

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 71355/99

Name of the Appellant

Before

A B Lawson (Chairperson)
E M Aitken (Member)

Representative for the appellant

Ms S. Aitken
(Malcolm Pacific Consultants Limited)

Date of Hearing

7 May 1999

Date of Decision

14 October 1999

DECISION

This is an appeal against the decision of the Refugee Status Branch of the New Zealand Immigration Service (RSB) declining the grant of refugee status to the appellant, a citizen of the Peoples Republic of China.

BACKGROUND

The appellant is a single woman born in G, S Province, China in 1967. Both her parents and an elder sister who is married live in G. The married sister has one child and her husband is employed in a pharmaceutical company. Her mother is a retired accountant, her father is also retired but still does some work as an electrical engineer. The appellant was educated to university level and has a BA degree in education and she specialises in the teaching of music. She has been particularly involved in teaching and conducting school choirs and has risen to the position of a teaching supervisor in the music department supervising a total of about 65 schools in her district. She arrived in New Zealand on 7 October 1996, travelling on her own genuine People's Republic of China passport and a visitor's visa for New Zealand. She applied for refugee status on 7 July 1997 and was interviewed by the RSB on 4 September 1998. Her application was declined on 3 March 1999. She then appealed to this Authority.

THE APPELLANT'S CASE

The appellant fears persecution by both the Chinese authorities and the general public by reason of her sexual orientation - lesbianism.

The appellant's case can most conveniently be taken from her counsel's submissions filed just before the appeal hearing, which at page 2 thereof read as follows:

"BACKGROUND

The appellant is a homosexual. She first realised that she was "different" when she was at primary school. By the time the appellant attended secondary school she thought of herself as a boy. Confused and intrigued by her feelings the appellant bought books in order to find out "what she was like". These books identified the appellant's feelings as lesbianism and defined it as a spiritual and psychological abnormality.

It was at this stage that the appellant had her first lesbian relationship. The relationship was kept secret and ended after 2 years when the couple attended separate universities. The appellant met her current partner in 1990 however it was not until 1994 that their relationship developed from friends to lovers.

The appellant's relationship with L has always been a secret. Even to this day friends and family in the PRC are still not aware of the intimate nature of their relationship.

The appellant and her partner's desire to be together encouraged their visit to New Zealand. The appellant had heard that New Zealand was a beautiful place and through her own research she also discovered that New Zealand was accepting of homosexuals. Since their arrival the appellant's partner has returned to China to care for her seriously ill mother. She left New Zealand in August last year i.e. August 1998 (and her refugee status application subsequently lapsed). The two have maintained contact and the appellant sends money to her partner to assist with her situation.

The appellant's refugee claim and that of her partner (L) are based on the same grounds. We therefore request that if this appeal is successful the Authority also consider granting L refugee status."

BASIS OF THE APPEAL

The application for refugee status was lodged on behalf of the appellant on 7 July 1997. The basis of the claim is that the appellant has a well founded fear of persecution based on her membership of a particular social group (Chinese homosexuals) and their political opinions. If returned to the PRC there is a real chance that the appellant would suffer violation of her internationally protected human rights."

In her evidence before this Authority [as in her statements at the interview with the RSB], the appellant elaborated upon the outline of her case as set out above. She told the Authority that her parents are still not aware of her relationship with L or

that she is a lesbian. Although she has spoken to her sister they are not close and there really has been no significant communication between them on the topic. The appellant has only one close friend who is aware of the situation but even then they have not openly discussed the matter. No one else in China is aware of the situation as far as she knows, although, she has been told that since she left her position there has been some gossip among her former work mates. In China, neither the appellant nor her partner L have ever sought out any gay/lesbian associates nor engaged in any gay/lesbian-type social activities. They have been away for holidays together about two or three times on their own and on other occasions on school trips.

L is also a school teacher and has been employed in the same educational organisation as the appellant who has been her superior. In 1996, the appellant was allocated an apartment but has never lived in it. In a submission made after the hearing of the appeal, her representative pointed out that the apartment was allocated on the basis of her performance at work and because she had advised her superiors and colleagues that she was involved with a man and that the two intended to marry. Such apartments, the submission said are in great demand and the waiting list is very long. The apartment was granted in anticipation that the appellant would marry. The appellant was not expected to move into or use the apartment until such a time. Indeed the said submission commented that:

“.. it would seem the appellant obtained the apartment under false pretences and never even got to use the apartment because she continued in public to be single”.

