

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 72123/2000

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AT AUCKLAND

Before: A Mackey (Chairperson)
S Joe (Member)

Counsel for Appellant: Y S Kak

Appearing for NZIS: No appearance

Date of Hearing: 30 August 2000

Date of Decision: 19 October 2000

DECISION DELIVERED BY S JOE

[1] These are appeals against decisions of the Refugee Status Branch of the New Zealand Immigration Service ("the RSB"), declining the grant of refugee status to the appellants, a married couple of the Christian faith from China.

INTRODUCTION

[2] AB (the wife) arrived in New Zealand on 22 November 1996 and lodged her application for refugee status on 13 January 1997. After interviews with the RSB on 24 February and 31 March 2000, her application was declined on 7 June 2000.

[3] CD (the husband) arrived in New Zealand on 13 October 1996 and lodged his claim for refugee status on 14 October 1996. He was interviewed by the RSB on 31 March and 5 April 2000 and a decision declining his application was made on 2 June 2000. Both appellants then appealed to this Authority.

[4] Although the appeals for the appellants were lodged separately and apart, and considered separately by the RSB, the Authority considered that there was such a high level of commonality in the appeals lodged by this couple that it was logical for them to be heard together by the same panel. Counsel, on instructions from his clients, agreed. The evidence of AB was heard first and this was followed by the evidence of CD. The hearing of CD's evidence was concluded the following day, 31 August 2000. At the end of the hearing, counsel was allowed 14 working days to present final submissions. Those submissions were received by the Authority on 19 September 2000 and have been taken into account in preparation of this decision.

THE APPELLANTS' CASE

[5] The refugee claims of both appellants are based on their fears that they will be persecuted for reasons of their religious beliefs if they return to China. Both of them have been involved in a Protestant home church group in Beijing prior to coming to New Zealand. Since they have been in this country, they have pursued their religious beliefs with some intensity at the X church in Auckland.

[6] AB was brought up in a Christian family. Her parents and later the appellants were led in their religious beliefs by Pastor Y who ran an underground home church in Beijing for many years until his arrest and detention in 1992. She thought that Pastor Y had originally been involved in the officially sanctioned Protestant Three-Self Patriotic Movement but had broken away from the officially recognised church for ideological reasons, principally because he could not accept that the state should have supremacy over the teachings of Jesus Christ.

[7] AB attended church with her parents from a very early age. Her father had a role as "missionary" although he was never a pastor himself.

[8] In the 1980s, AB took part in home church meetings of the group which were held either in the home of Pastor Y, her own home or in the homes of other members of their group. She considered that there were 30 or more members. Her role was usually to meet and greet members, hand out pamphlets and to conduct pastoral visits to other members in the group or people they were hoping to assist. From time to time, they would make pastoral visits to the countryside or meet with friends from other home churches to improve their understanding of

their religious beliefs and to exchange ideas. AB was actively involved in the church work from 1986 to 1996 when she came to New Zealand. In 1989, Pastor Y had been able to come to an arrangement where he was able to use one of the official Protestant churches in Beijing for a baptismal service. AB was one of four people baptised in that service. After that time, however, Pastor Y and members of the appellants' group were unable to use the official church and all other ceremonies and baptisms were carried out in home churches. AB produced at the hearing the original photograph of her own baptismal service which included Pastor Y, the other people baptised and three other pastors.

[9] After her baptism, AB said her faith increased and she considered she was called upon to introduce the Bible and Christian teachings to other people. Occasionally, she carried these activities in the street or with colleagues from work. However, she informed us that it was only a colleague who had adopted Christianity after the friend had spoken with AB and heard her explain Christianity to her. AB explained that in carrying out her work and trying to explain the gospel to people in the street, she was very careful as she knew it was dangerous. She continued with this activity until she left in 1996. The activities were not regular and were often disrupted by the authorities. However, if she met someone she thought she could assist, she would try to "let the light of the Lord shine on them".

[10] There were a number of occasions over the years when AB or other members of her group had troubles with the authorities. The first she recalled was at the home of Pastor Y in 1982 when the police burst in to a home church meeting and took the Pastor away. She herself was grabbed by the hair and thrown against the wall and all members of the home church group were intimidated, threatened and told to disperse. Pastor Y was evidently released one hour later. He had been beaten and physically and verbally abused.

[11] The religious meetings continued nevertheless, moving from house to house.

[12] The next problems occurred in 1988 during a church meeting at the appellant's father's home. The police came and broke windows and generally ransacked the house. They took away religious materials and told all of the group that they should join the official Patriotic church. She said there were some 20 or more people in the house and a number of religious tracts, Bibles and other religious materials was confiscated.

