

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 2612/96

W Y S

AT AUCKLAND

<u>Before:</u>	E M Aitken (Chairperson) S Joe (Member)
<u>Representative for Appellant:</u>	P Lang
<u>Representative for NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	29 July 1996 and 15 October 1996
<u>Date of Decision:</u>	13 February 1997

DECISION DELIVERED BY S JOE

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

INTRODUCTION

Prior to the date of hearing, and by letter dated 25 July 1996, Ms Lamont sought leave to withdraw as the appellant's counsel, given the advice by her client that he would subsequently be assisted in his appeal by a Mr Waters of the United Maori Mission. Ms Lamont further informed the Authority that a copy of the appellant's immigration file had been returned to the appellant personally, and the appeal procedure explained to him.

On the first day of the hearing, Mr Waters sought leave to withdraw as the appellant's representative, preferring that Ms Lang act on the appellant's behalf

instead. The Authority accordingly accepted Mr Water's withdrawal and the appellant's consent for Ms Lang to act on his behalf.

The Authority was informed by Ms Lang that she had only recently come to know of the appellant's case after he sought help from the New Hope Chinese Church, of which both she and the appellant are members. The appellant could not afford to obtain legal counsel in support of this appeal, and therefore asked Ms Lang to act as his representative. Ms Lang further stated that she had not had an opportunity to read a copy of the appellant's immigration file until the morning of the hearing. In such circumstances, and in the interests of fairness to the appellant, the Authority granted Ms Lang leave of a further 14 days, within which she could read the file and lodge any written submissions in respect of matters arising from her perusal of it. The Authority also provided Ms Lang with a copy of the 1995 *US Department of State Country Report on China* ("US DOS report") published in February 1996 and invited her to make any submissions on the material contained within that report relating to the state of religion in China.

Under cover of her letter dated 3 August 1996, Ms Lang made further written submissions about the appellant's case highlighting pertinent extracts from the US DOS report, and submitting two original photos depicting the appellant's baptism which took place on 16 December 1995 in Auckland. Also enclosed were five references as to the appellant's good character and another document, which was written in Chinese.

By letter dated 3 September 1996, the Secretariat on behalf of the Authority informed Ms Lang that the document written in Chinese could not be considered unless submitted with an English translation. The Authority also requested that further questions be put to the appellant regarding the New Hope Chinese Church to which he belonged in Auckland, and his ability to practise his newly found religion in China. The appellant was granted a further 14 days leave within which he could reply to these outstanding matters.

Under cover of her further letter dated 18 September 1996, Ms Lang enclosed further information about the New Hope Chinese Church. This included song-sheets and schedules used by the church written in Chinese script. Also submitted was a copy of an undated letter written in Chinese by a New Hope church member to two of that church's founding members, on the state of religion in China.

Given that the information submitted raised further issues that the Authority wished to put to the appellant, the hearing was re-convened for a second day at 10am on 15 October 1996. The letter sent under cover of Ms Lang's letter of 18 September was therefore translated by the attending interpreter in the course of this second day of hearing. The contents of that letter will be the subject of further discussion below.

The Authority has considered all of the above information in determining this appeal.

Finally, it is also appropriate to record that while the appellant's representative expressed initial concern about the accuracy of the interpreter's translation of the appellant's evidence (she being fluent in both English and Cantonese), she confirmed at the conclusion of the second day of hearing that she was satisfied that the Authority had always clarified with the appellant evidence which they did not understand, and that for this reason it had a clear understanding of his case.

COUNTRY INFORMATION

It is appropriate to record that the Authority, in the course of its own enquiries, was able to obtain other country information on the state of religion in China that was consistent with and supported the findings in the US DOS Report disclosed to the appellant and his representative. However, the Authority considered the country information contained in the US DOS report a helpful and succinct summary of the state of religion in China.

