

<b>Appellants:</b>	<b>AZ (Russia)</b>
<b>Before:</b>	M Benvie (Member)
<b>Counsel for the Appellants:</b>	S Lamain
<b>Counsel for the Respondent:</b>	No Appearance
<b>Date of Hearing:</b>	15 and 16 December 2021
<b>Date of Decision:</b>	11 April 2022

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## **DECISION**

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[1] This is an appeal against a decision of a refugee and protection officer declining to grant refugee status or protected person status to the appellants, all of whom are citizens of Russia.

[2] The appellants are a mother (AA), her adult son (BB) and her 13-year-old daughter. For the purposes of section 375 of the Immigration Act 2009 (the Act), AA acted as the responsible adult for her daughter.

### **INTRODUCTION**

[3] AA claims to be at risk of being killed or otherwise seriously harmed in Russia by police or state security services as a result of her observing and reporting an incident of electoral fraud, her involvement in supporting the opposition to the Russian government [withheld].

[4] BB claims to be at risk of being killed or seriously harmed in Russia by police or state security services as a result of him assisting with his mother's reporting of an incident of electoral fraud, his own political views and his participation in an anti-government rally in 2019.

[5] The primary issue on appeal is whether the appellants have a well-founded fear of being persecuted or suffering other qualifying harm in Russia.

[6] For the reasons that follow, the appeals are declined.

[7] Given that the same claim is relied upon in respect of all limbs of the appeal, it is appropriate to record it first. It is also necessary to record that the evidence of AA and BB was taken as applicable to all three appeals.

## **THE APPELLANTS' CASE**

[8] The account which follows is a summary of that given by the appellants at the appeal hearing. It is assessed later.

### **Evidence of the Mother**

[9] AA is a 53-year-old who was born in Z city, Russia. She has a brother who lives in Russia.

[10] In 1990, AA graduated from university and began working as a teacher at a school in a rural area in Russia. The following year, she married her first husband and began working as a lecturer at a university in Z city. In 1994 her son was born, and she subsequently began studying law at a university in Z city.

[11] In 1998, AA and her first husband divorced.

[12] In 2000, AA completed her law degree and married her second husband. She began working as a lawyer specialising in civil law and human rights.

[13] In 2003, AA commenced working as a senior lecturer in law at a university in Z city. She also enrolled in a Doctor of Philosophy (PhD) program in law at the university. After completing her PhD in 2006, she was appointed to the position of associate professor at the university.

[14] The daughter was born in 2008. The mother's second husband was killed in an accident in 2010.

### *The May 2016 election*

[15] In May 2016, a party's 'primary' election was held to elect two local candidates to represent the ABC party in the forthcoming state parliamentary

election to be held later that year. Because of her academic interest in electoral law, AA was appointed, by an independent election supervising committee, to act as a volunteer election observer. In this role she was responsible for overseeing the work of 12 other volunteer observers at different election polling stations. Her son, BB, was an observer at one of these polling stations.

[16] On the evening of the election day, and after the polling stations had closed, AA was contacted by her son. He told her that one of the election officials at his polling station had placed a large bundle of voting papers into a polling box. Only single, completed voting papers, placed into the box by each voter after he or she had voted, should have been placed into the polling boxes at any one time. AA had also received reports during the day from some of the other volunteer observers who had also noticed irregularities in the conduct of officials at their polling stations.

[17] AA then telephoned CC, a journalist and former State Duma parliamentarian that she had met several weeks before election day. CC was also a candidate in the May 2016 election. She told CC about the polling station irregularities that had been reported to her by the observers, including what her son BB had told her happened at his polling station. CC said that he would immediately go to BB's polling station to investigate for himself what had occurred there.

[18] Immediately after the election, AA sent a written report to the election supervising committee in which she recorded the irregularities that had been reported to her from the polling stations. She also attended a press conference held by CC at which she confirmed to those present that there had been voting irregularities at polling stations.

#### *Events after the May 2016 election*

[19] AA subsequently spoke about these election irregularities at an academic conference (XYZ conference) hosted by a government ministry. She also wrote about them in an article published in an academic journal.

