

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 73924**

**AT AUCKLAND**

<b><u>Before:</u></b>	Bruce Burson (Member)
<b><u>Counsel for the Appellant:</u></b>	Self represented
<b><u>Appearing for the NZIS:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	18 October , 15 November & 13 December 2004
<b><u>Date of Decision:</u></b>	14 January 2005

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**DECISION**

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[1] This is an appeal against a decision 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 national of the People's Republic of China.

**INTRODUCTION**

[2] The appellant is a married man born in the mid-1950s. He has one child. He arrived in New Zealand in August 1996. In September 1996, he made an application for refugee status. He was interviewed by the RSB on 10 March 2000 and 6 September 2001. By decision dated 30 May 2002, the RSB declined his application. The appellant appealed to this Authority from that decision.

## **THE APPELLANT'S CASE**

[3] The following is a summary of the appellant's evidence which is assessed thereafter.

[4] The appellant's life, at least until his last 12 months in China was unremarkable for present purposes. He did not, until then, experience any problems. He worked as a taxi-driver in 1980 in X city, Y province, where he had lived all his life. This was his only employment.

[5] The appellant first became interested in politics following the well known student demonstrations in 1989. There were student protests in X city. He was impressed by the student's demands for greater freedoms and, in particular, the need for a multi-party political system in China. Despite the suppression of the student protest in X city by the Chinese authorities, the appellant was transformed by this event. Selecting young or middle-aged passengers who he believed would have a similar political views, he began having political discussions in the privacy of his own taxi.

[6] Over the years of such discourse, the appellant's belief in the need for genuine political reform hardened, creating in him a desire to become politically active. He spoke about this desire to a neighbour, AA, who introduced the appellant to BB. It was now the end of 1995.

[7] BB informed him that a branch of a new political party (PPP) was being formed in X city, the principal aim of which was to seek to change the political structure of China by advocating a multi-party democratic system. At a local level the PPP party would highlight the need for reform by exposing and dealing with the corruption of and extortion by, local government officials and other persons in positions of power. BB informed him that all across China, many people with pro-democracy sentiments were forming similar grassroots parties and that the PPP party, although small, was part of this wider political process. Galvanised by what he heard, the appellant enthusiastically agreed to become involved.

[8] Some two days after meeting BB the appellant attended the inaugural meeting of that branch of the PPP. Of the 16 people there he knew only BB. The branch was formally opened and they swore an oath of loyalty to the PPP Party.

The aims and policies of the party were discussed and the regulations by which it was to be run were outlined.

[9] The branch was organised along hierarchical lines: at the top was the branch secretary, BB, who was the local leader. Underneath him were two “propaganda members”. The remainder were ordinary members. As branch secretary, BB liaised with and received instructions from the party headquarters in Y city. The propaganda members were responsible for ensuring the successful promotion of PPP party policies to the people in X city and surrounding area. The propaganda members also deputised in the absence of the branch secretary. The ordinary members were divided into two groups, each of which reported to one of the two propaganda members.

[10] The appellant was appointed one of the founding propaganda members along with a person called WW. As propaganda member, the appellant met with BB twice to discuss and plan activity. He met the ordinary members under his control every week; three such meetings were held at his house which lasted up to an hour at a time. The branch would meet as a whole every second week.

[11] The appellant undertook a number of political activities for the PPP Party. He and his group went into markets and began talking about the problems within China and the need for reform. As he began to speak, gradually people would gather around him to listen. The appellant did this on four occasions. The size of the group listening varied between 40 or 50 to up to 200 people. Throughout this time the appellant continued to also have political discussions with selected passengers in his taxi.

[12] The appellant also went to rural areas surrounding X city and wrote messages about Chinese Communist Party (CCP) corruption on blackboards that served the local community. The slogans were always identified with the name of the PPP party. There was no set pattern to this. Sometimes the appellant and his group would do this every couple of days and then there would be no further writing on blackboards for a period of two weeks.

[13] Finally, the appellant wrote notes about political issues which would be secretly dropped in the streets and markets at night.