[13] The group continued its operations but again became careful. However, in 1989, AB with her husband and members of their group were distributing religious tracts in the streets when some plainclothes members of the authorities rode into them on their bicycles, knocking AB to the ground. In this incident, she banged her head and fainted and was taken to hospital with concussion. As a result of this incident, AB was unable to work for two weeks.

[14] In the following years, AB also had problems at her place of work where she was a typist in the information unit. Because of her religious beliefs, she was transferred to the printing section of the same organisation to do heavy type-setting work. She said that this transfer was carried out at the directions of the police to her work unit and subsequent to visits by members of the Patriotic church to her work unit. AB was, however, able to continue working, although the job was tough and dirty. Her factory leader told her that "God would get [her] a job".

[15] AB remembered the story of David and Goliath and found she was able to carry the heavy burden of her job and bear it rather than complain.

[16] The next incident she recalled was in 1992, when Pastor Y was arrested again. On this occasion, the group was worshipping at AB's home when the police burst in and arrested Pastor Y. They accused him of being instrumental in getting people to leave the Patriotic church and join the home church. AB, however, considered the real reason was that Pastor Y had offended the clergy in the Patriotic church by stating that the clergy in that church had misappropriated offerings made to the church and used them for unrelated activities. Pastor Y had also said that the sermons in the Patriotic church had to be checked with the PSB before they could be delivered. At the time of his arrest, Pastor Y had yelled out to everyone why he had criticised the Patriotic church. The other members of the home church tried to protect the Pastor but were unable to do so. Thereafter, Pastor Y was detained and, to the best of the appellant's knowledge, is still in detention.

[17] Also at that time, AB's father was detained because he was a supporter of Pastor Y. He was held for a few hours and then released. AB herself was beaten and intimidated by both uniformed and plain clothed police. She told the Authority that there were 20 more people in the congregation at the time when this incident took place.

[18] Following the arrest of Pastor Y, their group had to become more careful and they moved their services from place to place but often held them in AB's father's home. Occasionally pastors came from other home church groups or the congregation was led by AB's father or herself. Her own activities involved her in learning more about the skills of preaching, Bible studies and pastoral work. She received instructions not only from her father, but also from other home church pastors. She said that she had been able to keep contact with the wife and daughter of Pastor Y, who had since moved to the USA, and the last information from them was that Pastor Y was still in prison.

[19] In 1993 to 1996, AB's activities continued with the home church group at her own home and in other homes of congregation members. On one occasion while she was doing evangelical work, the police came to her home and disrupted a meeting, pinning AB against a wall for some 20 minutes while the house was searched. After that incident, AB and CD decided that CD should go overseas and seek a better life away from the constant harassment and risk of detention.

[20] She recalled that in the first year after CD came to New Zealand, he had sent a number of religious leaflets (in Chinese) to her in Beijing. She found the material in these pamphlets very useful and informative as they were simply unavailable in China. She therefore distributed them to a number of members of the congregation and asked her husband to send further material. He did so but, on one occasion in March 1996 when she went to obtain the pamphlets from her post office box, AB found that the package had been opened and the material was spread all over the floor. She found a few of the pamphlets that had not been scattered about and collected them up. Soon after this, when travelling to a home church meeting on her bicycle, she was knocked over by people she considered were plainclothes police or supporters of the Patriotic church. She was abused by them and told that she should follow the Chinese way of Buddhism and not the evil cult that she was following. As she attempted to get up, she was knocked down again and told that she should go to prison with other members of the evil cults such as Pastor Y. After this, she was taken home by a friend and then to a hospital for treatment.

[21] Thereafter, AB became very careful but attempted to obtain a passport to leave the country to join CD in New Zealand. It took three attempts before she was able to obtain a passport with the assistance of a friend.

[22] AB gave evidence that she had met her husband in the early 1980s when he had been introduced to their church group by a mutual friend. After several years of meeting in the church group, they had married in 1988 but a formal Christian ceremony was not performed until 1 January 1990.

[23] AB had had contact with her father and mother from time to time since she has been in New Zealand. She was told that her father continued to be harassed for his religious beliefs. However, he was very guarded in the comments he made to AB, merely stating that the environment was “very difficult” and that family churches were not allowed and were being treated savagely by the authorities.

[24] Since AB has been in New Zealand, she has become heavily involved with the X church in Auckland. She said she is now a Sunday school teacher, carries out witnessing and other pastoral care. She states that the depth of her faith has been increased and that she has undergone a full baptismal service with the church. She said she regularly attends the church on Sundays and is also involved in other sessions throughout the week. From the cautious report she receives from her parents, she considered there has been a growth in the size of the church group with which she had been involved, but people were very careful and very cautious, knowing that they were constantly at risk.

