

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76312

AT AUCKLAND

<u>Before:</u>	J Baddeley (Member)
<u>Counsel for the Appellant:</u>	D Mansouri-Rad
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	16 & 17 March 2009
<u>Date of Decision:</u>	3 June 2009

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) declining the grant of refugee status to the appellant, a national of Iran.

INTRODUCTION

[2] The appellant arrived in New Zealand on 21 September 2008 and claimed refugee status on arrival. He was interviewed by the RSB and was declined refugee status on 16 January 2008. It is against this decline decision that he now appeals to this Authority.

THE APPELLANT'S CASE

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

[4] The appellant is a 29 year old, single Azeri man who has lived all his life in Z with his father and mother, one sister and two brothers. His father is a retired greengrocer and his two brothers own their own businesses. His sister is a

student. The family speak Azeri Turkish at home but Farsi was the language of instruction used during the appellant's education.

[5] The first problems the appellant experienced were at intermediate school because he chose to wear jeans and T-shirts to which the school authorities objected. He also refused to attend compulsory communal prayers. When the appellant was 12 years old his father made him participate in the *Ashura* mourning ceremony. In accordance with this ritual, the appellant was hit on the head and sustained lasting scarring. He became disillusioned with Islam and avoided attending prayers either at school or at the mosque. Because of his refusal to observe the precepts of Islam he was not selected for a national athletics team although he won the national shot put event. Eventually, his obvious intransigence caused him to be expelled from high school at the age of 17.

[6] He was once detained, questioned and 'roughed-up' by some soldiers for refusing to obey an order that he and his friends disperse from the usual meeting place in their neighbourhood.

[7] After leaving school, he initially worked in his father's shop and then found employment as a welder and metal polisher. He was able to avoid military service because his father obtained an exemption on medical grounds from a friendly official. The appellant worked as a welder for about three years and then took up painting.

[8] In 2002, the appellant was arrested for disorderly behaviour when celebrating *Chaharshanbeh Soori* (a traditional Iranian celebration). He was taken to the police station, questioned and then taken to court and fined 3 million *rial*. On another occasion he and his brother were arrested by *Basij* in a park because they had been drinking alcohol. They were questioned, physically mistreated and made to sign an undertaking that they would report to the *Basij* before they went into the park in future. Each of these incidents added to the appellant's resentment towards the regime and, in particular, its discrimination against Azeri.

[9] The appellant knew that Azeri were often passed over in favour of others as local and national government officials. Azeri language and traditional dress were discouraged and Azeri speakers had to use interpreters when dealing with officials who spoke only Farsi. The only broadcasts on radio or television in Azeri Turkish were those available from Turkish radio and television stations. No Azeri names were registered on birth certificates and only Farsi shop signs were allowed. He

and his friends met at the local coffee shop where they discussed and complained about the discrimination against Azeri. The appellant was unaware of any political group promoting Azeri rights which he would be able to join. Although he had heard of the Pan Turkishman Group (an Azeri nationalist movement) from an uncle, he could not establish contact with this movement which was illegal and secretive.

[10] In May 2006, the *Iran* (a national newspaper) published a cartoon depicting Azeri people as cockroaches. This was very offensive and gave rise to protests in many parts of Iran. The appellant joined the street protest march held in Z at about 6pm. Half an hour after he arrived, a bank was set alight and he saw uniformed and plain-clothed officials move into the crowd and begin striking protestors with clubs. The appellant was hit on his back, fell to the ground and was dragged off into a car and taken to the central police station. There, he was placed in a cell with others arrested from the protest. He was later transferred to a detention facility where he was interrogated about why he had joined the protest and the identity of the others involved. He was beaten until he collapsed and was taken to a cell so small that he could not stand up in it nor sit down. The most serious injuries he sustained were to his nose and ear. These were bleeding continuously and his hearing was impaired.

