REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 732/92

AT AUCKLAND

Before:	R.P.G. Haines (Chairman) H.M. Domzalski (Member)
Counsel for the Appellant:	Ms J. Lamont
Appearing for the NZIS:	No appearance
Date of Hearing:	9 May 1994
Date of Decision:	5 August 1994

DECISION

This is an appeal against the decision of the Refugee Status Section of the New Zealand Immigration Service declining the grant of refugee status to the appellant, a citizen of the People's Republic of China.

INTRODUCTION

At the hearing of this appeal on 9 May 1994, the Authority provided counsel for the appellant with a number of magazine and newspaper articles relating to current conditions in China. While the gist of the information contained in this material was put to the appellant during the day-long hearing, counsel properly sought leave to file written submissions on the issues which had been raised. The Authority directed that the further submissions be filed by 23 May 1994. Those submissions were subsequently received in time and have been considered by the Authority.

In the course of preparing this decision, the Authority's researches uncovered (*inter alia*) two relevant decisions of the Immigration and Refugee Board of Canada (Convention Refugee Determination Division). Both decisions were provided to counsel for the appellant and an opportunity given to call evidence and make submissions in relation thereto. The text of the letter from the Secretariat

dated 19 July 1994 was in the following terms:

> "This appeal was heard by the Authority on 9 May 1994 and further written submissions on behalf of the appellant were filed under cover of your letter dated 24 May 1994.
>
> Since that time the Authority has come into possession of the following:
>
> CRDD V91-01030 (August 27, 1991) (Immigration and Refugee Board of Canada, Convention Refugee Determination Division)
>
> CRDD M-90-03886 (December 18, 1990) 9
>
> Asia Watch, Continuing Religious Repression in China (June 1993).
>
> In relation to Part II of your written submissions and in particular paragraphs 5 and 6, you will find enclosed a copy of Refugee Appeal No. 691/92 Re LJX (17 May 1994) 19-21 in which the various articles from the South China Morning Post cited by you are considered by the Authority.
>
> A copy of each of these four items is enclosed.
>
> The Authority believes that you may, in the light of this further information and material wish to present further evidence and submission.
>
> Notice is given that any further evidence or submission intended to be presented by the appellant is to be filed within 21 days of the date of this letter.
>
> The New Zealand Immigration Service has the same opportunity to present evidence and submissions if it so wishes."

As can be seen, a response was requested within twenty-one days of 19 July 1994. In the event, no further evidence or submissions were received.

THE APPELLANT'S CASE

The appellant is a twenty-three year old single woman who has lived all her life in Guangzhou city in the southern province of Guangdong. Her father is an inspector in a lightbulb factory. Her mother is a chemist and her sister a garment designer.

The appellant arrived in New Zealand on 24 April 1992 on a flight from Singapore direct to Christchurch and then to Auckland. While in transit at Christchurch International Airport she destroyed her PRC passport and upon arrival at Auckland International Airport applied for refugee status. Interviewed at the airport, she said she had been expelled from secondary school for taking part in pro-democracy demonstrations in Guangzhou in May-June 1989 and as a result had been unable to find employment. It is not intended to refer to the airport interview in any detail as the appellant subsequently admitted that the account given at that time was in respects incomplete and misleading. This is a common phenomenon and for that reason it is not often that statements made by an asylum seeker upon arrival at an airport are relevant to the issue of credibility. In this case we, unlike the Refugee Status Section, attach little significance to the airport interview in making an assessment of the appellant's credibility.

A formal application for refugee status was received by the New Zealand

Immigration Service on 21 May 1992. It was accompanied by an eight-page typewritten statement by the appellant, which statement was maintained as the basis of her claim at the hearing of this appeal. We do not intend to repeat at length this statement or the appellant's evidence at the hearing of this appeal. Her principal claims are as follows:

1. From 1979 to 1984, she attended primary school in Guangzhou city. From 1985 to 1987, she attended junior high school. She completed her studies there at the end of the academic year in June/July 1988. In September 1988, she enroled in a senior high school. Ordinarily her studies at that level would take three years after which she could progress to tertiary education. It was her ambition to become a doctor, though at that time she had not turned her mind to the question whether she would study traditional Chinese medicine or conventional "Western" medicine.

   After the appellant's first half year in senior high school, her academic achievements were recognized as "outstanding" and she was permitted to study, conjointly, the second year course. In the second quarter exams held in January 1991, she passed both the first and second year courses. In the third quarter exams held in April/May 1991, she again obtained "reasonably good" results and was allowed to continue her conjoint studies. Had she sat and passed the last quarter exams she would have moved into her final (and notionally third) year of study at senior high school.