[20] In September 2016, after the start of a new university academic year, AA was asked by the rector of the university to resign from her position as a result of her publicising the voting irregularities during the May 2016 election. The rector stated that he did not want to see the university, or himself, connected in any way to the AA's outspokenness regarding fraud in the May 2016 election.

[21] Although she did not want to resign, AA did so as it was apparent to her that there was no future for her at the university. Her teaching load had been increased markedly and she had been removed from teaching classes in election law as well as some related jurisprudential subjects. AA had herself developed the university's course in election law and had written the books that were used for teaching this course. CC, despite his political connections and influence, was unable to intervene so as to change this outcome.

[22] After leaving her employment at the university, AA worked for a short while as a self-employed tutor. She subsequently obtained a position as a teacher at a high school in Z city and continued to write academic articles, however none of these articles were accepted for publication in any of the journals her previous articles had been published in. Attempts by her to attend academic conferences were blocked. She also sought appointment to another observer role for the subsequent State Duma election, however this was blocked by the independent election supervising committee.

[23] AA made posts on the internet and Russian social media platforms critical of the ABC party and DD. She also posted commentary critiquing laws passed by the State Duma, in which the ABC party held the majority, as well as indicating her support for opposition politicians.

[24] Prior to the September 2018 state gubernatorial election, AA made posts on social media in support of the DEF party candidate, EE.

[25] In July 2019, after BB had been offered a place at an English language school in Y city and her daughter had been offered a place at a Y city school, AA applied for a New Zealand visitor visa. At the time, she was concerned as to the family's future in Russia because she had been 'blacklisted' as an academic in Russia and could not continue her academic work there. She was also concerned that the political situation in Russia had worsened with the silencing of dissenting voices and opinions.

[26] In October 2019, AA, BB, and her daughter arrived in New Zealand. AA held a visitor visa, while BB and her daughter both held student visas.

[27] In March 2020, AA, BB, and her daughter applied for recognition as refugees or protected persons. The decline of their claims by the Refugee Status Unit in May 2021 led to the present appeals.

[28] In November 2020, AA attended (with BB) a protest held in Y city in respect of the poisoning of Russian opposition figure, Alexei Navalny and Russian

interference in Belarus. A photograph of this protest, which includes AA, was included in a series of photographs that accompanied a news report on the Russian language version of the BBC website. She has supported, both in Russia and in New Zealand, Navalny's 'Anti-Corruption Foundation' (FBK), and a piece written by her decrying the arrest and mistreatment of EE was posted on a Russian language 'blog' website.

### **Evidence of the Son**

[29] BB was born in 1994 in Z city, Russia. After completing his schooling, he obtained a computer science degree at a university in Z city.

[30] At the time of the May 2016 primary election held to select candidates for the ABC party for the forthcoming State Duma election, BB was a student at university. At his mother's request, he agreed to volunteer as a election observer at a polling station during the May 2016 primary election. Although he had had no personal involvement in politics or the political process prior to this election, BB had been interested in reading about politics for some time prior to this.

[31] The polling station BB was allocated was at a school hall in an industrial area. A nearby classroom was used by electoral committee officials. As an observer, one of his tasks was to count the number of people who came through the door and compare this to the number of voting papers placed into the ballot boxes. He was also responsible for ensuring that no one was able to approach people inside the polling station to influence them as they cast their votes.

[32] Towards the end of the day, BB observed an electoral committee official walk past a ballot box, and he heard the sound of something heavy being dropped into the ballot box. When BB approached the official, she stated that she had the right to make her vote as a voter, however, it was apparent that she had dropped a bundle of voting papers into the ballot box, not a single voting paper. BB said that he would be reporting what he had observed, but the official did not respond to this.

[33] Before the polling station closed at 8 pm, BB telephoned his mother and told her that he had seen an election committee official drop a bundle of voting papers into a ballot box and that she had wrongly claimed that this was simply her casting her own vote.

[34] After the polling station closed, BB was present while the ballot papers were counted. About 400 people had come through the door to vote, but more than

1,200 ballot papers were counted. Following the completion of vote-counting, the election candidates, including CC, who had been waiting outside were allowed in. Police officers also arrived, and they guarded the electoral committee officials so that they could leave the polling station unimpeded.