[11] Two prison guards took him by car to a local hospital for treatment. Initially he was taken to an X-ray room, the guards waiting outside while the technician performed the X-ray. He was then examined by a doctor who treated the blockage in his ear and advised him that his ear drum was damaged. The doctor decided to have further X-rays done and so the appellant was kept in hospital overnight, a guard remaining by his bed. The next day he was taken by wheelchair to the X-ray room. The appellant recognised the radiologist AA. When they were alone in the X-ray room, he pleaded with AA to help him to escape. AA said he would be X-rayed by him again after the proposed operation to his nose. AA kept their conversation brief lest the guards became suspicious. Later in the day the appellant's nose was operated on and dressed with a plaster. The doctor directed that he be taken again to be X-rayed to ensure that the bones in his nose had been correctly adjusted.

[12] The guard accompanied him to the X-ray room and waited outside during the X-ray as before. AA was again the radiologist and he and the appellant were the only two people in the X-ray room. He told the appellant that he could leave

through the window only about half a metre above the ground and run across a courtyard to the street where his cousin BB was waiting to take him away. AA told the appellant to push him over so that it would look as though the appellant had forced him out of the way in order to make his getaway. The appellant followed his instructions and found BB waiting. BB took him on his motorcycle to his aunt's house in the city. He stayed there only briefly and was then taken by car to a village about 25 kilometres from the town to the home of DD, a relative of his grandmother whom he had often visited with his family. The appellant knew that he could trust DD.

[13] The appellant remained there for about a year, keeping to the house and occasionally going to the orchard. He did not socialise with any of the villagers. He telephoned his brother and BB occasionally. They told him that AA had been questioned about his escape for about 10 hours and released. The appellant's home and his grandfather's home were raided and CC, his brother, taken for questioning and then released.

[14] The appellant found the confinement in DD's home very irksome and dull. He had nothing to do. After being there for a year, he arranged for an uncle to find him a job where he would be safe from the intelligence service. His uncle organised painting contracts and found him a job painting a large empty warehouse in an industrial zone. The appellant lived in the warehouse in the guardroom. His uncle brought him food. The only other person he saw during that time was one other fellow worker. He never left the premises; his uncle brought him all the necessary supplies. After a month of this job he learnt that DD's home in the village had been raided and DD's son taken for questioning about the appellant.

[15] The appellant left the warehouse to stay with another relative in a town about two hours drive away. His brother CC told him that obviously the security forces were still searching for him and advised him to leave Iran. CC organised a people smuggler, BB, to have the appellant taken from Iran illegally across the border to Turkey and eventually to the United Kingdom. His family paid BB €16,000.

[16] The appellant met BB in Turkey and travelled from there to Greece with about 14 other illegal migrants. They were arrested by Greek officials and issued with removal orders and then released. The appellant remained illegally in Athens for several months until BB arranged for him to travel by truck to Spain.

[17] The appellant had arranged to contact BB in Spain but was unable to do so. BB's friend advised him that BB could not help him at that time because he himself was on the run due to a failed people smuggling venture. BB's friend told the appellant to apply for refugee status in Spain. The appellant contacted the appropriate Spanish immigration officials and applied for refugee status, giving his correct personal details. The Iranian woman interpreter assigned to help him advised him to embellish his story to ensure his application would be successful by omitting any reference to his escape from hospital and substituting the story that he was in breach of reporting requirements imposed as a condition of bail and that his brother was killed in the protest and he himself had psychiatric problems. Eventually he and the interpreter had a falling-out. She threatened that she would get revenge. Sometime later the appellant contacted his family in Iran who told him that officials had again gone to their home and interrogated his brother. The officials knew he had applied for refugee status in Spain. The appellant believes that the Iranian interpreter had given this information to the Iranian authorities.