Of particular significance to the appellant's case was the material contained on pages 583 to 585 of this report relating to the Freedom of Religion, in which it was stated (inter alia):

"The Government subjects religious freedom to restrictions of varying severity; nonetheless, the number of religious adherents continues to grow. While the Constitution affirms toleration of religious beliefs, government regulations restrict religious practice to government-controlled religious organizations and registered places of worship. The Government supervised the publication of about 1 million Bibles for distribution in 1994, but complaints that the amount of Christian religious materials fell far short of demand increased pressure on the Government to raise the number to 1.5 million in 1995.

...The Government's treatment of religious believers and organizations often varies widely depending on the locality. Unregistered or "house" church leaders

and members are harassed in some regions but tolerated in others. Nonmainstream sects are often singled out.

...The number of Christians continues to grow rapidly. However, only those Christian churches affiliated with either the Catholic Patriotic Association or the (Protestant) Three Self Patriotic Movement may operate openly. The Government established both organizations in the 1950's to eliminate perceived foreign domination of local Christian groups.

Active unofficial religious movements pose an alternative to the state-regulated churches, although in some areas there is tacit cooperation between official and unofficial churches. The unofficial, Vatican-affiliated, Catholic Church claims a membership far larger than the 4 million registered with the official Catholic Church, although actual figures are unknown. Reliable estimates indicate that there are about 10 million people who belong to the official Protestant church, while perhaps twice that many worship privately in house churches that are independent of government control.

There continued to be credible reports in 1995 of efforts by authorities in some areas to rein in activities of the unapproved Catholic and Protestant movements, including raiding and closing a number of unregistered churches. In January 1994, new regulations tightening an existing requirement that all church groups register with the state-controlled Religious Affairs Bureau went into effect. These regulations have presented religious believers with the choice of registering and bringing their congregations under official control or continuing to operate underground and risking fines, arrests, and prison sentences. It was reported in 1995 that Vincent Qin Guoliang and Li Zhixin, two priests affiliated with the unofficial Catholic Church in Qinghai Province, were sentenced to 2 years in a labor camp in November 1994. In February police reportedly detained nine church workers after raiding one unofficial church in Huai'an, Jiangsu Province. According to press reports, a Jiangsu official warned in a church publication that Christian meeting places deemed controlled by hostile forces would be banned. Guangzhou preacher Li Dexian was detained four separate times and allegedly beaten by police after attempts to give his monthly sermons at a house church outside of Guangzhou. According to press reports in December, Beijing authorities sentenced underground Christian activists Xu Yonghai, Cao Feng, and Liu Fenggang to up to 2 ½ years reeducation through labor. Elsewhere, authorities tolerate the existence of unofficial Catholic and Protestant churches as long as they remain small and discreet."

THE APPELLANT'S CASE

The appellant is a 22 year old, single male born in C village in Linhai City, China. To his knowledge, his parents, one brother and two married sisters remain living there. All of his family farm for a living, although some family members supplement their income in the "low season" by doing casual work. Despite the appellant's designated "capitalist" family background from the days of the Cultural Revolution, the appellant claims not to have been affected by it.

Until he was 18 years old, the appellant also earned his living by farming. Thereafter he moved to live in the city areas of Hangzhou and Ning Bo, where he worked as a tradesman. The appellant had no fixed abode, and would usually live

“on site” at his work-place. Due to the distance, he would only occasionally visit home.

While in his home village in 1992, the appellant, together with other friends with whom he was playing poker, were arrested by the police and fined 300 yuan for their alleged gambling practices. This was the equivalent of approximately one month of the appellant’s pay. The appellant ceased his social card-playing as a result.

The appellant fled China principally due to an event which occurred in May 1994. His brother-in-law lived in a neighbouring village some three kilometres away from where the appellant lived. It was well known that since 1992 or 1993, this brother-in-law had been engaged in a dispute with another man, named C, about the irrigation rights of their respective farmland. In May 1994, the appellant, learning that the two were engaged in a fight in his brother-in-law’s courtyard, went over to investigate. When he arrived, he found the two fighting one another, using farming tools. Both his brother-in-law’s brother and father, together with some of his neighbours, had also become involved in the fight. Some 30 to 40 bystanders stood by and watched.