[25] AB considered the only reason she had not been detained when the gospel pamphlets and other material had been received from her husband was because her father was able to convince the policemen not to proceed. She said that he had spread the gospel to the policemen and that there were some good policemen who were prepared to help them.

[26] The Authority then took the evidence of her husband, CD. In the main, CD's evidence confirmed that of his wife. He, however, was not brought up in a Christian home and was only introduced to Christianity by his wife after they had met each other in approximately 1982 at a meeting in the home of Pastor Y. CD said that he had not been as fully involved in the church activities in China because of his work commitments, but had gradually become a stronger and stronger supporter after the raids on his parents-in-law's home and the arrest of Pastor Y. He said he would work with his wife and other members of the congregation in distributing pamphlets and often went to the home church meetings in the homes of other “brothers and sisters”. He also gave his details of

the incident when his wife was knocked down in the street in 1989 resulting in her being concussed and taken to hospital. On that occasion, when he had gone to assist his wife, he had been clipped by the policeman. CD also gave an account of the arrest of Pastor Y in 1992 and confirmed that there had been no further news of him since that arrest.

[27] CD further stated that in 1994, when he had been at his parents-in-law's home during a religious meeting, police had invaded the meeting and broken windows, pushed people around and confiscated materials. He said that he himself was taken away to the police station where he was held for 24 hours and beaten up. He was made to squat in a corner, holding his head for a lengthy period of time and told that the church was an evil cult. He claimed that he had never told his wife about this incident as she would worry. He also said that he was kicked by three or four policeman and an electric baton was put on him with high voltage which made him fall to the ground. Also bright lights were shone on him and eventually he was told to wash his face and go away or they would take him in again. His father-in-law was not detained at the same time.

[28] The following morning, immediately after the resumption of the hearing, CD informed the Authority that he wished to make a statement. He then said that he was a confirmed Christian and that the evidence he had given in relation to the detention in 1994 was exaggerated and was a lie. He said he thought it may assist his case if he exaggerated it. He said he had worried about it all evening and wanted to tell the Authority the truth. He apologised to the Authority and wished to confirm that the rest of the evidence he gave was correct. He told us that his father-in-law's role in the house church had been to organise house church group meetings of some 20 or 30 people and that he had been very careful in their location and in moving them from place to place.

[29] The reason CD left China is related to the problems he had with the police and a drive to improve himself. He had a friend who helped him to come to New Zealand. His wife had helped him make up his mind after she had a dream that they would be able to do God's work in this country. He said he had looked at going to other countries in the past but that opportunities to travel to them simply did not arise. Eventually, he paid RMB30,000 to a friend, who was able to organise a position as a cook in a restaurant in New Zealand and CD obtained an invitation to travel to New Zealand and applied for a work permit. This was a genuine position. When CD arrived in New Zealand, he was interviewed and, after

carrying out a satisfactory demonstration of his skills as a cook, he was employed.

[30] CD also related his account of the incident of sending the pamphlets from the X church in Auckland and the worrying responses he received from his wife after several sets of pamphlets had been sent to her. He said he was then eventually successful in sponsoring a visit by his wife and child to New Zealand after he obtained a statement from his employer here and sent it to the New Zealand Embassy in Beijing. Since he has been in New Zealand, CD has renewed his passport without any difficulties and no-one had asked him any questions.

[31] CD was also significantly involved in the X church in New Zealand and attended whenever he could, particularly the Wednesday meetings. On the weekends, he was involved with work and was thus often unable to attend.

[32] When both the appellants were asked their fear if they returned to China, they each considered that as overseas returnees, they would be targeted, particularly because of the problems they have had in the past. They considered that they would be arrested in a similar manner to Pastor Y. Both of them considered that they would want to carry on their pastoral and evangelical work with others, especially because of the great amount of additional knowledge and information they had obtained since they were in New Zealand. CD said he was studying informally to become a pastor himself in the Wednesday sessions held at the home of a Mr H.

[33] The submissions presented by Mr Yeh referred the Authority to the *Amnesty International Report 2000, China*, at page 72 and to the United States Department of State "*Country Reports on Human Rights Practices 2000 - China*" at 1045. In addition, he referred to a report provided by the Authority "*2000 Annual Report on International Religious Freedom: China*" (Bureau of Democracy, Human Rights and Labor) US Department of State, September 5, 2000. This country information had been considered by the Authority in determining these appeals and are referred to later in the decision.

THE ISSUES

[34] 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."