[35] BB then went with CC to the city council administration building but the police did not allow them (or anyone else) to enter. A while later, a city council official came out and stated that CC was one of the two successful candidates in the election. BB provided his personal details and a written statement of what he had observed to the police, including his opinion that at least one member of the electoral committee had engaged in fraud.

[36] A week after the election day, BB attended a press conference held by CC. During this conference, CC spoke to the journalists about what BB had witnessed at the polling station (and in doing so he referred to BB by his name). BB had provided CC with a video he took of the ballot box in question being opened, but he does not know whether this video was provided to the journalists by CC. Later that same day, a press conference was held by the ABC party which BB also attended. During this second press conference, it was announced that CC was an unsuccessful candidate as he had placed third in the election.

[37] When he returned to university after the events of the May 2016 election, BB noticed that things had changed for him. A woman who worked in administration at the university asked one of his friends about his political views and BB noticed that university administration staff appeared to be surveilling him. Notwithstanding this interest in him, BB graduated from university in July 2017 without any difficulties.

[38] After graduating, BB commenced working for a bank in Z city for approximately one year. He then moved to X city where he worked for another business involved in the financial industry.

[39] In July 2019, BB attended a large political protest held in Moscow that had been organised by Mr Navalny. The protest related to the selection of candidates for the 2019 Moscow Duma election and was held at Sakharov Avenue.

[40] The events that followed the May 2016 election convinced BB that his family was “not welcome” in Russia. His mother had been forced to resign from her university job and, in 2018, he had been shown a screenshot from a social media group in which a former student leader had sought to find out who BB and other former classmates of his had voted for in the Russian presidential election.

This indicated to him that he was being monitored for his political views even after leaving university.

[41] BB resigned from his job in July 2019 and applied for a New Zealand student visa the following month. He wanted to seek political asylum in New Zealand but did not know how to do this. Since he arrived in New Zealand, the political landscape in Russia has worsened. The police or Federal Security Service (“FSB”) can readily find reasons to arrest someone, and BB’s friend was detained in Russian police custody for 48 hours simply because of his attendance at a protest. The protest BB attended in 2019 was recorded by a number of cameras, and videos of the protest were shown on news media.

[42] In November 2020, BB attended (with his mother) a protest held in Y city in respect of the poisoning of Russian opposition figure, Alexei Navalny and Russian interference in Belarus. A photograph of this protest was included in a series of photographs that accompanied a news report on the Russian language version of the BBC website.

### **Material and Submissions Received**

[43] Counsel has filed written opening submissions dated 14 May 2021 together with:

- (a) a written statement by AA;
- (b) a written statement by BB;
- (c) a bundle of country information.

[44] The Tribunal and the appellant also have before them copies of the Refugee Status Unit files which include all documents which were before that body at the time of its decision.

[45] At the conclusion of the hearing, counsel made oral closing submissions.

### **ASSESSMENT**

[46] Under section 198 of the Immigration Act 2009 (“the Act”), on an appeal under section 194(1)(c), the Tribunal must determine (in this order) whether to recognise the appellants as:

- (a) refugees under the 1951 *Convention Relating to the Status of Refugees* (“the Refugee Convention” or “the Convention”) (section 129); and
- (b) protected persons under the 1984 *Convention Against Torture* (section 130); and
- (c) protected persons under the 1966 *International Covenant on Civil and Political Rights* (“the ICCPR”) (section 131).

[47] In determining whether the appellants are refugees or protected persons, it is necessary first to identify the facts against which the assessment is to be made. That requires consideration of the credibility of the appellants’ account.

### **Credibility**

[48] The Tribunal accepts the appellants’ accounts as credible.

#### *Facts as found*

##### *— AA and her daughter*

[49] AA is a Russian national, aged 53 years. She is the holder of a doctorate in law degree. Her daughter, aged 13, is also a Russian national.

[50] Until September 2016, AA held an academic teaching position at a university in Z city, Russia. Academic articles written by her were published in journals and she gave presentations at academic conferences. Textbooks she wrote on election law were used by university students.