When the appellant arrived on the scene, the fight had already been going on for some ten minutes. After a short time it ended. C’s brother, having suffered a head injury, had started bleeding and had fallen unconscious. The crowd that had gathered subsequently dispersed, believing he was dead. The brother-in-law was admitted to hospital the same afternoon as a result of injuries he sustained. Both the appellant’s brother-in-law’s father and brother had also become injured, the latter suffering a broken hand.

The following day, the appellant learned that C’s brother had died as a result of his injuries on the evening of the fight and that his brother-in-law, as well as the latter’s parents, had subsequently been questioned about the incident by the Linhai City police. The brother-in-law was subsequently detained, and as far as the appellant is aware, has yet to be released by them. No other persons, to his knowledge, were detained by the police.

The appellant, fearing that he may also be called by the police, fled his village for Linhai City. In his absence, police visited his family home and questioned his father. He does not know whether his father encountered any further problems

afterwards. On the second day after the fight, the appellant learned from relatives that the police issued his family with a summons notice which required the appellant to present himself for questioning. He was not told whether the police were seeking to question anyone else who had witnessed the incident.

The appellant did not wish to speak to the police even though he had not been directly involved in the fight. He believed that any dealings with the police caused difficulties, and he feared he would get into trouble with the police just by talking to them. In this regard, the appellant referred to his brother-in-law being detained by the police for questioning without being released, and his previous experiences in being penalised for gambling even though he was engaged in a social game of cards. He therefore considered that it would be better for him not to present himself to the police at all.

A few days after the fight, the appellant left Linhai City by bus, bound for Shanghai. The appellant intended to stay in Shanghai for a short while before deciding his next move. Although he had a distant relative that lived in Shanghai, the appellant made no attempt to contact him. Instead, he obtained casual work on a building site, where he stayed also overnight.

The appellant remained in Shanghai for some five months working at the same building site. Despite his lack of ho khau in Shanghai, the appellant did not encounter any problems with the authorities during this time. As his immediate family had no telephone, and the appellant had no wish to jeopardise his situation by writing to his family's home address, the appellant maintained telephone contact with his relatives, who lived elsewhere in Linhai City. The appellant was told that this matter had still to be resolved by the police, and advised not to return home.

By the end of 1994, the appellant decided that he did not wish to remain in China. He believed there was no justice under China's legal system and that he would not be treated fairly by the authorities if apprehended. He attempted to stow-a-way on a cargo vessel bound for Japan, but was discovered on-board by the police before the vessel had even left the port.

The appellant was sent to the headquarters of the armed police centre, where he was detained a few days before being transferred to the Public Security Bureau (PSB) in Shanghai. While in police custody at both places, the appellant was

beaten by the PSB using wooden sticks and asked why he wanted to leave the country. The appellant claimed that he would be beaten a few times each day and whenever meals were provided to him. The appellant had no papers to verify his identity and therefore gave the police a false name and address, telling them that he had wanted to go to Japan for work.

While in detention the appellant was able to contact a relative who paid a bond to secure his release. The appellant was subsequently released on bail, and told to appear before the court on a designated day when the court would deliver its sentence against him. At the time of his release, although he was still able to walk, the appellant claimed that, physically, he still felt very uncomfortable as a result of the police maltreatment.

Approximately two days after his release the appellant, fearing not only the consequences of a conviction in court, but also the possibility that he could be in more trouble should his true identity be discovered, decided to run away.

Despite the attendant risks, the appellant chose to return to his home village in order to get money for his intended departure. He travelled again by bus, undetected.

The appellant had no opportunity to see his immediate family. The only news he gained about his brother-in-law was that he remained in prison, and still had yet to be released. Despite his enquiries, the appellant could not find out whether the police were still asking about his whereabouts from his family, although his relatives told him they were unsure how the police proposed to resolve his particular problem.