[14] The appellant carried out these activities in the weeks immediately after the party was formed. His activities came to an abrupt halt when in early 1996, when he was arrested from his house and taken to the local police station. He was held for a period of five days, during the first three days of which he was not given any food to eat or water to drink. The cell was very small. He was repeatedly interrogated about his involvement in the PPP Party. They told him that the party was illegal and that he had committed anti-communist activities which tried to influence the people against the Chinese Constitution. The appellant denied any involvement.

[15] He was interrogated on each of the first four days he was in detention. During his detention he was kicked and punched. During his second period of interrogation he was also beaten with a baton. He was eventually released only because the authorities had no firm evidence against him. As a result of this mistreatment the appellant suffered an injury on his right arm. He had to go to hospital when he was released in order to have his arm stitched.

[16] The appellant did not go home. Instead he went to an old friend's house some 200km away from his home. The appellant telephoned his wife. She told him that soon after he had been arrested the Public Security Bureau (PSB) had searched the house. Nothing was found at this time. She was questioned as to her contact with him and whether any meetings had been held at the house.

[17] The appellant went to Z city far from his home. He enlisted a friend to make a visa application for him to leave China and in mid-1996 he left China. Shortly before he left he telephoned his wife again. She told him that the PSB had come to the family home again. They had also searched both his parents' house and his parents in law's house. During these searches the PSB found documentation relating to the PPP Party at both his own house and his parents' house. The documents at his house were administrative in nature. The documents which were found at his parents' house were pamphlets that were highly critical of the CCP. He had secretly deposited the latter at his parents' house because he thought they were unlikely to be searched and would be safe there.

[18] His wife told him that during the search of his parents' house when they found the documents his father was attacked by the PSB. He needed bed rest for a week. The wife's brother-in-law who was an epileptic was also badly affected by

the search of the parents-in-laws' house. When the PSB came into the house the brother-in-law was terrified and scared. He had a fit and died a few days later. He was only 25.

[19] Since his arrival in New Zealand the appellant has had some contact with his wife on the telephone. He spoke to his wife one month after his arrival and then two weeks after. Since that time he has corresponded with his wife by letter. His wife has told him that in 1998 WW, the other propaganda member in his branch and another ordinary member of the PPP Party, had both been arrested. As far as the appellant is aware WW remains in detention until this day.

[20] His wife has also told him that she had lost her job as a result of his political activity. In addition his son has been bullied at school. The appellant's involvement in the PPP is common knowledge in the area and their son is considered the son of a counter-revolutionary. She said that the PSB had been many times to the house to look for him. The last news he had of any such visit by the PSB was in mid-2002. Since that time the appellant does not like to speak about his situation with his wife. He feels great sadness when he thinks about the problems that have been visited on his wife and his family because of him.

[21] When the appellant arrived in New Zealand he became aware of the activities of the China Democratic Party in New Zealand from the Chinese community press. He went to some four or five meetings during his first two years here. He found that it was not however sufficiently active and in general, the Chinese community in New Zealand was not that interested in political matters. He ceased attending.

[22] He has however been introduced to a Chinese Christian church and has been going since 1996. Through this church he helps other Chinese people deal with problems they have such as hospital visits and housing. He expressly indicated to the Authority that he was not claiming refugee status on the basis of his conversion; this was he said, something very private for him. Therefore, if in China, he would not have any difficulty in attending one of the official Christian churches registered with the Government; indeed he was suspicious of underground churches some of whom he had heard have nothing to do with Christian belief.

[23] He fears he will be arrested in China and given a lengthy period of imprisonment like WW. Although not in a senior leadership role, he was an important local member of the PPP Party because of his role as a propaganda member. They now have solid evidence as to his involvement in the PPP party. If not arrested on arrival, it is he says only a matter of time before his presence in China becomes known and he will be arrested.

### **The Evidence of CC**

[24] The Authority heard from CC. She is a New Zealand citizen and author. She is originally from the same part of X city as the appellant. She was employed as a university lecturer in X city and often took the appellant's taxi to the campus. She confirmed to the Authority that when in his taxi, she and the appellant would have political discussions openly critical of the CCP. Although she can not now recall the date, she can recall a particular conversation with the appellant where he spoke of the plight of the rural population in Y province.