[35] 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 APPELLANTS' CASE

[36] At the outset, it is necessary to consider the credibility of the evidence provided by both appellants. The evidence of the appellant, AB, is accepted. She is unquestionably a woman of clear religious conviction, something which she has held over a number of years. As to her husband, CD, the Authority did have reservations about parts of his evidence on the first day of the hearing but was met on the second day with the bald admission that he had told the Authority lies on the previous day in respect of a detention incident in 1994. Having assessed the totality of his evidence and its consistency with that of his wife, the Authority accepts that the remainder of his story can be relied upon as a genuine account and that it is probably testimony to his Christian faith and honesty that he did retract the lies and exaggeration that he told the Authority.

[37] The issue therefore is whether these appellants have a well-founded fear of persecution for the reason of their religious beliefs should they return to China. In this regard, it is also important to note that the religious conviction and zeal with which they now pursue their religious beliefs in New Zealand, is at a high level of commitment. This is particularly so, with regards to AB. She had been involved with the home church in China all of her life and proselytised her beliefs on a number of occasions before coming to New Zealand, although clearly with a high degree of caution. Her commitment to Christianity and her belief since she has been in New Zealand has clearly grown substantially and it would be surprising if,

on return to China, she did not wish to proselytise far more emphatically than she did in the past. The appellant, CD, has also strengthened his commitment and is informally studying towards being a pastor himself.

[38] In assessing the likelihood of risk to persons having the profiles of these two appellants, the Authority notes firstly:

- (a) AB's father has been clearly involved in the church movement for some 20 years or more as a major supporter of Pastor Y and organiser or "missionary" in home church groups in Beijing. He appears to have been harassed on a number of occasions and warned. However, there is no evidence that he is being detained himself and, according to the evidence of his daughter, he clearly has friends in the authorities whom he has been either able to convince of the purity or inoffensiveness of his beliefs and messages, or that his actions are not at the level that would require the authorities to detain him for threatening to undermine the Communist regime.
- (b) The appellant, AB and, to a lesser extent, her husband did come to the attention of the authorities in Beijing, because of their home church and also because of the modest level of proselytising of their religion in the period prior to leaving China.
- (c) Both appellants have taken on a much deeper commitment to their Christian faith since they have been in New Zealand and are now significantly involved and committed to proselytising their beliefs.
- (d) The home church group in which the appellants were involved in Beijing appears to have comprised some 20 to 30 people. It may have possibly grown in numbers since that time. The evidence does not point to significant growth. However, the appellant, AB and her father have had association with other home church groups in the Beijing area and thus the involvement of AB was not just with the limited group of 20-30 people.

It has to be recognised in this case that the former leader of this home church group, Pastor Y, was evidently a person of some

significance in the home church movement in Beijing, to the extent that he was detained in 1992 and remains in detention. It is self-evident that he must have been considered a threat to either CCP or the Patriotic Church Movement for the detention to have taken place and to continue. Thus, if the appellants in this case, having had a very close association with Pastor Y for a number of years, were seen, on returning from overseas, to pose a similar threat to that of Pastor Y, obviously their profile and risk of detention would heighten significantly.

- (e) The country information, particularly that contained in the United States Department of State 2000 *“Annual Report on International Religious Freedom: China”*, (September 5, 2000), sets out that there are five officially recognised religions in China: Buddhism, Taoism, Islam, Protestantism and Catholicism. Each of these faiths is monitored by a government-affiliated association. In the case of Protestantism, that is the Three-Self Patriotic Movement. Membership in all faiths is stated to be growing rapidly and while the Chinese government generally does not seek to suppress the growth outright, it tries to control and regulate religious groups to prevent threats to the government and the Chinese Communist Party.

Apart from the widely reported crackdown on “cults” including the Falun Gong, the report states on its first page:

“In general, unregistered religious groups, including Protestant and Catholic groups, continued to experience varying degrees of official interference, harassment, and repression. Some unregistered religious groups were subjected to increased restrictions – including, in some cases, intimidation, harassment, and detention. However, degree of restrictions varied significantly from region to region, and the number of religious adherents, in both registered and unregistered churches, continued to grow rapidly, and in some areas, with little official interference. In some regions, registered and unregistered churches were treated in a similar fashion by the authorities. . .

The Government’s efforts to maintain a strong degree of control over religion, and its crackdown on groups that it perceived to pose a threat, continued. Overall, however, in the two decades since the Cultural Revolution, when all forms of religion were banned, there has been a loosening of government controls and a resurgence in religious activity.”