After a short stay overnight at his relative's home, during which time his family, friends and relatives all gathered money, the appellant left for Shenzhen once again, by bus.

The appellant was able to make his way safely to Shenzhen without problem, as he had been able to buy a border certificate on the black-market. This certificate was under an assumed name, but bore a photograph of the appellant. Once in Shenzhen, the appellant obtained some medical treatment from a doctor who attended to the injuries sustained during the police beatings.

Later, through the assistance of a travel agent and upon payment of RMB 5000, the appellant obtained a tourist passport to travel to Hong Kong. The appellant understood this passport to be a genuine one. Although it bore a false address (Yunnan province), the passport was issued in the appellant's own name. Using this passport the appellant entered Hong Kong by train.

The appellant had decided that he would try to find a way to get to the United States from Hong Kong. In February 1995 he boarded a shipping vessel in Hong Kong as a stow-away, under the mistaken belief that it was bound for the United States. The appellant was subsequently discovered as a stow-a-way on the vessel, but believes that the only reason nothing happened to him was because he was "at sea".

The ship stopped several times on its journey. After more than 20 days at sea, the ship docked in New Zealand. The appellant again mistakenly believed that he had arrived in the United States, and therefore left to go on shore. The appellant remained in New Zealand and was subsequently provided food and shelter by a family who belonged to the United Maori Mission church group in Auckland.

Apart from the problems the appellant encountered while living in China, the appellant also expressed a fear that if he returned he would be persecuted by reason of his newly found Christian belief which he has formed while living in Auckland. The appellant was first introduced to the concept of Christianity when his host family took him to small church group meetings held every Thursday at the New Hope Chinese Church, also based in Auckland. The appellant said that his host family were also Christians, although language barriers prevented him from having any meaningful communication with them. At these weekly meetings, which lasted around two hours each time, the appellant would participate in bible readings and sing hymns.

The appellant gave evidence that since September 1995 he had become a practising Christian, and was presently attending church services which were conducted at the New Hope Chinese Church in Auckland every Sunday. He also reads one or two religious articles each week as well as taking part in family prayer meetings each week.

The Authority had the opportunity to question the appellant at length throughout both days of hearing on the effect that his Christianity has had on his life, and what

he feared would happen to him if he returned to live in China. On the first day of hearing, when the appellant was asked how becoming a Christian had changed his life personally, the appellant gave evidence that he felt he was “controlled by God” and that this could “change a person”. He also said that unlike human beings, God knows everything, including what is to happen in the future.

On the second day of hearing, when asked how, in practical terms, he would practise his Christian faith, the appellant told the Authority that he would worship God in his heart, and that the most important aspect of his being a Christian was the need to be honest and to worship God. The appellant also stated that although his participation in church activities such as bible reading or attending church services was also important, he considered this would be meaningless unless he also kept his own internal faith in God. He also considered that there was no set place where one should read the bible and that it was possible to worship God even while at home.

When asked whether the appellant had any concerns about his ability to practise his Christian faith upon his return to China if he could only attend one of the recognised churches in China (which does not have any affiliation with the New Hope Chinese Church in New Zealand) the appellant told the Authority that he was aware that he would only be able to take part in the religious activities that were officially sanctioned by the Chinese government. He expressed a belief that as faith was “unlimited”, it was irrelevant what form of worship this takes, whether it be by praying at home or by attending a church. In the appellant’s opinion, the most important consideration was to have “faith in your heart”.

As previously noted, the Authority had the opportunity of obtaining a verbal translation of the letter submitted by Ms Lang under cover of her letter of 18 September 1996. According to Ms Lang, she submitted only a portion of the letter to the Authority, as the remainder of the letter dealt with personal family matters which she considered were not relevant to the appellant’s case. The writer of this letter is the mother of one of the founding members of the New Hope Chinese Church who, while resident in New Zealand, occasionally returns to China to preach. The letter, while not addressed to the appellant, was submitted as evidence to demonstrate the status of house churches and the practice of religion generally in China. It is also appropriate to record that this was the first time that the appellant had been made aware of the contents of the letter submitted by his representative. The letter reads:

"M, LD, have peace in God.