2. However, during May and early June 1989, the appellant participated in five pro-democracy demonstrations held in Guangzhou city. She played no part in the organization of these marches. She was no more than one of many thousands of participants. She did, along with the other protestors, hand out leaflets and shout slogans. A large number of her classmates also took part in these protest activities.

3. After the Tiananmen Square massacre on 4 June 1989, the appellant was questioned by the security officer in her school concerning her activities. She was asked to write a report on her activities detailing who else from the school had been involved and the contact she had had with the organizers of the demonstrations. The appellant, after initial resistance, wrote a report which did not implicate anyone. She admitted that she had joined in the crowd activity but claimed that it was simply a "fun thing" to do.

   She was then required to write a report of self-criticism acknowledging that she had been wrong to participate in the marches and promising not to become involved again. She was required to read out her self-criticism at school assembly.

   Approximately six other students at the school were required to compile similar reports and to write a self-criticism.

4. Because the appellant came from a "landlord" class, she was told that she could not continue her studies at that particular school. She was asked to resign or face expulsion. It was suggested that it was preferable for her to

resign. The appellant accordingly left the school at the end of June 1989 and did not sit the end of year examinations. She was then eighteen years and four months of age.

5. Approximately one week after her expulsion, the appellant was required to attend a Public Security Bureau office where she was questioned for a day. The officers wanted to know the contacts she had had with student organization and who, in turn, had been in contact with her. The appellant was able to truthfully reply that she had had no such contacts. She was released.

   The appellant was never again questioned by the Public Security Bureau.

6. Approximately a fortnight later, the local neighbourhood committee called at the family home. The appellant was out at the time. They enquired of the appellant's family as to where she had been and the names of the people who had had contact with her.

   The neighbourhood committee never returned to the family home.

7. The appellant made no attempt to enrol at another high school, believing that her personal file now contained prejudicial information which would discourage any other school from accepting her as a student.
   Nor, for the same reason, did she make any attempt to enrol at a vocational school. She assumed that there was no point.

8. The appellant did, however, continue "studies" at home in the fields of acupuncture, massage, typewriting and English. She studied from books and was assisted by her mother.

9. The appellant decided to look for employment in order to become financially independent. In the first few months after leaving school she applied for ten positions which had been advertised in newspapers. She was invited for one or perhaps two interviews but was unsuccessful on each occasion. She believes that the explanation lies in the fact that the prospective employers would have learnt from her personal file of her pro-democracy activities and her expulsion from school, making her an undesirable employee.

   After these first few attempts to obtain employment, the appellant became discouraged and made no further attempt to find a job over the next two and a half years from July 1989 to January 1992.

10. In December 1991, the appellant met with friends at a restaurant. They discussed the downfall of Communism in the former USSR and the implications this had for Communism in China. In the course of these discussions the appellant expressed the view that the Chinese Communist Party was as corrupt as the Communist Party of the USSR and believed that the Chinese regime would collapse.

One of the appellant's group had a brother who worked in the Public Security Bureau. He (the brother) subsequently reported that each of the group were to be investigated as it had been reported that they had expressed anti-government opinions during the meeting at the restaurant. Each of the group were frightened at this news and separately went into hiding.

11. The appellant went into hiding in January 1992 by staying at a friend's house in Guangzhou. It was situated some twenty kilometres from the family home. She did not thereafter return home.

The appellant does not know if during this time the Public Security Bureau visited the family home in search of her. She believes that had there been such an event, her parents would most certainly have told her about it. However, her parents have never mentioned visits by the Public Security Bureau. Nor since her arrival in New Zealand have such visits been mentioned even though the appellant receives a letter from her family each month.

Nor does the appellant know whether any of her colleagues who were at the restaurant meeting have been spoken to by the Public Security Bureau or arrested. She has made no enquiry in this regard, nor has she requested her family or friends in China to make such enquiry even though the parents of the friends who went into hiding live in the same housing complex as the appellant's family. The appellant explained her omission on the basis that she did not want her parents to become involved. Asked whether she could arrange for another friend or colleague to carry out such enquiries, the appellant claimed that all her best friends had run away and she could not remember the addresses of any others. Pressed on the point, the appellant replied that she did not understand why she should find out what had happened to her friends.