The report sets out the legal and policy framework for the freedom of

religious belief in China, stating the Constitution provides for the freedom of religious belief. However, pursuant to the 1994 State Council Regulations and subsequent Provincial Regulations, any place of worship has to be registered with the Government Religious Affairs Bureau (RAB) and come under the supervision of official “Patriotic” Religious Organisations. During a September 1999 speech, President Jiang Zemin noted the policy on freedom of religion but also added that “we should energetically give guidance to religions so that it will keep in line with the Socialist society and serve the ethnic unity, social stability and modernisation” (*supra*, Section I).

The report also notes that the need for vigilance against foreign, western forces splitting the country and the containment of religious cults was identified in the January 20, 2000 document “*Several policy issues concerning current religious work*” issued in conjunction with a national meeting of the Religious Affairs Bureau (*supra* Section I).

It also notes that there are some 200 million religious adherents in China with tens of millions adhering to Christianity and an estimate of between 2.4 and 6.5 percent of the population who worship in home churches that are independent of government control (*supra* Section I, Religious Demography).

Those underground churches are noted as having significant properties, memberships, financial resources and networks and often the leaders of those groups are targets for harassment, interrogation, detention and physical abuse (*supra* Section B, Governmental Restrictions on Religious Freedoms).

Later in the report, when discussing the geographic spread of unregistered religious groups, it states (*supra*):

“In some areas, security authorities use threats, demolition of unregistered property, extortion of fines, interrogation, detention, and at times beatings and torture to harass unofficial or religious figures and followers. Authorities particularly targeted unofficial religious groups in Beijing and in the provinces of Henan and Shandong, where there are rapidly growing numbers of unregistered Protestants, and in Hebei, a center of unregistered Catholics. . . However, many family churches, generally made up of family members and friends, and which conduct activities similar to those of home Bible study groups, are tolerated by the

authorities as long as they remain small and unobtrusive. Family churches reportedly encounter difficulties when their memberships become too large, when they arrange for the use of facilities for the specific purpose of conducting religious activities, or when they forge links with other unregistered groups.

Some Protestant house church groups reported more frequent police raids of worship services and detentions than in previous years.”

[39] From the above findings is there a real chance that this couple will be persecuted, on their return to China, for practising their religious beliefs and proselytising those beliefs to others?

[40] The persecution definition incorporated into New Zealand refugee jurisprudence has been that taken from Professor James C Hathaway’s text “*The Law of Refugee Status*” Butterworths, 1991 at pages 104, 105. He states:

“. . . persecution may be defined as the systemic violation of basic human rights demonstrative of a failure of state protection. A well-founded fear of persecution exists when one reasonably anticipates that remaining in the country may result in a form of serious harm which the government cannot or will not prevent including either “specific hostile acts or . . . accumulation of adverse circumstances such a discrimination existing in an atmosphere of insecurity and fear”.”

[41] The freedom to practise one’s own religion is of course a high level right contained within the Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political rights, 1966.

[42] Balancing all the evidence before the Authority, and in applying the benefit of the doubt, there is a real, as distinct from remote, chance, albeit at the lower end of the threshold, that the appellants would face persecution were they to now return to China.

[43] On the particular facts of this case, the Authority notes the particularly zealous commitment of AB to her religious beliefs, which have been further reinforced as a result of her continued religious activities in New Zealand, superimposed on a lifetime of training and commitment to Protestant Christianity. The appellant belonged to an underground church in Beijing which was already of some significance to the authorities, leading to the detention of Pastor Y and discriminatory treatment of its members. That group has since also had association with other home church groups in the Beijing area. The appellant, AB, was also known to be involved in distributing overseas religious materials prior to her departure from China. It is this particular matrix of facts in this case that leads

the Authority to have doubt as to the potential risk to these appellants, such doubt necessarily being exercised in their favour. It is against this backdrop that the Authority considers, in according the benefit of the doubt that, given the high level of religious commitment of the appellants (the husband being included because of his ever-growing commitment also), there is a real chance that they would proselytise their faith. In doing so, and in view of their particular history with the authorities, this would place them in a position where there will be a real chance of their being arbitrarily detained, harassed and restricted in their ability to practise their religion to the extent of persecution.

[44] In reaching this conclusion, the Authority emphasises that this does not mean that all Christians from China are, *ipso facto*, refugees. Each case must be determined on its own particular facts and in light of the country information as at the date of determination.

[45] Accordingly, for all of these reasons, the Authority finds the appellants do meet the refugee definition and both issues post are answered in the positive.

CONCLUSION

[46] The Authority finds there is a real chance that these appellants will suffer persecution on account of their religious beliefs should they return to China. Accordingly, they are found to be refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal succeeds.

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S Joe
Member