Thanks to the God, I have returned to work from Ning Bo, Shang Men. I've seen the glory of the God. The family meetings in the Mainland in some places is very open. There are lots of activities in Beijing, Shanghai and Gwenzhou [situated in Zhe Jiang province].

The family meeting at Yuan Xiang Chen in Beijing (a famous place following the death of Wang Min [illegible]. He is considered famous) has already stopped. X D has been there in Gwenzhou. In Gwenzhou, a place for family meeting was bombed. In Jia Xin, Yao Lin Min's place, which was for family meeting, was dismantled. Sister Yao [religious figure] and her son were arrested. This happened on 24th of July.

I have people from "Three Self Patriotic Movement" to investigate. I said it was a meeting for 3 or 5 people and they said that's OK. We have prayer meetings on Friday. There are not many people usually, there are several meetings in a day.

There are places in other areas which are also very open. When you come in December, I've already organised several places and you can go for meetings with some preachers. You can exchange, that's no problem. Don't organise meetings with large amounts of people. We have the God's bless for our work. I'm very busy working here at the moment, thanks to the Gods for the bless he gave me for curing people's disease.

SYF's son was waiting for an operation in the military hospital. He almost died. After praying now he has fully recovered. The whole family has given themselves to the Gods.

HYM's sister suffered from psychiatric disease. It has been over one and a half years. Her family have suffered. They only went to pray once along with CYP. Since that date, she has fully recovered. Doctor YSY could not sleep for two weeks but only after one prayer, sleep was resumed that evening. Thanks to the God that God wants to use me so he gives me this "blessing" to glorify his name. Every glory belongs to God.

My home has people coming one group after another. Every group (two or three people) I helped them to pray and I encouraged them with God's word. Every glory should belong to the God. There are lots of floods this year and damage is serious. Helping people to send clothes and money to the brothers and sisters of the affected area. There are vast areas that have suffered this year. We pray for the God's mercy".

The appellant claimed that, from the contents of this letter, while it appeared that a meeting of three to five people was acceptable to the Chinese authorities, some of the penalties referred to were quite serious. He was also concerned that a family meeting place had been bombed in Gwenzhou, although he conceded that he did not consider that this same event would necessarily happen to him if he practised his religion in China.

In summary, the appellant's fears upon return to China can be expressed as follows:

- (a) He fears that he would be questioned by the Chinese authorities about his involvement in the fight that took place in May 1994. Given his failure to present himself when requested by the authorities, the appellant fears that he would be falsely accused of murdering C's brother;
- (b) He fears that he would be punished for his attempted illegal departure to Japan, his breach of the terms of his bail and giving false particulars to the Shanghai PSB when arrested in 1994. In terms of the appellant's fear of punishment for illegal departure, Ms Lang submitted that the mere fact of his having previously attempted to leave China twice would be interpreted by the Chinese authorities as a rejection by him of his Chinese culture and that given that this was the third time he had left his country, he would be dealt with more seriously by them;
- (c) The appellant also fears that he would be punished by reason that he is now a Christian. Ms Lang submitted that there was a real chance that the appellant would be questioned by the Chinese authorities not only about how he managed to leave China, but also about what activities he took part in while living in New Zealand. This, it was submitted, would inevitably lead to the appellant's confession that he had become a Christian resulting in his being persecuted.

Finally, Ms Lang submitted that there was a real chance that the appellant would be punished more severely for the offences described in (a) and (b) above by reason of his Christian religion.

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 terms of Refugee Appeal No. 70074/96 Re ELLM (17 September 1996), the principal issues are:

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

ASSESSMENT OF THE APPELLANT'S CASE

Credibility

We first consider the issue of the appellant's credibility.