12. While the appellant was in hiding, friends (other than those involved in the restaurant meeting) collected money among themselves to finance the appellant's escape from China. They arranged not only the purchase of the airline ticket, but also the obtaining of a passport which was secured on payment of a small bribe. It was a genuine passport, issued in the appellant's name and bearing her photograph.

Passports are issued by the Public Security Bureau. When the appellant was asked how she was able to obtain a passport at a time when the Public Security Bureau was allegedly looking for her, the appellant stated that she believed that the bribe had been paid for this purpose.

13. On 23 April 1992, the appellant flew from Guangzhou to Hong Kong and then to Singapore. She arrived in New Zealand on the following day, 24 April 1992 and as mentioned, destroyed her passport at Christchurch International Airport.

14. In a letter dated 7 May 1992, the appellant's mother reported that on 3 May 1992, police officers had called at the family home enquiring as to the

appellant's whereabouts. The English translation of the relevant passage reads:

> "Their attitude were very poor. They warned us to tell them your whereabout once we were told, or else we will be persecuted. Its lucky that we can finally drove them away. If you can remember to be careful in your future correspondence, you will not cause trouble to the family."

15. In an undated letter received by the appellant from her father "in 1993" he reports that although fifty-eight years of age, he had been prevented by his work unit from retiring. The relevant extract from the English translation reads:

> "My work unit tells me that you have done something against the government. They say that I cannot retire."

In this regard, the appellant was asked to comment on the newspaper report "China Admits to Huge Problem with Jobless", *NZ Herald*, Thursday, April 7, 1994. It mentions that Chinese officials have admitted to "an extremely serious unemployment problem". It reads in part:

> "Economists say China's unemployment statistics are misleadingly low because they do not include the large mass of rural unemployed and under-employed, and mask much of urban joblessness behind euphemisms like "youths waiting for work".
> The *People's Daily* said the huge army of roaming labourers, who criss-cross the country looking for work, now topped 20 million. Most of them come from the huge pool of 130 million surplus rural labourers.
>
> The problem of unemployment strikes at the heart of Communist Party leaders who worry that social unrest could shake their hold on power.
>
> One top economist, who is also a parliamentary deputy, warned last month that rising unemployment could be a bigger danger than rising inflation, which is also causing widespread anger as it tops 25 per cent in major cities ...."

It was put to the appellant that given this information it was difficult to accept as true the assertion that a fifty-eight year old man approaching retirement age would be refused early retirement. The appellant claimed that while there was a lot of unskilled labour in China, there was a shortage of skilled labour. Most importantly, she believes that her father was refused retirement as he is the son of a landlord and also because of the appellant's connection with him.

The appellant was then asked to comment on the article "Why China's People are Getting Out of Control", *The Economist*, June 12, 1993, 27, and in particular the following quotation:

> "In Beijing and in Guangzhou, in the south of the country, almost a third of state workers have second jobs. In Chongqing that figure is 40%. In Shanghai, out of a population of 12m, an estimated 5m state workers are moonlighting as anything from street peddlars to financial consultants.
>
> Often, moonlighters do not bother to turn up to work at their overstaffed state

> units, except to pick up their pay packet once a month. They make far more money elsewhere ..."

The appellant disagreed with this assessment claiming that if her father left his position he would lose his retirement benefit.

16. On 1 November 1993, the appellant joined the Chinese Students (NZ) Association Inc and in January 1994, became a member of the Executive Committee. In her evidence she explained that there are twelve members on the Executive Committee and that they are divided into two groups. The first group attends to internal matters while the second group attends to relations with the outside world, including publicity and dealing with government departments. She is a member of the first group and has not been involved in public relations.

17. Finally, the appellant claims that in June 1989, she became a practising Christian. She experienced no difficulties because of her religious beliefs. She appears to have learnt her religion from her grandfather as she did not attend church in China. She claims to be a Baptist and to have attended church here in New Zealand subsequent to her arrival.

THE REFUGEE STATUS SECTION DECISION

The appellant was interviewed by the Refugee Status Section on 26 August 1992. By letter dated 29 October 1992, she was advised that her refugee application had been declined on the principal ground that her fear of persecution was not well-founded. The Refugee Status Section also stated that they had "difficulty accepting the credibility" of the appellant's claim.

THE ISSUES

The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:

> "... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable or, owing to such fear, is unwilling to return to it."

In the context of this case the four principal issues are:

1. Is the appellant genuinely in fear?

2. If so, is it a fear of persecution?

3. If so, is that fear well-founded?

4. If so, is the persecution he fears persecution for a Convention reason?

In this regard we refer to our decision in Refugee Appeal No. 1/91 Re TLY and Refugee Appeal No. 2/91 Re LAB (11 July 1991).