[25] CC left China in early 1995 to take up residence in New Zealand. She knew nothing of the appellant's political activities in China until she returned to X city in 1998. The situation of the appellant and his family was a matter of discussion amongst the population in their area. She was told on a number of occasions by various people that the appellant has done something "stupid" and tried to set up a new political party "against the Government". People told her the appellant had been arrested and then had just disappeared. People also told her that the appellant's wife had been given a hard time and that his son was bullied. She was made aware of the death of his brother-in-law. She saw the appellant's wife briefly on this occasion. His wife was very distressed and anxious at her continuing separation from the appellant.

[26] CC has returned to X city in 2000, 2002 and 2004. During the last visit she did not see the appellant's wife. CC was told that she had lost her job and moved elsewhere. The situation of the appellant and his family was no longer such a central piece of news. CC did however see one of the appellant's relatives who told CC that it was better if the appellant did not return because he might be in trouble again and because the relative thought this could cause trouble for the family as well.

## **The Evidence of SS**

[27] The appellant filed a witness statement from SS, who was also from X city. SS confirmed that she was from the same area as the appellant. She confirmed that the appellant had been involved in a democratic movement in their area. SS said the appellant “made big news for his political stand before he disappeared in early 1996 from our area”

[28] SS was to appear as a witness on 13 December 2004. Unfortunately, her father died shortly prior to the hearing and she had to return to China to attend the funeral. She was not able to be called.

## **Other Documents**

[29] The appellant has filed a number of letters from his wife dated between 1998 and 2001. He also produced damaged copies of his warrants of arrest and release. They confirm his arrest in February 1996 for “counter –revolutionary activities”.

## **THE ISSUES**

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

“...owing to a 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.”

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

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

## **ASSESSMENT OF THE APPELLANT'S CASE**

### **Credibility**

[32] The Authority examined the appellant closely over a period of three days. The appellant's evidence was clear and consistent. The Authority notes the evidence of his witness CC was demonstrably credible and to the extent that the Authority can place weight on it, notes the unsworn evidence of SS. There is documentary corroboration of his arrest. The Authority, having regard to the above, accepts the appellant as a credible witness. His account is accepted in its entirety.

### **A Well Founded Fear of Being Persecuted**

[33] After evaluating all the material before it, the Authority is satisfied that there is a real chance of this appellant being persecuted if returned to China. In reaching this finding, the Authority does not overlook the fact that this appellant has been absent from China for some time. However, the cumulative weight of the following matters is such that it finds there is a real chance of the appellant suffering serious harm.

#### **His past activities**

[34] The appellant has a history of very public political activity critical of the CCP which is known to the Chinese authorities. Some idea of the attitude of officials in Y province to anti government political activists at the time can be gained from the report "China increases security measures, muzzles dissidents" *United Press International* (25 March 1994). It notes that leading communist party official in Y province called for preventative measures against "mass disturbances" in the run up to the anniversary of the June 4 crackdown. The official is quoted in terms of saying the central authorities should "strengthen the discovery, control and power to hit the enemy".

[35] While not referring specifically to the appellant or the PPP party, the use of the term "the enemy" is instructive in its latent belligerence. Having been linked to

the PPP, it suggests a strongly negative view of him is likely to have been held by local security officials.

#### The Continuing Interest for the Appellant

[36] The appellant has learnt from his wife that there have been a number of searches of the family home by the Chinese authorities looking for him. The last of these visits as far as he is aware was in mid 2002. The fact the authorities were continuing to search intermittently for the appellant some seven years after his arrest is powerful evidence of the degree of interest they have in him.

[37] This chimes with the evidence of both CC and SS to the effect that the appellant's identity in X is one of being widely known as the person who has in the past tried to set up a new party against the Government and who has disappeared. This identity will be with him if he returns and is likely to excite a degree of official interest in him.