Of some concern to the Authority was the fact that there were discrepancies in the appellant's evidence as to the level of his involvement in the fight which took place in May 1994. Before the Authority, the appellant claimed that he had no involvement whatsoever in the fight, and that he had only witnessed the injury to C's brother. Yet in his written statement which was submitted in support of his refugee application, the appellant refers to his having been "on the spot at that time" and that he "became one of the helpers in the fighting." Further, during his interview with the RSB, the appellant confirmed that he took part in the fighting, that he used a "metal tool", and that both he and his brother-in-law were responsible for the injuries of C's brother.

When asked to account for these discrepancies, the appellant admitted that he had not been truthful either in his own written statement or when later questioned about this aspect of his case during his RSB interview. The appellant said that he wanted to get a residency permit in New Zealand and therefore lied on this aspect of his case to do so. He confirmed that he had not had any direct involvement in the fight and that he was not directly responsible for the injury sustained by C's brother, although because he was related to his brother-in-law, he did feel partially responsible.

The Authority has some reservations on whether the appellant was in fact merely an observer to the fight as he now claims, or if he was at least partially involved, given the specific nature of the contradictory evidence previously given by him.

The appellant was also asked how he could reconcile the fact of his having lied on two occasions to the RSB with his newly found Christianity. This is particularly given the appellant's own evidence that it was most important to him as a Christian to be honest. The appellant could only reply that once his religious convictions became stronger, he later realised that he should not lie to God or anyone else.

The Authority also had some concerns over the motivation behind the appellant's decision not to present himself to the PSB for questioning in relation to the fight incident when, according to his own evidence, he had not been responsible for C's brother's death and had done nothing wrong. The appellant told the Authority that he believed that it would be "better not to go than [by] going" as he had no trust in the police.

These issues aside, the Authority found the appellant to be generally a credible witness. The appellant presented as a somewhat naïve and unassuming young man, with a low standard of education. We have therefore made allowances for the fact that, on some occasions, particularly when questioned about his Christianity, the appellant's responses did not always directly relate to questions put to him by the Authority. The Authority certainly has no reservations as to the genuineness of the appellant's religious convictions and that he would wish to continue to practise his faith.

We are therefore prepared to afford the appellant the benefit of the doubt, and accept that while he had no involvement in his brother-in-law's fight, the PSB have nevertheless expressed an interest in questioning him. We also accept that the appellant's decision not to report to the authorities despite his being summoned was primarily motivated out of fear. We further accept that the appellant has attempted to leave China unsuccessfully once before, resulting in his subsequent detention, release on bail and that later he breached the terms of that bail by fleeing to New Zealand.

A. PRE-FLIGHT EXPERIENCES IN CHINA

We will deal first with the appellant's individual fears based on his experiences prior to leaving China. The issue of whether the appellant has a well founded fear of persecution based on cumulative grounds will be dealt with later in this decision.

The appellant has given evidence before the Authority that he has not had any contact with his family in China since leaving Hong Kong and therefore is not in a position to know whether the police continue to have an interest in him for the reasons already stated. We are nevertheless prepared to give the appellant the benefit of the doubt and accept that there is a real chance, given his failure to present himself to the PSB when summonsed, that he would be wanted, at the very least, for questioning in relation to the fight which took place in the neighbouring village.

We are further of the view that there is a real chance that the appellant would be punished for his attempted illegal departure to Japan. The fact of the appellant having absconded whilst on bail pending formal proceedings against him for the attempt is also likely to be a matter of police record. We therefore accept that there is a real chance that the appellant would face punitive measures, not only for providing false particulars to the Shanghai PSB once apprehended, but also for subsequently having breached the terms of his bail and absconding to New Zealand.

However, this appeal cannot succeed on these grounds as none of the measures taken against the appellant would relate to any one of the five Convention grounds set out in the Refugee Convention. In other words, while there is a real chance that the appellant will face some form of punishment or prosecution for criminal offences, the appellant's fear in this regard cannot be said to be one for a Convention reason. It is, instead, a fear that the criminal law process will take its normal course which may result in him being further charged and then dealt with by the courts.