In the same decision this Authority held that in relation to issue (3) the proper test is whether there is a real chance of persecution.

ASSESSMENT OF THE APPELLANT'S CASE

Addressing first the issue of credibility, the appellant's case contains a number of contradictions. On the one hand she claims high ambitions (to be a doctor) and a degree of sophistication (membership of the Executive Committee of the Chinese Students Association). On the other hand, she appears remarkably naive and lacking in initiative. Notwithstanding that she comes from the principal city of a province widely acknowledged to be both economically and politically more liberal than others in China, she made no attempt to enrol in other schools or educational institutions following her expulsion and her attempts to find employment appear, at best, to be entirely lacking in conviction. Furthermore, she claims that although she was handed the airline ticket in Guangzhou, she never read it and was not aware of her destination (Tonga via Auckland). She further claims that her friend who made the travel arrangements did not mention this information to her. She first learnt that she was travelling to New Zealand when she arrived in Singapore and saw the name "New Zealand" on an illuminated sign. Nor did she know that she was ticketed to Tonga until officials at Auckland Airport pointed this out to her. All this notwithstanding the fact that the appellant claims an ability to read some English. Furthermore, as will be seen, she is astonishingly ignorant as to the restrictions in China on the practice of Protestant religions. At times her "ignorance" appears to be both methodical and deliberate, as in her excuse as to why she did not know the fate of her school friends and colleagues who, like her, had allegedly gone into hiding in January 1992.

Overall, the Authority has concluded that a carefully edited set of facts has been presented by the appellant in support of her application for refugee status and that a full account has yet to be given. We believe that the edited version presented at the appeal hearing has been designed to exaggerate those points which assist the appellant and to gloss over or minimize anything which is unfavourable. Nevertheless, we cannot say that we are sure that her account is untrue and, applying the benefit of the doubt, will accept her general claims. That having been said, however, the weight to be given to her evidence is an entirely separate issue given the reservation we have expressed, namely that the appellant has exaggerated her positive points but minimized the negative.

ISSUES 1 AND 4 - WHETHER APPELLANT GENUINELY IN FEAR AND WHETHER CONVENTION REASON PRESENT

Applying the benefit of the doubt the Authority is prepared to accept that the appellant is in fear of returning to China and also that the difficulties she anticipates are on account of a Convention reason, namely her actual or imputed political opinion.

It does not follow, however, that the difficulties she anticipates amount to persecution or that her fears are well-founded. We will address the persecution issue first.

ISSUE 2 - IS IT A FEAR OF PERSECUTION?

EDUCATION

The appellant submits that her expulsion from senior high school has denied her both the opportunity to obtain her chosen qualification (a doctor) and the employment opportunities which that qualification would have opened up. Thus, it is claimed, she has been persecuted in the past and will continue to be so persecuted in the future or at the very least, the ongoing effects of the denial of education amount to persecution.

While the right to education is proclaimed in the Universal Declaration of Human Rights, 1948, Article 26, and the International Covenant on Economic, Social and Cultural Rights, 1966, Article 13, that right is not incorporated in the International Covenant on Civil and Political Rights, 1966. The "right" is therefore a "social" or second generation right and is placed third in the four-tier hierarchy of rights discussed by Professor Hathaway in The Law of Refugee Status (1991) 108-111.

The nature of the "right" to education as proclaimed in Article 26 of the Universal Declaration of Human Rights (Brownlie, Basic Documents on Human Rights (3rd ed 1992) 21, 26) is as follows:

> "1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
>
> 2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
>
> 3. Parents have a prior right to choose the kind of education that shall be given to their children."

Secondly, Article 13 of the International Covenant on Economic, Social and Cultural Rights (Brownlie, *op cit* 114, 118) provides:

> "1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
>
> 2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
>
> (a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular, by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, and adequate fellowship systems shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this Article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this Article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the state."

Article 14 provides:

"14. Each State Party to the present Covenant which, at the time of becoming a Party has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all."

These provisions are generally interpreted as imposing a duty to provide compulsory primary education available for free to all: Pentti Arajärvi, "Article 26" in Eide et al (eds), The Universal Declaration of Human Rights: A Commentary (1992) 405.