[51] In May 2016, AA was appointed as a volunteer election observer for the ‘primary’ election held to elect two local candidates to represent the ABC party in the forthcoming state parliamentary election. In this role, she was responsible for overseeing the work of 12 other volunteer observers at different election polling stations. She subsequently publicised, thorough a speech at a conference and an academic article, incidents of electoral fraud that were reported to her during the election day.

[52] As a result of her publicising these incidents of electoral fraud, AA was forced to resign from her position at the university. She then obtained employment teaching at a high school. Later, she found that she was blocked from attending

academic conferences and academic journals refused to publish articles submitted by her.

[53] AA has made posts on Russian social media platforms critical of the ABC party and DD. She has also posted commentary critiquing laws passed by the State Duma, in which the ABC party held the majority, as well as indicating her support for opposition politicians. Prior to the September 2018 state gubernatorial election, AA made posts on social media in support of the DEF party candidate, EE.

[54] In 2020, AA attended a protest held in Y city in respect of the poisoning of Russian opposition figure, Alexei Navalny, and Russian interference in Belarus. A photograph of this protest, which includes her, was included in a series of photographs that accompanied a news report on the Russian language version of the BBC website. She has made posts, both in Russia and in New Zealand, in support of Mr Navalny's 'Anti-Corruption Foundation' ("FBK").

— *BB*

[55] BB is a Russian national, aged 27 years. He is the holder of a Bachelor of Science degree and, in Russia, worked in information technology for the financial services industry.

[56] In May 2016, while acting as an election observer at a polling station in Z city during an ABC party 'primary' election, he witnessed an incident of voting fraud. He provided a written statement to the police and later attended a press conference at which the voting fraud incident he witnessed was made public. In 2018, he learnt that a former student leader had sought to find out how he (and other former classmates) had voted during the 2018 Russian presidential election.

[57] In July 2019, while living in X city, BB attended a large anti-government protest (the protest at Sakharov Avenue).

[58] In 2020, BB attended a protest held in Y city in respect of the poisoning of Russian opposition figure, Alexei Navalny and Russian interference in Belarus. A photograph of this protest, which includes BB, was included in a series of photographs that accompanied a news report in the Russian language version of the BBC website.

## The Refugee Convention

[59] Section 129(1) of the Act provides that:

A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention.

[60] Article 1A(2) of the Refugee Convention 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.

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

- (a) Objectively, on the facts as found, is there a real chance of the appellants 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 Claim to Refugee Status

[62] For the purposes of refugee determination, “being persecuted” requires serious harm arising from the sustained or systemic violation of internationally recognised human rights, demonstrative of a failure of state protection — see *DS (Iran)* [2016] NZIPT 800788 at [114]–[130] and [177]–[183].

[63] In determining what is meant by “well-founded” in Article 1A(2) of the Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379, where it was held that a fear of being persecuted is established as well-founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective — see *Refugee Appeal No 76044* (11 September 2008) at [57].

*Objectively, on the facts as found, is there a real chance of the appellants being persecuted if returned to Russia?*

[64] In making this assessment, it is first necessary to consider relevant country information.

[65] The United States Department of State *2020 Country Reports on Human Rights Practices: Russia* (30 March 2021) (“the Department of State report”) noted that significant human rights issues included severe suppression of freedom of expression, media and the right to peaceful assembly as well as severe limits on participation in the political process, including restrictions on opposition candidates and the ability of civil society to monitor election processes. As to interference in election processes, the report stated:

The September 13 elections of 18 governors and 11 regional legislative bodies were marked by... allegations of government interference and manipulation. Independent election monitors logged thousands of reported abuses during these elections at regional and local levels.

[66] The Department of State report also recorded the poisoning of high-profile opposition activist Alexei Navalny, probably by officers from Russia’s FSB, and the detention of political prisoners including journalists and opposition activists. Politically motivated reprisals against persons located outside Russia included using Interpol to target political enemies abroad and using bilateral pressure to have other countries take action against specific individuals; the detention of Nikolay Makhlichev by Belarusian authorities was cited as an example of the latter. The report also noted the use of national security and terrorism laws to arrest or punish critics of the government or to deter criticism of government policies; the arrests of historian Andrey Zhukov and journalists Abdulmumin Gadzhiev and Svetlana Prokopyeva were cited as examples of this. As to academic freedoms, the report noted:

There were reports that the government sanctioned academic personnel for their teachings, writing, research, or political views. In August the HSE [(Higher School Economics)] decided not to renew the contracts of five lecturers due to the “reorganization” of the university. Among the lecturers was Kirill Martynov, a political correspondent for the independent *Novaya Gazeta* newspaper... The university also failed to renew the contract of world-renowned sociologist Ella Paneyakh. Media outlets reported HSE administrators asked their faculty members not to criticize Russian authorities while publicly identifying with the university.