That was somewhat different from what the appellant had told the Authority in her evidence. However, nothing turns on the point and she did tell the Authority that she and her partner L had never contemplated living in the apartment as both of them had stayed at home with their parents. They had however stayed together over night at their parents' places and did have some privacy but not a lot.

The appellant confirmed that her partner L had gone back to China in August 1998 to care for her mother but had been unable to resume her former employment. When asked by the Authority if L had in fact applied for a job the appellant said she felt that she had applied although she had never asked her. L's parents' income was not very good and the appellant had sent some money herself every few months. She did not appear to know the nature of the mother's illness but said that L was an only child and the situation was difficult for her. The appellant felt L could come back to New Zealand but she had not at this point applied for

another visa.

From the time of their arrival in New Zealand, the couple lived together in a Housing New Zealand Ltd house which they rented. They had both worked in restaurants. Neither had joined any gay/lesbian groups in New Zealand nor did it seem they had ever openly declared themselves homosexual. The appellant confirmed the impression given that she and her partner would not wish to draw attention to themselves even in the more open atmosphere in New Zealand. They had no desire, either here or in China, to go to any lesbian/gay night clubs, bars or entertainment centres or be involved in what could be described as the "gay scene".

As far as the Authority could determine, the real problem faced by the appellant was her extreme reluctance to let her family become aware of her sexual orientation and her acute embarrassment and perhaps guilt over the relationship. It was the guilt, embarrassment and disapproval that she anticipated from family and friends if they came to know of it that she feared most. Apart from being ostracised, she also feared that, if it became known, both she and L would lose their employment. She had applied for leave to come to New Zealand and that had been approved for three months but when the three months expired, she did not notify the school authorities that she would not be coming back. Her mother had since told her that she had been notified that the appellant's employment had been terminated. The school had asked the mother about her and she said that she had not completed her studies in New Zealand. As far as the school is aware, therefore, she had obtained the leave in order to go to New Zealand to continue studies. It seems that her partner L also obtained leave but it was for only for a month which was all she was allowed. L's parents received a notice from the Education authorities as well.

As can be seen from the foregoing, the appellant and L have not been the subject of any persecution or indeed of any discrimination or harassment because they have never let their lesbian relationship become known. Their fear however, is that if they return and it does become known they will suffer discrimination socially and in the work place. The restrictions on their freedom of expression and ability to live together in a sexual relationship is disapproved of in China and if known the consequent harassment and discrimination would amount to persecution. The appellant and her partner fear that they will not be able to resume their former employment nor will they be able to obtain similar employment if they return and

will suffer discrimination in housing and in the social context. It was put to the appellant by the Authority that there would be employment available outside the state controlled system and that it might be necessary for them to relocate elsewhere in China to obtain employment approaching their former standard. Nevertheless, the appellant believed this would not be possible. The Authority however, is of the view that regardless of discrimination because of sexual orientation, the appellant would be able to obtain some form of employment in China even if it were not of such a high status as the employment which she left. No allegations were made specifically in regard to political opinion independent of the appellant's homosexuality. The claim essentially has been that the appellant fears persecution by reason of her membership of a particular social group i.e. 'Lesbians in China'.

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 CLAIM

Credibility

The Authority accepts the appellant as a credible witness and it also accepts that she and her partner L have had a lesbian relationship since about 1994, although that has now been interrupted by the return to China of her partner in August

1998. Whether the relationship will resume, is at this time, somewhat speculative. However, the Authority accepts that the appellant is, as she claims to be, homosexual and that she is reluctant to return to China because of the accumulation of difficulties that now face her, not least of which, is the fact that she will no longer have her former high status employment in her home city.