The appellant is unable to point to an unqualified right to secondary education. The obligations imposed by the Covenant are not absolute and immediately binding, but rather "programmatic". That is, Article 2(1) provides:

"Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

The appellant has received the benefit of free and compulsory primary education and, indeed, secondary education to junior high school level. The *gravamen* of her complaint is that she has been denied secondary education contrary to the obligation of non-discrimination contained in Article 2(2) of the Covenant and, in

turn, denied also tertiary education. Article 2(2) provides:

> "2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

In assessing this complaint the Authority certainly agrees that the appellant was denied further secondary education at the particular school from which she was expelled. However, the Authority does not accept that there has been a **blanket** denial of secondary and higher education. To make such a finding would, in our view, be to speculate for the appellant made no attempt to enter any other school or technical institute. Our conclusion may well have been different had the appellant made a concerted attempt to enrol at other schools and been denied entry on the basis of her political opinion or family history. We accordingly find that while her expulsion from the particular school she attended in 1989 was a breach of her human rights:

(a) The right involved is low in the hierarchy of rights.

(b) The breach was not accompanied by aggravating features, such as her blanket exclusion from all educational institutions.

(c) The appellant herself made no effort whatever to enrol elsewhere.

(d) Such breach of her human rights as did occur falls far short of the sustained or systemic violation of basic human rights which is the widely accepted yardstick of persecution: Hathaway, The Law of Refugee Status 101 *et seq.*

(e) It follows that the appellant's claimed lifelong disadvantage at being excluded from employment opportunities is not an exclusion which has a sufficient nexus to the relatively minor breach of her human rights caused by her expulsion from school.

In conclusion, the Authority finds that the appellant's expulsion from school and the continuing consequences in the employment sphere do not, on these facts, constitute persecution.

EMPLOYMENT

The right to work is also an "economic and social" right contained in the International Covenant on Economic, Social and Cultural Rights. Article 6 (Brownlie *op cit* 116) provides:

> "1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
> 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under

> conditions safeguarding fundamental political and economic freedoms to the individual."

The right to work, as with the right to education, is a second generation right and appears third in the hierarchy of rights referred to previously. However, as recognized by Professor Hathaway, The Law of Refugee Status 111:

> "... the deprivation of certain of the socio-economic rights, such as the ability to earn a living, or the entitlement to food, shelter, or health care will at an extreme level be tantamount to the deprivation of life or cruel, inhuman or degrading treatment, and hence unquestionably constitute persecution."

To this might be added the observation that at a less extreme level, substantial impairment of ability to earn a living coupled with other discriminatory factors could, depending on the circumstances, constitute persecution.

The difficulty faced by the appellant, however, is that there is no significant evidence that she has been excluded from employment. This is because her attempts to obtain employment have, at best, been desultory and of a half-hearted nature. It is to be recalled that after making approximately ten attempts in the first few months following her expulsion from school to answer newspaper advertisements she took no further steps to find employment in the following two and a half years. The Authority recognizes that China's serious unemployment problem would have presented the appellant with difficulties. On the other hand, it is quite clear that the phenomenal economic growth in Guangdong province has opened up many employment opportunities in the private sphere, as evidenced by the fact that almost a third of state workers have second jobs. See "Why China's People are Getting Out of Control", *The Economist*, June 12, 1993, 27 and also Karl Goldstein, "Two Faces of Reform: Guangdong's Economy Booms, But the Crime Rate Soars", *Far Eastern Economic Review*, 8 April 1993, 15 where reference is made to "new employment opportunities springing up all over the province" and to the province's "critical need for labour".

The appellant's passivity with regard to finding employment over a remarkably extended period of time precludes a finding that she has been persecuted in the past by the denial of employment opportunities. We accept, however, that the Refugee Convention does not require an applicant to establish past persecution, though persecution in the past is an excellent indicator as to what the future might hold in store.

Addressing now the situation that the appellant would face were she to return to China, the Authority is of the view that as she would be returning to a province sometimes described as the cradle of China's open door policy, and in the light of the enormous economic growth occurring in that province, she would have many opportunities to secure employment. It may not be employment to her liking or remunerative to the level she might desire. However, on the facts, these economic considerations fall outside the parameters of the Refugee Convention. Even if we are wrong in this regard, these factors would amount to no more than a low level infringement of her human rights and are more properly described as discriminatory rather than persecutory.