[67] Regarding freedom of peaceful assembly, the Department of State report recorded:

Arrests or detentions for organizing or taking part in unsanctioned protests were common. The July 9 arrest of Khabarovsk Kray governor Sergey Furgal sparked more than four months of continuous protests in the region, with solidarity protests occurring in other Russian Far East cities including Vladivostok, Birobidzhan, and on Sakhalin Island. None of the protests was sanctioned by the authorities. According to official Khabarovsk Kray statistics, between July 11 and September 6, a total of 4,126 citations were issued for drivers participating in motor rallies that “interfered” with the flow of traffic, 173 citations were issued for participation in an unsanctioned meeting, and 22 individuals were detained. Among those detained and fined was Father Andrey, an Orthodox priest who did not chant slogans or hold

placards. He received the largest fine during the series of protests and was detained for three days.

[68] The constraining of peaceful assembly and freedom of expression by Russian authorities was referred to in Amnesty International's report, *Amnesty International Report 2020/2021: State of the World's Human Rights* (7 April 2021) at pp303–304:

On 15 July, over a hundred peaceful protestors against constitutional changes were arbitrarily arrested and at least three severely beaten by the police in Moscow. Dozens were heavily fined or detained for five to 14 days...

...

Restrictions on freedom of expression continued. On 1 April, amendments to the so-called "fake news" law, first passed in 2019, criminalized dissemination of "knowingly false information about circumstances posing a threat to the lives and security of citizens and/or about the government's actions to protect the population."... Hundreds of people were fined under administrative proceedings, and at least 37 faced criminal proceedings under this law, many of them critical civil activists, journalists or bloggers...

[69] Notwithstanding these constraints on peaceful assembly, the protest held at Sakharov Avenue (attended by BB) on 20 July 2019 was attended by around 20,000 people. This was a "permitted" rally and seven people were detained by the authorities; see "Moscow Protest: Thousands Demand Fair Elections" *BBC News* (20 July 2019). A subsequent protest, not approved by the authorities, in Moscow on 27 July 2019 saw between 15,000 to 20,000 people attend and with more than 1,300 arrested; see I Nechepurenko "Moscow Police Arrest More Than 1,300 at Election Protest" *The New York Times* (27 July 2019). A protest by more than 20,000 people was held in Moscow on 28 September 2019 protesting against the detention of those arrested during the July protests; see "Thousands Demand Protesters Freed in Moscow Rally" *BBC News* (29 September 2019).

[70] Similarly, the constraining of freedom of expression in Russia is far from absolute. As a very recent example of this, a group of 12,000 doctors, nurses and paramedics are reported to have signed a letter addressed to the Russian President expressing their opposition to the Russian invasion of Ukraine; see A Merelli "12,000 Russian Healthcare Workers Dared Publicly Oppose Putin's War" *Quartz* (5 March 2022).

[71] The systemic abuse of detainees and prisoners by authorities within Russian detention facilities and prisons was noted in both the Department of State and Amnesty International reports referred to above, as well as in a recent media article, A Roth "'I Was Always Scared': Inmate Who Exposed Systemic Russian Prisoner Abuse" *The Guardian* (8 November 2021).

[72] A report by Freedom House, N Schenkkan and I Linzer *Out of Sight, Not Out of Reach: The Global Scale and Scope of Transnational Repression: Russia* (4 February 2021), referred to the Russian government's treatment of elements of the Russian diaspora:

The Russian government conducts highly aggressive transnational repression activities abroad. Its campaign, which heavily relies on assassination as a tool, targets former insiders and others who are perceived as threats to the regime's security. The government pairs this campaign with control over key cultural institutions operating abroad, in an effort to exert influence over the Russian diaspora. Unlike other states profiled in this report, however, the government does not use coercive measures against the Russian diaspora as a whole. Instead, it focuses on repressing activism within its own borders and on maintaining control of the domestic information environment to ensure that exiles do not reach domestic audiences.