ISSUE OF WELL FOUNDEDNESS

The appellants case was put forward at the RSB interview and also before this Authority on the basis that the appellant had a well founded fear of persecution by reason of her membership of a particular social group i.e. "Lesbians in China". The Authority however prefers to leave undecided the issue as to whether lesbians in China are in fact a particular social group. The Authority recognises that homosexuals may in certain circumstances constitute such a group (see Refugee Appeal No. 1312/93 (30 August 1995). However the present appeal can be decided upon the simple basis of lack of well foundedness and the Authority considers it more appropriate to deal with that issue alone in this case.

The Authority is satisfied in this case that the evidence established:

- (a) Lesbians are not "per se" persecuted in China. Indeed society in the Peoples Republic of China is tolerant of them, provided some discretion is exercised.
- (b) The appellant herself has in the past exercised a high degree of discretion to ensure that her sexual orientation is not disclosed. Furthermore she has made it plain in her evidence that she has no desire to become involved in the "gay scene" and will continue to remain highly discrete.

The Authority now deals with these issues:

HOMOSEXUALS NOT PERSECUTED IN CHINA

The real problem facing the appellant in this case, is the abundance of country information and material which indicates that homosexuals, and in particular lesbians, are not the subject of persecution in China. The appellant's fears therefore are not well-founded. The appellant's representative produced material in this regard which it was submitted tended to show that homosexuals were persecuted in China. However, the Authority notes much of that limited material is

either not at all current or relates to overt activity of male homosexuals principally concerning those who have committed criminal or quasi-criminal offences directed towards the maintenance of public order or prevention of overt sexuality. Homosexuals in New Zealand were, and indeed still are, subject to laws of a similar kind which were designed to prevent or penalise activity regarded as objectionable such as soliciting in public places such as in public toilets. Activities involving under age partners (whether homosexual or heterosexual) is, of course, in the Authority's view a matter for the criminal law both here and in China. The preponderance of country information and material the Authority believes indicates that, whilst there is discrimination against homosexuality in China (as indeed there is still to some degree within New Zealand and in other open western democracies), there is no evidence of conduct amounting to persecution. The Authority now refers specifically to the following:

- a) country information and;
- b) recent Australian decisions in support of these conclusions.

COUNTRY INFORMATION

1. Report from DPA Deutsche Presse-Agentur dated 12 July 1996 entitled 'China Focuses on Women, Again Ignores Gays in Aids Fight'. This report indicates that China has an estimated population of 12 million gays and has decided to focus on women in its vow to battle Aids.* It also referred to the decision to continue their crack down on prostitution, drug smuggling and drug addiction and asks hospitals to ban illegal blood sales and supplies. It goes on to say:

"Once again however there was no mention of China's homosexual community, a group which in 1995 was estimated to number between 4 and 12 million men and women, according to research by Chinese journalist Fang, Gang China's most public gay figure. While there are no laws against homosexuals in China most gays and lesbians fear discrimination if their identity is exposed. In cities like Shanghai, Beijing and Tian Jin which have somewhat more visible gay populations parks, public toilets, and public bathing areas frequented by gays have been the target of authorities. Last year Fang told a Hong Kong newspaper he suspected homosexuality also existed among the peasant labourers who flocked to cities looking for work and who in many cases took shelter in the same places. What worries him most he told the South China

* The Authority observes here that if homosexuals form an approximate percentage of any population as USA research would indicate then even at a modest 1%, let alone the 5% sometimes suggested, then the figure of 12 million is very conservative indeed.

Morning Post was promiscuity among China's homosexuals. He said at least 2 out of every 6 confirmed Aids carriers in Beijing in 1994 were gay."

2. The 'Dallas Morning News' dated 14 September 1997. Under the headline 'Chinese Gays Lesbians Enjoy Greater Freedom Many Gather More Openly But Some Say Limits Remain'. The report refers to a small restaurant in Shanghai, where a crowd of homosexuals were gathered listening to an apparently transvestite singer and continued:-

"no one bothers about us any more" said a 32 year old man with a crew cut sitting with a half dozen friends at a corner table "as long as we are not disturbing anyone else we can enjoy ourselves and the police will leave us alone."