FURTHER OBSERVATIONS ON EDUCATION AND EMPLOYMENT

The Authority's conclusions in relation to the education and employment aspects of this case are in accord with Canadian jurisprudence. In CRDD V91-01030 (August 27, 1991) (Immigration and Refugee Board of Canada, Convention Refugee Determination Division) the claimant, a resident of Guangzhou was expelled from secondary school as a result of her participation in pro-democracy protests in May/June 1989. She applied unsuccessfully for entry to three other schools. Two job applications also failed. At the suggestion of her parents she went to Canada. The Board held:

> "In my opinion the treatment that the claimant received from the education authorities and her two unsuccessful attempts at securing employment do not amount to persecution, nor does the evidence of this treatment show a reasonable possibility of persecution in the future. Expulsion from college because of a perceived political opinion falls within the realm of discrimination, as does the refusal of two work units to hire the claimant. When cumulative acts of discrimination reach a pressing and pervasive level in an individual's life and the person is prevented from any meaningful employment or education as a result, those cumulative acts can be characterized as persecution. There is insufficient evidence to conclude that the claimant would be completely prevented from working because of her perceived political opinion. The claimant acknowledged that she had not applied to many prospective employers. It would be speculation to conclude that the claimant would be unsuccessful at finding work simply because she was refused employment on two occasions.
> ...
> ... I find the claimant is not a Convention refugee."

To similar effect, see CRDD M-90-03886 (December 18, 1990) 9, a case which involved a claimant from Bulgaria who had been denied entrance to university.

RELIGION

That part of the appellant's case based on religion was not advanced with any conviction. Be that as it may, it is necessary to deal with the appellant's claim. By way of background, China's Central Government policy on religion has been described in the following terms by the Asia Watch publication, Continuing Religious Repression in China (June 1993) 2:

> "Despite the guarantee of religious freedom in Article 36 of the Chinese constitution, each of the five officially recognized religions - Buddhism, Daoism, Islam, Catholicism and Christianity, (Protestantism) - is controlled and monitored through a "patriotic association" accountable to the government through the Religious Affairs Bureau (RAB). The congregations meeting under the aegis of the relevant association, such as the Catholic Patriotic Association (CPA) or the Protestant Three-Self Patriotic Movement (TSPM), are known as "open" or "official" or "affiliated" churches. The CPA does not recognize the authority of the Vatican; Catholic priests or congregations which look to Rome operate illegally. The TSPM supervises a "post-denominational Protestantism", reflecting the government move to consolidate all protestant denominations in to one, ignoring differences in doctrine and liturgy. Underground protestant groups are often known as "house churches" since they meet in private homes. Aware of the role of the church in the demise of long-entrenched communist governments in eastern Europe, the stirrings of Islam in Central Asia and the linkage of religion and nationalism in Tibet, the Chinese government appears more determined than ever to ensure that so-called counter-revolutionaries do not operate in China under the guise of religion."

The position in Guangdong is, however, unique. In this province a relatively liberal

attitude towards religion has been adopted by the local authorities: Karl Goldstein, "Free to Keep the Faith", *Far Eastern Economic Review*, 8 April 1993, 16:

> "Despite periodical national campaigns against what the communist party calls "superstitions", the Guangdong authorities maintain a relatively liberal - if wary - attitude towards religion and its adherents. As a result, the provinces Christian churches enjoy a level of freedom unmatched in the rest of China.
>
> And the faithful respond. By the time the weekday morning Protestant church service in Canton is over, more than 200 people will have taken part in the active worship. Most are packed into wooden pews on the top two floors of an old house just off bustling Sun Yatsen Road.
>
> The gathering is led by Lin Xiangao, 68, better known abroad as Pastor Samuel Lamb. Generally recognized as the leader of China's protestant "house" - as distinct from the state-sanctioned "patriotic" church movement - Lamb's flock has grown so large that latecomers must now watch him on a closed-circuit television on the second floor and hear his voice related through loud speakers in a mix of Cantonese and Mandarin.
>
> For Lamb, whose refusal to adhere to the patriotic church led to 22 years in prison, the opportunity to deliver the sermon is a reminder that he enjoys greater freedom than many of his religious brethren in other provinces. Lamb's overseas connections no doubt help, but the rather tolerant local officials probably count for more.
>
> And the same holds true for Catholics. Among those provinces with sizable Catholic populations, Guangdong is the only province with no underground church. Catholic activists say the reason is that local religious affairs authorities, who operate under the close supervision of security agencies and the communist party, allow the officially sanctioned church enough leeway so that believers do not feel the need for one ...."