### *Application to the facts*

#### *— AA and her daughter*

[73] The Tribunal accepts that AA has genuine trepidation about returning to Russia and that the loss of her university position and academic connections, as a result of her speaking out about fraud during the May 2016 ABC party primary election, has been distressing for her.

[74] The Tribunal is also satisfied that, if arrested, AA is likely to face serious harm if she is detained for any length of time, given the available country information as to the conditions and treatment that detainees face in detention facilities and prisons.

[75] However, the central issue for the Tribunal is whether there is a real chance that AA would be arrested or detained if she was returned to Russia.

[76] The Tribunal finds, for the reasons that follow, that neither the country information nor the evidence adduced establishes that the chance of AA being the victim of serious harm, arising from breaches of internationally recognised human rights, in the future, is no more than remote and speculative.

[77] First, AA lived in Russia for three years following the events of the May 2016 election. During that time, she publicised the incidents of election fraud in a published academic article and at an academic conference. She also made posts on the internet and social media critical of the ABC party, DD and laws passed by the State Duma as well as indicating her support for opposition politicians. None of this activity had any serious consequences for her beyond

the, understandably distressing, loss of her university teaching position and her exclusion from academic publishing and attendance at academic conferences. While she experienced the type of sanctioning by university authorities referred to in the country information cited above, the evidence did not establish that the Russian authorities, such as the police and Federal Security Services (“FSB”), took any interest in AA at any time prior to her departure from Russia.

[78] Second, the evidence did not establish that AA will be deprived of the opportunity to find gainful employment in Russia due to either her publicising the May 2016 election fraud or her subsequent internet and social media posts. Although it involved a significant ‘step down’ from the status she enjoyed as a university lecturer and academic, AA readily found employment as a secondary school teacher after being forced to resign from the university and she remained in that teaching position until her departure from Russia.

[79] Third, it was not established that AA’s continued posts on the internet and social media critical of the Russian government after her arrival in New Zealand, or her participation in an anti-Russian government protest here, gives rise to a real chance of AA being persecuted if she returns to Russia. The country information does record instances of politically motivated reprisals by the Russian state against some individuals outside Russia, particularly former ‘insiders’ and opposition leaders, however some context is required. AA is neither a former insider nor an opposition leader. The Russian diaspora has been estimated at 25–30 million people, the second largest after that of China; see Institut Français des Relations Internationales (IFRI), M Suslov “*Russian World*”: *Russia’s Policy Towards its Diaspora*” (19 July 2017). As noted in the country information cited above, the Russian government does not use coercive measures against the Russian diaspora as a whole. Instead, its focus is on repressing activism within its own borders and on maintaining control of the domestic information environment to ensure that criticism from abroad does not reach domestic audiences. There is no evidence that AA is currently of interest to the Russian authorities because of her internet or social media posts, either as to those she made within Russia or posted in New Zealand.

[80] The Tribunal reminds itself that the “real chance” test does not require certainty or even likelihood that an event is going to occur. However, the risk must be beyond “remote and speculative”. While the Tribunal accepts that AA is likely to continue to make posts on the internet and social media platforms that are critical of the policies of the present Russian government upon her return to Russia, there is no reason to consider that this will attract particular attention or

put her at risk of harm to the real chance level. In this regard, the Tribunal notes that she posted criticism of the policies of state and Russian governments on the internet and social media platforms in Russia for more three years prior to her arrival in New Zealand without being arrested, detained, or suffering serious harm.

[81] The Tribunal finds that AA has not established that there is a real chance of her being subjected to serious harm arising from the sustained or systemic violation of internationally recognised human rights if she returns to Russia. It follows that, viewed objectively, she does not have a well-founded fear of being persecuted there. Given that her daughter's fear of persecution is for the same reason as that of her mother, it follows that the daughter also does not have a well-founded fear of being persecuted in Russia.