[18] The appellant was assigned a lawyer in Spain to assist with his refugee application. He was interviewed by the immigration authorities and eventually received a decision which advised that his case would not be considered by them because they had discovered he had come to Spain via Greece so he would have to make his refugee application there as it was his point of entry into Europe. He also heard from other refugee applicants that he would be returned to Greece. He decided to leave Spain and, on BB's advice, chose to travel to New Zealand. BB provided him with a photo-substituted Israeli passport which he destroyed on arrival in Auckland on 21 September 2008 where he claimed refugee status.

[19] Since coming to New Zealand he has heard from his family that three months prior to the appeal hearing people he knew who had participated in the protest had just been released. They had been mistreated and still suffered from injuries inflicted in detention. He was also told that another acquaintance, who like the appellant had escaped from the protest, had recently been arrested.

[20] The appellant claims that on return he will be discriminated against as an Azeri; he is not allowed to voice his political views and objects to being made to observe the Islamic religion. Moreover, he is an escaped fugitive and on return will be arrested, interrogated and mistreated.

[21] The Authority received written submissions from counsel dated 12 March 2009, 1 April 2009 and 22 April 2009. These, together with oral submissions made at the hearing, have been considered in reaching this decision.

THE ISSUES

[22] The Inclusion Clause in 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

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

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

ASSESSMENT OF THE APPELLANT'S CASE

[24] The account given by the appellant in his Confirmation of Claim form, his written statement, at his RSB interview and during the hearing of his appeal has been consistent. His description of events in Iran, in particular the demonstration in May 2006 and the circumstances of the Azeri minority, are consistent with country information. He has provided some documentary evidence to confirm his account; birth certificate and driver's licence, identity cards of relatives and a doctor's report detailing injuries to his nose and ear. He also provided confidentiality waivers to enable the refugee status officer to enquire about his dealings with the Spanish and Greek authorities. A reply was received from the Spanish authorities which confirmed that he had applied for asylum there and had been declined. At the appeal hearing, the appellant gave his evidence clearly and in a forthright manner. The Authority accords the benefit of the doubt to the appellant in respect of the account of his participation in the protest in Z, his subsequent detention, escape and travel from Iran.

Country information

[25] Azeri nationalism, which was an active political movement in the early 20th century, was suppressed by the government of Reza Shah. However, the break-up of the former USSR and the formation of the new independent state of Azerbaijan revived Azeri nationalist sentiment. The current regime in Iran is opposed to what it sees as the threat of Azeri nationalism. It suppresses Azeri language and culture and does not tolerate public demonstrations protesting discrimination against Azeris. Refer Human Rights Watch *World Report: Iran* (1997):

"Azeris complain that there is no language instruction in schools for Azeri children and no department of Azeri literature in any Iranian university. In this latter regard they compare themselves to the much smaller Armenian minority and feel disadvantaged. ... With the growth of Azeri nationalism, central authorities have begun to take measures to counter it. Those who speak up for Azeri rights are labelled by government officials and the state-controlled media as separatists or Turkish spies.

The authorities have taken security measures to counter the threat perceived to be coming from Azeri nationalism. For example in April 1996, the Information Minister Ali Fallahian announced the arrest of 29 "Turkish spies" in West Azerbaijan Province. In March 1997 50 "Turkish spies" were reported to have been detained and to have confessed in Orumich. Activist lawyer Sepehr-rooz Moloudi has been imprisoned since October 1996. Azeri activists sources claim that he is detained because of his advocacy of Azeri rights.

[26] The demonstration which took place on 27 May 2006 in Z is described in *Iran – Appeal Case Abbas Lisani – Prisoner of Conscience* Amnesty International (1 February 2007) AI Index: MDE 13/012/2007:

“In May 2006, massive demonstrations took place in towns and cities in north-western Iran, where the majority of the population is Iranian Azerbaijani, in protest at a cartoon published on 12 May by the state-owned daily newspaper *Iran* which many Iranian Azerbaijanis found offensive. Hundreds were arrested during or following the demonstrations. Some of those detained were allegedly tortured, with some requiring hospital treatment. Publication of the newspaper was suspended on 23 May and the editor-in-chief and the cartoonist were arrested. Iranian Azerbaijani sources have claimed that dozens were killed and hundreds injured by the security forces. The security forces have generally denied that anyone was killed, although on 29 May a police official acknowledged that four people had been killed and 43 injured in the town of Naqada. While many have now been released, others remain detained and some, like Abbas Lisani, have been sentenced to prison terms and flogging in connection with the demonstrations.”