#### The continuing Imprisonment of WW

[38] According to the appellant, the other person who was also a founding propaganda member in X city for the party remains in prison since 1998 – some seven years for peacefully advocating his political opinion. This is a potent indicator of the fate that may well await the appellant if returned. According to the United States Department of State *Country Report for Human Rights Practises for 2003;China* (25 February 2004) s.1(d), (the DOS report) China's Supreme Court Procuratorate has reported that from 1998 to 2002 (a period covered by WW's detention), over 300,000 persons were detained for periods longer than permitted by law. Unlawful extended detention is stated to remain a serious problem for political dissidents.

#### The Arrest and Imprisonment People Campaigning for Human Rights or Political Change at a Local level

[39] There are continuing reports of the Chinese authorities cracking down on persons who do agitate successfully at a local level. For example the Amnesty International report *Peoples Republic of China: Human Rights Defenders at Risk*

(2004) at p 7, records a sentence of three years imprisonment given to a factory worker who was convicted of “disturbing social order” for merely organising a worker protest against unfair redundancy terms. Indictments have been brought against a number of people in January 2003 for their involvement in labour unrest during March 2002 in north eastern China.

[40] In Human Rights Watch *Indictment Text Shows China’s Political Use of Subversion* (14 April 2003) <http://.hrw.org/press/2003/02/china021403.htm>, the director of the Asia Division of Human Rights Watch comments:

“China seems determined to make an example of people who attain even local prominence on some such matters such as labour”

[41] Human Rights Watch *China Human Rights Update* (February 2002) at page 3 - 4 notes that political dissidents continue to be imprisoned – one has been imprisoned for three years for writing an article advocating reform of the political system; two others have been given two and three year sentences respectively, for simply attempting to bring local corruption associated with rural resettlement in the wake of the Three Gorges dam project, to the attention of central authorities.

[42] Thus it cannot be said that the mere fact the appellant has achieved only a local prominence is symptomatic of an absence of risk at a real chance level. Country information shows that it is not only those who are prominent nationally who are at risk of receiving lengthy prison sentences for peacefully articulating pro democracy political opinions or engaging in civil society activities such as assisting persons to fight corrupt local officials.

#### Continuing Social Unrest and Restrictions on Civil and Political Rights

[43] Such arrests and detentions must be seen within the wider context of continuing restrictions on civil and political rights in China despite a large measure of economic liberalisation. It is not necessary for present purposes to document this in any great detail; suffice to say that country information clearly posits the continuing restrictions on civil and political rights within wider tensions arising between twin goals of reform and stability – see generally Kent *Between Freedom and Subsistence, China and Human Rights* (OUP 1993) Chapter 8; Human Rights Watch Report *China: Nipped in the bud: suppression of the China Democracy Party* (September 2000) <http://www.hrw.org/reports/2000/china>;

Watch *China: Human Rights Update* (February 2002). See also “Shanghai struggles to cope as millions join China’s urbanization charge” *Guardian Weekly* (11 December 2003); Rich Man Poor Man *The Economist* ( 27 September 2003); “Rural unrest alarms China’s communist leadership” *The Guardian Weekly* (12 November 2004) where it is reported that up to three million people have taken to the streets in rural China recently. For a recent reference to the manifestation of this tension in the periodic clampdown on intellectuals see “Writer Held as China Turns on Intellectuals” *The Guardian* ( 22 December 2004). It is clear that tensions are emerging as the large social forces unleashed by a programme of economic liberalization collide with a political system still wedded to the principle of one party rule.

[44] The Authority acknowledges that there has been a growth in civil society in China. Amnesty International *Peoples Republic of China: Human Rights Defenders at Risk* (2004) notes that many civil society organisations have sprung up, dealing with the broad range of human rights issues that have emerged in the course of economic modernisation including environmental issues, housing, health, education and the rights of migrant workers. Some have been established by the Government, others have grown at a grassroots level arising out of concerns at a local level. Yet, Amnesty international notes that while China has recently introduced some legal reforms with the stated aim of improving protection for human rights (including amending the Constitution in March 2004), laws continue to exist which facilitate the detention and imprisonment of persons who engage in such civil society issues.

