB. We find his lack of knowledge of the existence of the second edition at the time he was in CD implausible given the major significance of the publication of the article to him. The husband attempted to explain this by saying that that he had to go to the police after the article was published, went to hospital the next day, lost touch with the newspaper and had to subsequently shuttle between CD and Moscow. We find these explanations unconvincing and do not accept that he would have been unaware that a replacement edition was published the same day his article was published.

Wife's role in article

[64] The wife said she was completely supportive of her husband deciding to continue to write the article after the editor vetoed it and that he did not need to persuade her to continue. However, this contrasted with her husband's evidence to the Authority and at his RSB interview, which was that his wife initially opposed him continuing with the article, but that he managed to persuade her after discussing her mother's death by cancer. When the Authority alerted the wife to this discrepancy, she responded "I did support him. I can not remember every minute detail".

[65] The wife said that her husband would not tell her much about the interviews that he conducted with respect to the factory and that she had no idea of their contents. The husband's evidence before the RSB was that the wife listened to tape recordings of the interviews and typed them up. When the discrepancy was pointed out to the wife, her response was that she did type up the tapes but that she was "not listening". That explanation is implausible. The wife professes to have been strongly supportive of her husband's plans to expose the factory which had likely killed her mother. Indeed, the wife was so supportive as to risk her own safety. That she would then "not listen" as she transcribed the material is simply

not credible.

Timing of wife's graduation

[66] The wife presented a certificate as evidence that she had graduated from her course in CD on 29 May 2006, in the month after the couple had supposedly fled to Moscow. When questioned as to when she completed the course, she said that she stopped attending the course in April 2006, and that the course was supposed to finish in June. Initially, she said that she took her exams at the end of May (the month after she had supposedly moved to Moscow). She then changed her evidence and said that she took her exams at the end of March. When asked by the Authority why she was able to graduate if she did not attend the last part of the course, her explanation was that she was allowed to take her examinations early because "I was considered an orphan". When asked what explanation she gave the school for needing to sit the exams earlier she said that she did not know. However, the following day when asked the same question she said "I told them I had to sit my exams earlier because I had some family problems". When asked to elaborate she said that she told the school "I didn't give any reasons or explanations for those family problems, I just wrote an application, they accepted it and never asked any questions". When the Authority asked why she had said that she did not know what explanation she had given the school for sitting the exams on the previous hearing day, and yet had known it a day later, her response was "yesterday I was tired and just couldn't come up with an explanation".

[67] The Authority disbelieves the wife's evidence on the timing of her completion of the course, and finds that she did not sit her exams early as claimed. It follows that she sat her exams in CD in May, as she first claimed to the Authority. This fact, together with the document certifying that she graduated from her course in CD on 29 May 2006, contradicts the appellants' claim to have fled CD for Moscow in April 2006.

Evidence of desire to live in CD

[68] The husband said that he and his wife were originally planning to remain living indefinitely in CD after the investigation. When the Authority queried why they would want to stay there, given the serious environmental problems, the husband said that this was because they had lived there for the last six years, his wife was from the area and has family there, and that CD "is actually quite a nice place", and that he did not like big cities. He also said that he "was hoping

construction would not continue and the environment in the city would restore - that's why I wrote that article."

[69] We find this evidence to be implausible. If the appellants' investigation had indeed revealed grave health problems besetting the population of CD as a result of the factory, and the wife's mother had died of cancer shortly after the factory had opened, it is most unlikely that the couple would wish to continue living in the area. It is also noted that the husband told the RSB that he felt nauseous every morning when he woke up, after the factory opened. His earlier evidence was that he had pursued the goal of stopping the factory's expansion rather than closing it down because closing it down was not possible, which renders illogical his evidence that he was hoping that "the environment of the city would restore" as a result of his article.

Departure to Finland without difficulties

[70] The husband gave evidence that, when crossing the border from Russia into Finland, the train did not stop and that border officials came into the train, checked their passports then left after making marks in the passport. He said that they did not take the passports away or check them against a computer. However, a report by the UNHCR (*UNHCR Basis of Claims and Background Information on Asylum-seekers and Refugees from the Russian Federation* (June 2004)) states that Russian border guards, operating under the auspices of the FSB (the agency who had issued a summons to the husband and banned him from leaving Moscow) verify the identity of passengers against a central database at international crossing points, and that a number of categories of persons such as persons who have been arrested or accused of crimes are barred from leaving the country. This report was discussed with the husband at the hearing.

[71] The husband's evidence as to the procedure at the border is inconsistent with the UNHCR report. We find it implausible that if the husband was banned by the FSB from leaving Moscow as he claimed, he faced no difficulties at the border from FSB officials given that they check passenger identities against a central database. The fact that he was able to leave without difficulty indicates that, contrary to his claims, he was of no interest to the FSB.

Contact

[72] The husband said that he was in contact with his children, his father and a

friend in Russia, through a mailbox on a Russian website, and that his father had told him several months prior to the hearing that he had been telephoned by the authorities who were trying to find out his whereabouts. The friend subsequently emailed him several documents including a summons from the FSB. In contrast, his wife said that to her knowledge neither of them had made contact with anyone in Russia, and was unaware that a summons had been issued against the husband. When the Authority expressed surprise that she did not know of her husband's contact with his family and friend in Russia and did not know about the summons, she responded by saying "perhaps he didn't want to worry me; there's nothing surprising". When the Authority questioned her further about her lack of knowledge that documents had been emailed to her husband from Russia she changed her evidence and said she was aware that documents had been sent but "I never asked who had sent it".

[73] We find it implausible that the wife would have no knowledge of her husband's contacts with Russia or that, in the face of a joint refugee hearing, the purpose of which is to seek protection against the Russian state, he would fail to let her know that a summons had issued against him – a circumstance which, if true, would affect her own safety as well. In any case, her evidence on this point was inconsistent.

Timing of internet article

[74] The appellants produced no objective evidence of the publication of the article at any stage prior to or during the Authority's hearing of their claim. It was made apparent to them in the course of the hearing that in light of the lack of corroborative material (and other flaws in the evidence) the Authority had doubts as to whether the article had been written as claimed.

[75] Following the hearing, the appellants submitted a translated article from a website entitled "New Focus", which referred to the fate of several Russian journalists, and stated:

"The fate of journalist [husband's name] is yet to be discovered. In March 2006 he published shocking materials about the environmental violations in the Moscow Region caused by the [EF] plant and on how this issue was ignored by the regional authorities. After the attempted murder followed by threats both he and his wife had to take cover."

[76] The "New Focus" website article was dated 28 June 2007, which was the last day of the appeal hearing.

[77] The article indicates the appellants' disappearance was a matter of national interest, and yet the appellants have not submitted any earlier publications referring to it. We find the sudden appearance of this article on the internet on the last day of the hearing to be highly suspicious. In the circumstances, and given the ease with which material can be published on websites, we find that the article was manufactured and placed on the internet to bolster the appellants' claim.

Conclusion on credibility

[78] In light of the many serious flaws in the appellants' evidence outlined above, the Authority finds that their core account is untrue. The summons against the husband is found to be fabricated. The email dated 7 June 2007 from the friend is found to be either manufactured by the appellants or written and sent under instructions from the appellants.

[79] The evidence before the Authority does not establish that either appellant has a well-founded fear of being persecuted in Russia. Accordingly, the first framed issue is answered in the negative and the second framed issue does not arise for consideration.

CONCLUSION

[80] For the reasons outlined above, the appellants are not refugees within Article 1(A)(2) of the Refugee Convention. Refugee status is declined. The appeals are dismissed.

"S Murphy"
S Murphy
Member