B. SURPLACE CLAIM: CONVERSION TO CHRISTIANITY

As previously noted, the Authority questioned the appellant at length about his new-found commitment to Christianity and accepts that the appellant is a bona-fide Christian with genuinely-held religious beliefs. We now consider whether there is real chance of persecution upon return to China by reason of this appellant's conversion to Christianity since his arrival in New Zealand.

Appellant's Fear Based Solely on his Status as a Christian

While we accept that there is a real chance that the appellant will be questioned by the Chinese authorities upon his return, and that his status as a Christian may become known to them, we nevertheless find that the risk of persecution to the appellant in such circumstances falls below the level of a real chance. We do not consider that this particular appellant would be of any real significance to the Chinese authorities over and above that of a repeat criminal offender.

Country information suggests that religious activities not sanctioned by the state are regarded as potentially subversive to the regime. Thus, generally, religious persons, either those in positions of authority or having public prominence among underground religious communities at large, may be considered or perceived to be threats to the regime and are therefore at risk of persecution by the Chinese authorities. However, the appellant's profile is to be contrasted with those public figures who did attract punitive measures from the Chinese authorities, of the kind referred in the US DOS report, and in the letter written by the mother of one of the founders of the New Hope Chinese Church which was submitted by the appellant. The appellant, despite his genuine religious convictions, presents as a simple young man, without any predisposition to matters political. Although he has a "capitalist" background, his previous experiences have shown that this has not been a source of discrimination for the appellant even prior to his coming to New Zealand. There is no evidence before this Authority, however, that the mere status of an individual as a Christian would, in itself, be a source of persecution. This is substantiated by the fact that the practice of religion at any of the officially sanctioned religious institutions remains permissible.

The Appellant's Ability to Practice his Religion in China

Country information contained in the US DOS report suggests that while religious practice is, to an extent, allowed in China, of primary concern to the Chinese authorities is the need to maintain state control over such activities, hence the requirement to register with an officially sanctioned religious institution. Having considered the appellant's evidence together with the country information available, we find there to be no real chance that the appellant would be prohibited from practising his religion in the manner desired. Of particular significance to the Authority was the appellant's own evidence at the hearing that as he considered faith was "unlimited", it was irrelevant to him what form his religion manifested itself. The appellant conceded to the Authority that if he returned to China he would pray at home but he also acknowledged that he could attend one of the officially sanctioned churches in China. The overriding concern expressed by the appellant was to have "faith in [his] heart". It is therefore the conclusion of this Authority that, given both forms of worship are, according to the country information, accepted practices permitted by the Chinese authorities, the risk of persecution to this particular appellant because of his religious beliefs falls below the level of a real chance.

Fear of Disproportionately Severe Punishment for Criminal Offences

Finally, the Authority has also considered Ms Lang's submission that the appellant may receive a disproportionately more severe punishment for his history of attempted illegal departures by reason of his Christianity.

While the Authority considers that, as a repeat offender, the appellant may receive a more severe punishment for his attempted illegal departures, (as would be the case, even in countries with established democracies) there is no evidence before it to suggest that such would be by reason of any of the five Convention grounds in terms of the Refugee Convention. As previously noted, the appellant's adverse family background has not affected the appellant's life prior to leaving China and he is not considered to be of any real significance, politically, to warrant the attention of the authorities. The fact of his being a Christian is not, in the Authority's view, in itself, determinative of a claim to persecution in China. Nor is there any country information or other available evidence, (despite our own efforts to substantiate the same), to suggest that persons of any religious faith receive disproportionately more severe treatment for offences under Chinese law than

non-religious citizens in China. We therefore find that the appellant's fear as regards this aspect of his claim cannot be said to be well-founded, and accordingly must also fail.

Accordingly, for the reasons given, the Authority finds 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.

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Member