— *BB*

[82] The Tribunal is also satisfied that, if arrested, BB is likely to face serious harm if he is detained for any length of time, given the available country information as to the conditions and treatment that detainees face in detention facilities and prisons. However, as noted above, the central issue for the Tribunal is whether there is a real chance that BB would be arrested or detained if he was returned to Russia.

[83] The Tribunal finds that neither the country information nor the evidence adduced establishes that the chance of BB being the victim of serious harm, arising from breaches of internationally recognised human rights, in the future, is more than remote and speculative. BB faced no significant difficulties in Russia after his role in reporting irregularities at his polling station during the May 2016 party primary election. Nor does the subsequent interest of a former student leader in how BB and his former classmates voted in the presidential election indicate a specific interest in BB by the Russian authorities. While BB was a participant in a protest held in Moscow in July 2019, the Tribunal notes that he was amongst tens of thousands of people at that particular rally. While his subjective fear that he was photographed by police or that his image was captured in news reports of that day is understandable, there is no objective evidence establishing that there is a real chance of him being arrested for his attendance at that rally.

[84] The Tribunal notes that, in the past, BB attended just one large political protest in Moscow. Having not attended more than one protest in the past, it seems unlikely he would do so in the future, but even if he were to attend such a protest any risk to him would arise from being in the wrong place at the wrong time if law enforcement authorities and protestors clash in a public place where he

happens, by chance, to be. Such a degree of risk is no more than speculative and remote, and does not rise to the level of a real chance.

[85] The Tribunal finds that the evidence did not establish that there is a real chance of BB being subjected to serious harm arising from the sustained or systemic violation of internationally recognised human rights if he returns to Russia. Viewed objectively, he does not have a well-founded fear of being persecuted there.

*Is there a Convention reason for the persecution?*

[86] Having regard to the above findings, it is not necessary to address this issue.

### **Conclusion on Claim to Refugee Status**

[87] For the above reasons, the appellants are not entitled to be recognised as refugees under section 129(1) of the Act.

### **The Convention Against Torture**

[88] Section 130(1) of the Act provides that:

A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand.

### **Assessment of the Claim under Convention Against Torture**

[89] Section 130(5) of the Act provides that torture has the same meaning as in the *Convention Against Torture*, Article 1(1) of which states that torture is:

... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

### **Conclusion on Claim under Convention Against Torture**

[90] The appellants rely upon the same evidence in support of their claims under the *Convention Against Torture* as they did to support their claims under the

Refugee Convention. The Tribunal has already found that the evidence does not establish that they have a well-founded fear of being persecuted in Russia. For the same reasons, the Tribunal is satisfied that the appellants have not established that there are substantial grounds for believing that any of them would be in danger of being subjected to torture if they were to return to Russia. They are not entitled to be recognised as protected persons under section 130(1) of the Act.

### **The ICCPR**

[91] Section 131 of the Act provides that:

- (1) A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

...

- (6) In this section, cruel treatment means cruel, inhuman, or degrading treatment or punishment.

### **Conclusion on Claim under ICCPR**

[92] Again, the appellants rely upon the same evidence in support of their claims under the ICCPR as they did to support their claims under the Refugee Convention. The Tribunal has already found that the evidence does not establish that they have a well-founded fear of being persecuted in Russia. For the same reasons, the Tribunal finds that they have not established that there are substantial grounds for believing that any of them would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if they were to return to Russia. They are not entitled to be recognised as protected persons under section 131(1) of the Act.

### **CONCLUSION**

[93] For the foregoing reasons, the Tribunal finds that:

- (a) the appellants are not refugees within the meaning of the Refugee Convention;

- (b) the appellants are not protected persons within the meaning of the *Convention Against Torture*;
- (c) the appellants are not protected persons within the meaning of the *International Covenant on Civil and Political Rights*.

[94] The appeals are dismissed.

**Order as to Depersonalised Research Copy**

[95] Pursuant to clause 19 of Schedule 2 of the Immigration Act 2009, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellants names and any particulars likely to lead to the identification of the appellants.

"M Benvie"  
M Benvie  
Member

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Copy released for publication.

M Benvie  
Member