When at the hearing the Authority questioned the appellant about the practice of her religion in Guangdong, she was asked whether, upon her return, she would attend a house church in preference to a "patriotic" church. The appellant stated that she had never heard of a house church, nor had she heard of the Protestant Three-self Patriotic Movement. She stated that there was no unofficial church movement in Guangzhou.

The appellant's response very much confirms Karl Goldstein's article "Free to Keep the Faith" quoted above.

The Authority is of the view that there is no substance whatever to the religious persecution limb of the appellant's case. There is nothing to suggest that upon her return to China that she faces punishment for practising her religion, let alone persecution.

APPELLANT'S ILLEGAL DEPARTURE FROM CHINA

The facts of the appellant's case are very similar to those in Refugee Appeal No. 691/92 Re LJX (17 May 1994) 19-21 in that the appellant in that case, a citizen of the People's Republic of China, upon arrival at Auckland International Airport destroyed his passport and that of his wife and child in order to prevent their summary removal to China. Application was made for refugee status. Addressing that aspect of the appellant's case, the Authority said:

> "We accept that were the appellant to return to China there is a real chance of him being prosecuted for breaking the law against leaving the country illegally. We do not, however, accept that such punishment as may be visited upon him would constitute

persecution. As mentioned, there is not a shred of evidence that the appellant faces a ten year period of imprisonment (as claimed by the appellant) or a two to eight year term of imprisonment (as claimed by counsel).

At the appeal hearing the appellant's attention was drawn to the following articles:

"Returnees Face Fines and Lectures", *South China Morning Post*, 17 July 1993

"Last of Boat People Flown Home", *South China Morning Post*, 21 July 1993

"Fujian Defends Treatment of Ils", *South China Morning Post*, 22 July 1993

These press clippings report the fate of Chinese illegal immigrants returned to China, particularly from Australia and the United States.

In "Returnees Face Fines and Lectures", a Beijing official is reported as saying that Chinese illegal immigrants who are sent home face fines and lectures, but not harsh punishment. The article reports that although no foreign government or organization has tracked returnees, the sketchy information available indicates the claim by the official is largely true. Foreign diplomats in Beijing are reported as saying that previously repatriated immigrants are generally held a few days for questioning about the smuggling rings who organize their passage. An Australian immigration officer in Beijing, John Moorehouse, is quoted as saying:

> "We haven't heard of anyone being sentenced to long terms in detention."

Australia has apparently returned more than 120 boat people in the two years to July 1993. The Vice-Director of the Public Security Ministry's Department of Frontier Defence is reported as saying that immigrants were lectured on the law, fined up to 5,000 yuan (about HK$6,700) per person and released. The money is described as several years' income for most rural residents. In fairness it must be mentioned that the article also reports that the official *China Daily* reported in December 1992 that thirty-two Chinese who tried to leave illegally on boats were sent to labour camps for up to eighteen months.

The remaining two articles report the fate of the 650 illegal Chinese immigrants who attempted to enter the United States on various vessels and who were repatriated by the Mexican and United States governments. Upon return they were detained for a short period for questioning and required to pay a cash penalty of 15,000 yuan (about HK$20,235). About half the amount served as the penalty, while the remainder was used to pay for the returnees' accommodation, food and transportation. The fine was imposed to make illegal immigration unattractive. Repeat offenders were held for re-education through labour while the ringleaders of the exercise, sometimes known as "snakeheads", were dealt with severely.

We do not accept that the Chinese authorities could treat the appellant in the same way as the persons repatriated from the United States and Mexico. First, such persons originated mainly from the province of Fujian and it is clear that illegal immigration is a major problem in that province. Second, the interception of vessels loaded with illegal Chinese migrants off the western coast of the United States and the grounding of one vessel in New York harbour have been accompanied by intense publicity and embarrassment on the part of the Chinese government. The appellant's circumstances are very different. In our view, on the evidence at the hearing, the appellant will face no more than a brief period of detention for questioning followed by a substantial fine. As an urban worker he will not find the imposition of the fine an intolerable burden, unlike those from rural areas. The penalties cannot be said to be of such severity as to amount to persecution. States must be permitted to impose penalties on their own nationals travelling on false or forged passports, as in the case of the appellant. Furthermore, there is no evidence that such punishment as may be visited on the appellant will be imposed on account of his actual or imputed political opinion. For these reasons the consequences of his illegal departure from China fall outside of the Refugee Convention."

In the present case, precisely the same press clippings from the *South China Morning Post* are before the Authority and on this information it is submitted for the appellant that the evidence suggests that upon her return to China she could face punishment for being an illegal immigrant. It is submitted that the various punishments referred to in the press clippings, namely imprisonment for one year, fines and detention in a labour camp for eighteen months are all punishments which are severely disproportionate in relation to the appellant's "comparatively minor offence".