As official tolerance of gay men and lesbians quietly grows in China, they are taking their first steps towards openness as the mere existence of this restaurant run by two openly gay managers testifies:

"The last few years have brought a significant if tentative coming out for gays and lesbians in urban China. Until recently gays and lesbians in communist China existed only behind closed doors, almost uniformly considered a social disgrace or a form of mental illness, sometimes treated with electric shock therapy. Now in cities all over the country, gays and lesbians gather and socialise in places openly known as homosexual hangouts such as restaurants, bars and public parks, largely unafraid of the kind of police round ups that were common only a few years ago. Yet many gays and lesbians speaking on condition of anonymity complain that they still face harsh discrimination, that Chinese society is so closed that an overwhelming majority of them keep their sexual orientation secret from their families and co-workers..."

"There is no law against homosexuality in China. In the past, the police have often arrested people and charged them with hooliganism or disturbing public order, simply for gathering in places where gays and/or lesbians were known to meet though such incidents are gradually becoming less frequent. A Mr Wan who helped set up an Aids telephone line stated that "the government no longer has a problem with gays, it has a problem with political organisations." Mr Wan said "as long as you don't organise or speak out you can do what you want." A landmark case involved two lesbians who were arrested for living together in A[nhui] Province in 1992. But after lengthy internal debate, the Ministry of Public Security ruled that there was nothing illegal about two people of the same sex living together. Although, lesbians say life is changing for them as fast as it is for gay men, they have fewer public gathering places. ... As with any touchy issue in China official practice varies from city to city and town to town. In many places gays and lesbians still may face dismissal from work if their sexuality becomes known to their superiors at the same time a growing number of their colleagues may accept it".

3. Christine Hall in her book published by the Scarlet Press London 1997 entitled "Daughters of the Dragon" (Women's Lives in Contemporary China), in a chapter dealing with love and sexual relationships, including

lesbian relationships, stated at page 80:

“In many ways China is the ideal country for homosexual couples of either sex. They can caress each other in public without attracting attention, live together openly - something heterosexual couples usually can't without marriage - as long as they don't declare their homosexuality. One can only guess that what goes on in the dormitories where up to 12 students share a room in strict segregation of the sexes is not unlike the happenings at the average British boys boarding school, possibly even more so because of the lack of knowledge”.

The evidence given to the Authority by the appellant supports this view. The appellant told the Authority that it was quite common in China for girls to hold hands in public, even on the street. She agreed that one would be more discrete in public places in New Zealand.

4. In the Bureau of Democracy, Human Rights and Labour (April 14 1998) Washington, report 'China Profile of Asylum Claims and Country Conditions' under the chapter dealing with claims based on social group the report stated at page 19:

“Claims in this category of cases are rare. Those received by the Department of State usually relate to homosexuality. Chinese authorities generally now appear to be somewhat more tolerant of homosexuality than in earlier years. Amnesty International reported in January 1994: “Generally speaking, although homosexuality is more tolerated than in previous years, it continues to be the subject of strong disapproval and may possibly still led to detention or imprisonment in some areas. The situation is currently not very clear and varies from one region of the country to another. In November 1992 it was reported that the Communist Party no longer regards homosexuality as an offence and provincial police departments have been instructed not to punish homosexuals. This new policy was reportedly published in an internal newsletter of the Ministry of Public Security which stated that detaining homosexuals was illegal but that they should be told to confine their homosexual activity to their homes.... The US Embassy in Beijing reported in April 1995: “Legal provisions criminalising homosexuality in China were repealed in 1992. Although sporadic instances of police harassment against homosexuals continued to occur, this reflects traditional social taboos and homophobia rather than systematic official harassment. Gay activists tell us that policemen generally adopt a don't ask don't tell attitude towards homosexuals. There were no reported cases of police violence directed against people because of their sexual orientation in 1994.... During 1996 and 1997 there were indications that while police monitored gay and lesbian groups for possible political activities, they exercised a live and let live policy. There were no reports of police violence against such groups.”