[45] Moreover there appears to be no change in the attitude of the Chinese Government to political dissidents who, like the appellant, advocate fundamental change in the political structure. In this regard the DOS report (February 2004) (*ibid* at s.1(e)) notes:

“Government officials denied holding any political prisoners, asserting that authorities detained persons not for their political or religious views, but because they violated the law; however, the authorities continued to confine citizens for reasons related to politics or religion. Thousands of political prisoners remained incarcerated, some in prisons and others in [labour] camps. According to human rights organisations, more citizens were in prison for political crimes during the year [2003] than at any time since 1992. The Government did not grant international humanitarian organisations access to political prisoners.

“Although the crime of “counterrevolution” was removed from the criminal code in 1997, western NGOs estimated that approximately 500 – 600 persons remained in prison for the crime. Hundreds of others were serving sentences under the State Security Law, which covers similar crimes as the repealed crime of counterrevolution.”

[46] In light of this evidence of continued suppression of dissident political activity against a background of simmering social unrest, the attitude of the Chinese authorities to the appellant, given his past history of active and public challenge to the Government, is unlikely to have softened with the passing of time.

### Summary

[47] The appellant is a man who has achieved local notoriety because of his brief but significant involvement with the PPP party as a propaganda member. He was arrested on suspicion of counter revolutionary activities and was mistreated during his detention. Since this detention, the Chinese authorities have found PPP propaganda incriminating him in its activities. His colleague of similar rank has been imprisoned for a lengthy period for the same activities. Searches for the appellant have continued until mid 2002 and the appellant's wife has lost her job following discovery of the incriminating material. Country information shows that political campaigners and civil society activists are routinely subjected to terms of lengthy imprisonment.

[48] Given the above, there is a real chance that the appellant will suffer a lengthy term of imprisonment for his past activities for the party of a duration meted out to WW. This amounts to an interference with the appellant's right under Art 19 of the International Covenant on Civil and Political Rights to hold opinions and impart information and ideas that cannot be justified within the terms of Art 19(3). The real chance of his imprisonment for peacefully advocating a change to the political system in China is therefore appropriately categorised as a real chance of his being persecuted.

### **Internal Protection Alternative**

[49] The appellant's local prominence raises the issue of whether the appellant has a viable internal protection alternative available to him. The Authority finds this must be answered in the negative.

[50] The *sine qua non* in terms of this issue is the elimination of the accepted well founded fear of being persecuted. Absent this there is no need to embark on any further analysis of the type set out in *Refugee Appeal No 71684* [2000] INLR 165.

[51] In this case the obvious point to note is that the agent of persecution is the state itself which, while not determinative of the issue, strongly suggests caution is warranted in finding that a viable internal protection exists – see generally Hathaway and Foster “Internal protection/relocation/ flight alternative as an aspect for refugee determination” in Feller, Turk and Nicholson (eds) *Refugee Protection in International law UNHCR’s Global Consultations on International Protection* (UNHCR, 2003) at pp394 - 400.

[52] A second point to note is that China possesses a highly evolved security apparatus. Its territorial reach is total. In such circumstances the ability of the Chinese state to act against the appellant is absolute, conditioned only by the ability of the appellant to remain effectively in hiding.

[53] It is true, as Zia Liang and ZhongDang Ma, Zai Liang and Zhongdong Ma “China’ Floating Population: new evidence from the 2000 census” *Population and Development Review* (Vol 30 Issue 3, September 2004) at p 467 observe, economic reforms in China have created a large “floating” population of migrants living outside their place of household registration which has in turn undermined the ability of the Chinese state to enforce the “Hukou” or household registration system. Yet the system still exists. It continues to provide a formal mechanism by which the relevant government agencies in any part of China could gain information about the appellant from their counterparts in X city.

[54] This fact, coupled with the total territorial reach of the state security apparatus, means the Authority cannot be satisfied to the requisite degree, that the risk to the appellant will be reduced to below the real chance threshold by his residing elsewhere in China. He has no viable internal protection alternative available to him.

## **CONCLUSION**

[55] For these reasons, the Authority answers the first principal question in the positive. Plainly, the appellant’s predicament is contributed to by his political opinions. The second principal question is also answered in the positive.

[56] The Authority finds that the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. The appeal is allowed. Refugee Status is granted.

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B Burson  
Member