As the Authority emphasized in Refugee Appeal No. 691/92 Re LJX, the press clippings, while generally informative, do not provide a basis for finding that all repatriated PRC nationals will be harshly dealt with. The cases documented in the various articles relate to the rather extreme situation of boat loads of PRC nationals (principally from the province of Fujian) being repatriated from the United States amid intense publicity and embarrassment on the part of the Chinese government. The authorities are clearly concerned at the scale of illegal immigration from that province and are concerned to make an example of some of the individuals, particularly those involved in the smuggling operation.

In our view, on the evidence at the hearing, this appellant faces on return to China a real chance of no more than a brief period of detention for questioning followed by a substantial fine. These penalties cannot be said to be of such severity as to amount to persecution. It should also be emphasized that there is no evidence that such punishment as may be visited on the appellant will be imposed on account of her actual or imputed political opinion. For these reasons the consequences of her illegal departure from China fall outside of the Refugee Convention. Our conclusions are entirely in accord with the principles established in Refugee Appeal No. 3/91 Re ZWD (20 October 1992) 85-87.

By way of summary, the Authority's conclusion is that such fear as the appellant may possess is not a fear of persecution.

ISSUE 3 - WHETHER THE APPELLANT'S FEAR IS WELL-FOUNDED

As to the appellant's fear of persecution at the hands of the Public Security Bureau, the following facts must be recalled:

1. After her expulsion from school the appellant was questioned by the Public Security Bureau for one day in July 1991. Thereafter she had no further contact with them.

2. Similarly, the neighbourhood committee visited the family home at about this time but did not speak to the appellant and never returned.

3. The appellant went into hiding in January 1992 after learning that the political discussion with her friends at the restaurant had led to Public Security Bureau interest. Between January 1992 and her departure for New Zealand on 23 April 1992, there were no visits to the family home by the Public Security Bureau. The appellant is sure that her parents would

have advised her had such visits occurred. In her letter dated 7 May 1992, the appellant's mother advises that on 3 May 1992, officers from the Public Security Bureau called enquiring as to the appellant's whereabouts. If the mother's account is true, a delay of four months by the Public Security Bureau in making enquiries as to the appellant's whereabouts hardly demonstrates an intense interest.

4. Even though the appellant receives letters from her family on a monthly basis, there have been no further reports of Public Security Bureau interest.

5. There is no evidence to suggest that any of the appellant's friends who were involved in the discussion at the restaurant have even so much as been visited or questioned by the Public Security Bureau. The appellant's studied attempts to avoid obtaining information about her colleagues is, in this context, significant. As is her protestation at the hearing that she could not understand the relevance of finding out the fate of her friends.

Given these circumstances, the Authority finds that the Public Security Bureau has no continuing interest in the appellant and even if wrong in this respect, is of the view, in the alternative, that their interest is of a minimal nature. The appellant can expect to be questioned, but that is all. The Authority has no hesitation in concluding that there is no real chance of persecution if the appellant returns to China.

The undated letter from the appellant's father again does not suggest Public Security Bureau interest. The Authority reads the letter as saying that the father's work unit has declined an application for early retirement and that one of the factors in their decision is the appellant's (unspecified) activities. The essential point being that since May 1992, the appellant's parents have made no mention of interest by the Public Security Bureau.

We turn now to the appellant's membership of the Chinese Students (NZ) Association Inc and her membership of the Executive Committee. At the hearing no evidence whatever was led to suggest that the appellant's activities in this association could place her at risk were she to return to China. Furthermore, it is to be remembered that her role on the Executive Committee is in relation to internal matters and that public relations are the responsibility of other members of the Executive Committee. There is not a shred of evidence that while in New Zealand the appellant has been engaged in activity which could be viewed unfavourably by the government of the People's Republic of China.

Our conclusion in relation to issue 3 is that such fear as the appellant may possess is not well-founded.

CONCLUSION

In summary our conclusions are:

1. Applying the benefit of the doubt the appellant holds a *bona fide* subjective fear of returning to China.

2. The harm feared by the appellant is not of sufficient gravity to constitute persecution.

3. The fear held by the appellant is not well-founded.

4. Applying the benefit of the doubt, the harm feared by the appellant is related to a Convention reason, namely her actual or imputed political opinion.

For these reasons we find that the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

.....
(Chairman)