5. In a report from Asia Week dated 7 August 1998 under the headline 'Revolution by Stages', it was reported “things are gradually getting better for Asia's homosexuals but acceptance is still a long way off”. In a section

dealing specifically with the situation in China the report *inter alia* said:

“Even in politically conservative countries such as China and Malaysia there is little overt anti gay hostility. Homosexuals say they do not fear being picked on by rough necks in the way they are in the west. Their explanation the traditional tolerance found in many Asian cultures. ... Hong Kong Academic Chou Washan suggests homophobia is a by-product of western cultural expansion. Same sex eroticism was prevalent throughout Chinese history he says. This was mirrored in literature such as the classic novel Dream of the Red Chamber, which deals openly with homosexual love. Class and gender were more important than sexual identity in Chinese society says Chou.”...

“In China where the Communist Party had begun easing its control over private lives, young gays are finding it easier to be open about their sexual feelings.. though most still fear being found out by their families. And those homosexuals scarred by the orthodoxy driven persecution of the cultural revolution will probably take their secret to their graves. Even in Hong Kong campaigners found few sympathisers when they attempted in the 1980’s to promote a bill to decriminalise homosexuality. But they persisted and in 1991 Hong Kong became the only place in Asia to legalise homosexual acts, in private, between consenting adults.

6. Report in the New Zealand Herald dated 2nd January 1999 at page B3 under the heading ‘Freedoms Rock Old Prejudices’, refers to the life of a trans-sexual named Jin Xing and comments by her as to present day conditions in China. Underneath her photograph, there is a caption that states:-

“Jim Xing’s life as a chic bar owner is a world away from the time when she was a he and colonel in the People’s Liberation Army”.

In the main text the following comments are made:

“Swathed in a purple velvet gown, with nail polish to match, trans-sexual Jin Xing presides over the Half Moon bar in Beijing’s trendy diplomatic district. The former national men’s dance champion and one time colonel in the People’s Liberation Army Dance Troop, underwent a sex change operation three years ago. She makes no secret of her past but admits that dating can be a problem. “...Jin has become accepted in Beijing in a way unthinkable just a few years ago. Her colourful lifestyle illustrates a sexual revolution now sweeping China an unintended result of economic reforms launched 20 years ago by the late Deng Xiaoping. ...Larger cities boast sex shops and gay bars gigolos and prostitutes openly advertised for business on street corners. ...Ideas in the west are more advanced and we are borrowing them. We have begun to respect people as individuals” said Andun Andun social commentator and author. The author Andun interviewed 1500 people about marriage, divorce and affairs for her latest book Absolute Privacy and comments among other things that the more open and free and easy attitude to sex and marriage amongst heterosexuals “panicked law makers this year proposed a first amendments to the country’s 1980 marriage law that would make extra marital sex a criminal offence”. The draft provisions have met howls of public protests and may well be knocked back. Still they reflect the fears of authorities that the institution of marriage is under threat and with it social stability. “Old

prejudices also still linger. Homosexuals who cruise public parks to pick up lovers risk being beaten up by police and gay bars are routinely closed down... However the contrast between China today and China 20 years ago is dramatic”.

AUSTRALIAN REFUGEE REVIEW TRIBUNAL DECISIONS

1. Refugee Review Tribunal (RRT) NZIS97/16390 (Sydney) (23 September 1998).

The applicant, a citizen of China, claimed refugee status on the grounds of her lesbianism. She had been married and had a child. In a very lengthy and carefully reasoned decision the Tribunal dismissed the appeal and had the following to say at page 12:

“The tribunal has also considered whether it is unreasonable to expect the applicant as a part of a homosexual couple to be so discrete as to avoid any sort of attention. It is the applicant’s evidence that she has never sought to be part of the gay scene in Shanghai. In any event there is no evidence of campaigns against homosexual people in Shanghai. The evidence indicated an unwillingness by the authorities at all levels to act against homosexual people except to the extent that there is breach of the peace. This is consistent with the applicant’s own claim that she encountered no difficulties from authorities except on one occasion after guests from a neighbouring room and hotel staff complained. The Tribunal is satisfied that it is not unreasonable to expect the applicant as a part of the homosexual couple to be so discrete as to avoid any sort of attention. The Tribunal accepts that she may face some social ostracism from her family. The tribunal accepts that her husband may have been upset with her having a relationship while still living in the same house but notes it is her evidence that they have not been getting on well since at least 1994 and she has now had no contact with him for several years.”

At page 5 of the decision the Tribunal observed that:

“The US embassy in Beijing reported in April 1995 there were no reported cases of police violence directed against people because of their sexual orientation in 1994.

2. Refugee Review Tribunal Decision NZIS98/21639 (Sydney) (21 December 1998).

The applicant was a citizen of China who arrived in Australia on 30 June 1997. She applied for asylum on the grounds of fear of persecution because of her lesbianism. At page 3 of the decision the Tribunal stated that:

“She put forward very general comments regarding discrimination against homosexuals in China. She said she feared she would lose her teaching job and as an only child her parents would not be able to accept the fact

that she was a lesbian. She said her family did not know about her sexuality. She had no experience of other lesbians and no knowledge of the gay scene in China. She said nobody accepted same sex relationships in China. She and her companion did not live together and could only meet in secret. She said she did not want to suffer the mental anguish of feeling guilty and insecure about being a lesbian in China. She said the sense of guilt tortured her - she was unable to do what she wanted to do in public like other normal families. She said people in China considered gay and lesbian relationships as immoral. In Australia she said she and her companion passed themselves off as cousins. She said she had never been detained mistreated or harmed in China because of her sexuality. She said if she returned to China she would suffer from discrimination and prejudice. She feared that her parents well known and respected as professional people would be aghast if they found out that she was a lesbian."

In a lengthy and detailed decision, the Tribunal reviewed a considerable amount of country information, and concluded that refugee status should not be granted and made the following observations, at page 10:

"I accept that the applicant has a lesbian relationship with her companion and is therefore a member of a particular social group. The question is whether she faces a real chance of persecution in the PRC on this ground. Judging from the independent country information above the authorities in China do not regard homosexuality as an offence. It seems fairly clear that provincial police departments in China have been instructed not to punish homosexuality (Amnesty International-Violations of Human Rights of Homosexuals January 1994). There is no report of lesbian women being arrested charged or otherwise harassed by the authorities in China. However judging from the independent country information above relations between people of the same sex are not well accepted in China. The treatment that lesbian women might receive within society is dependent upon whether or not their sexual orientation is known upon the location in which they live and whether or not they are sufficiently discrete. In Shanghai for example a cosmopolitan city with a population almost as large as Australia's total population homosexual men are tolerated.

There have been reports of some gay men being arrested but in the instances discussed in the independent country information above this has usually occurred when the gays have been found congregating in bars or where minors are involved or complaints received. There have been no reports of lesbian women being harassed by the authorities or mistreated by society in general whether in Shanghai or indeed anywhere else in China. In my view the situation would be no different in the applicant's home city a large internationalised city and the capital of the applicant's home province."

The Refugee Review Tribunal then cited a number of reliable sources of country information in support of its findings. These sources included 'Amnesty International', the 'South China Morning Post', reports from the Australian Consulate in Shanghai, the Australian Department of Foreign Affairs and an article by M Laris, 'Out of the Shadows', 'News Week' 16 April

1996, 'South China Morning Post' 14 April 1995 and other reports from the 'South China Morning Post'. Newspaper reports from the "Boston Globe" 27 November 1992, 'San Francisco Sentinel' 19 November 1992 entitled 'First Survey of Gays in China Completed' and 'San Francisco Chronicle', even as far back as 12 August 1989, entitled 'Gays in China Fear They Are Next.' 'The Economist' 14 February 1998 and others.

The Authority has not found it necessary to detail these various references in its decision but, of course, they are additional sources to those set out in section A of the Authority's decision above.

3. Refugee Review Tribunal Decision No. NZIS98/21640 (Sydney) (21 December 1998).

This is a decision of the same Tribunal in respect of the companion of the appellant in the above mentioned decision of 98/21639. The decision covers much the same ground as in the previous decision and reaches the same conclusion. It is apparent that the appellant's circumstances were similar to those of her companion, the appellant, in the previous decision.

FINDINGS

This Authority has distilled from the above country information and decisions of the Australian Refugee Review Tribunal that there is (as could perhaps be expected) a general trend towards liberalisation of attitudes both among the Chinese population at large and the governing authorities.

The Authority has taken into account the various submissions and country material supplied by the appellant's representative both before the hearing and subsequently, and has not overlooked an Australian Refugee Review Tribunal decision NZIS93/00846 (8 March 1994) [a decision which runs contrary to the decisions this Authority has referred to above].

That Tribunal decision concerned a review of the Immigration and Ethnic Affairs Department refusal to grant refugee status to the applicant a 29 year old single Chinese male who entered Australia on a student visa in 1992. He claimed to fear persecution by reason of his homosexuality.

This decision of the Tribunal can be distinguished on the facts from that of the

appellant in this case or the applicants in the other Australian cases. However over 6 years have elapsed since that decision was given and even longer since the events complained of occurred. More recent decisions and country information disclose a much more liberal attitude towards homosexuality in China and the Authority considers this decision cannot be relied upon as relevant to today's conditions. The Authority finds therefore that the evidence does not support the submission that homosexuals (whether male or female) are persecuted in the Peoples Republic of China.

APPELLANT'S PERSONAL CIRCUMSTANCES

The Authority finds on the evidence neither the appellant nor her partner L[i] have ever been the subject of any form of discrimination let alone persecution in the past by reason of their sexual orientation. The appellant has in the past acted with the utmost discretion and has been able to continue to live and work in China without even her parents or friends being aware of her true sexual orientation. Whilst her need to hide her "true self" has been a matter of shame and emotional distress to the appellant, it has never resulted in any form of persecution or discrimination. It is the Authority's view that if she returned to China, she would continue to act in a similarly discrete way. This would be the position even if she resumed her relationship with her present partner L or even if she were to form a new relationship. It is probable that any such future relationship would be similarly discrete. In other words, the appellant is not the sort of person who would draw attention to herself or wish to associate with or take part in any overtly gay/lesbian activities. The Authority fails to see how it could construe as persecution the appellant's choice to be discrete and her self imposed restraint from exercising any of the rights which other homosexuals in China may exercise. Furthermore, the Authority notes that even in New Zealand, the appellant has acknowledged, and the Authority accepts, she would not take part in any overtly homosexual activity or lifestyle.

The Authority, therefore, finds that there is nothing in the appellant's personal circumstances that would support the submission that she would personally stand a real chance of persecution if she returned to China.

ECONOMIC DIFFICULTIES

For completeness, the Authority deals briefly with the issues raised by the

appellant that she (and her partner) face a real chance that they will lose their employment as teachers and suffer other forms of economic hardship because of their relationship and sexual orientation. In the first place, the Authority points out the loss of the employment positions they held before leaving China have been lost, not because of their sexuality, but because of failure to return at the expiration of their leave without giving any explanation. Indeed, there is no evidence that the sexual orientation of the appellant or her partner L[i], is even known to her employer or anyone else. However even if the loss of employment could be attributed to their sexuality, two further issues arise.

- (a) The question of female teachers employed in a girls school living in and conducting a homosexual relationship could present school authorities even in some more open western societies with a significant problem involving at least the perception by parents of inappropriateness. The point is perhaps highlighted more in the context of male teachers in a male boarding school.
- (b) The Authority has pointed out in a number of its previous decisions that loss of state employment or benefits is not necessarily indicative of persecution particularly where employment in the growing private sector is available. Furthermore, employment at a lower status or pay would be available and the appellant and her partner have both demonstrated their willingness and ability to engage in such type of employment by working in restaurants in New Zealand. For more detailed discussion by the Authority upon this topic see Refugee Appeal No. 70365/96 (24 April 1997), Refugee Appeal No. 70996/98 (27 August 1998), Refugee Appeal No. 2258/94 (21.11.96), Refugee Appeal No. 2124/94 (30.4.96) and see US Department of State - China Country Report on Human Rights Practices in 1998 (26 February 1999) where in the introductory section it is reported:

“economic reforms have raised living standards for many, providing greater independence for entrepreneurs, diminishing state control over the economy and citizens’ daily lives and creating new economic opportunities. Despite serious economic difficulties in the state sector, individual economic opportunities expanded in non-state sectors, resulting in increased freedom of employment and mobility”.

CONCLUSION

The Authority is satisfied that there is no real chance that the appellant will suffer persecution if she is returned to her country of origin. Accordingly 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.

.....
(Chairperson)