[27] The appellant gave evidence of having seen Lisani taking part in the protest demonstrations in Z. Furthermore, he knew that Lisani, who owned a butcher’s shop in Z, was an acquaintance of his father and uncle.

[28] It is apparent that the Iranian authorities continue to actively suppress Azeri protests. In the United States Department of State *Country Reports on Human Rights Practices for 2008: Iran* (February 2009) it is reported that:

“On February 27, authorities released Azeri cultural and linguistic rights activist Jelil Ghanilou after he posted bail of 860 million rials (approximately \$86,000). Ghanilou claimed he faced torture and constant interrogation after his February 2007 arrest. ...

On May 11, a revolutionary court sentenced Azeri human rights lawyer Saleh Kamrani to a five-year suspended sentence after charging him with “publicity against the Islamic Republic”.

...

On October 29, authorities released Azeri activist Abbas Lisani after he completed two consecutive sentences totalling 30 months in prison for participating in two demonstrations. According to Amnesty International, security agents interrogated Lisani for 10 hours about his post-release plans, and the Z general prosecutor personally threatened Lisani and his family.

...

On September 10, the authorities arrested four Azeri journalists.

...

In a series of arrests beginning in July, police reportedly released at least eight Azeri-Iranian students in Tabriz and charged them with “establishing illegal groups in order to disrupt national security” and “propaganda against the state”. According to Amnesty International, the student activists were campaigning for greater cultural and linguistic rights, including the right to education using the Azeri language and the right to celebrate Azeri culture and history.

...

On September 10, authorities arrested a group of Azeri cultural rights activists ... Authorities held the men incommunicado and without charge for several weeks before releasing them on bail on November 9."

[29] It is reported that, under the current regime, individuals are subject to arrest on security grounds for political activism and peaceful dissent. In the Human Rights Watch Report *You Can Detain Anyone for Anything: Iran Broadening Clampdown on Independent Activism* (January 2008) Vol 20 No 1(E):

"More than in any other period in recent Iranian history, the authorities have used security legislation as a pretext for politically motivated arrests and detentions. Often there is no warrant or other legal basis for the arrests; instead the authorities interrogate detainees without an attorney present with the intention of "fishing" for a charge."

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Iran?

[30] In deciding whether the appellant's fear of being persecuted on return is well-founded, the Authority has regard to the appellant's personal profile (in particular, his involvement in the Azeri protest in 2006 and his arrest and escape) and the foregoing country information.

[31] The appellant has been out of Iran for nearly two years. He was arrested in June 2006, some three years ago. The authorities were still searching for him until his departure in October 2007; the interest continued when his brother CC was questioned and his house searched in August 2008. People who had evaded the authorities on the day of the protest in 2006 were still being arrested in 2009, months before the appeal hearing. Although the demonstration for which he was arrested occurred nearly three years ago, country information reveals that the Iranian authorities are still very sensitive to the issue of Azeri nationalism and respond to public manifestations of this by detaining and punishing those involved.

[32] Furthermore, the appellant is someone who is a fugitive. He escaped the custody of the Iranian security forces and left Iran illegally. On his return, his illegal departure would be apparent to the authorities at the border. He would be questioned about the circumstances of his departure and what had transpired during his three-year absence from Iran. The fact of his being a fugitive from custody and the reasons for his arrest may well be discovered in the course of such official inquiries. When the circumstances of his arrest become known it is

likely that he will be again subjected to the kind of mistreatment he suffered during detention. This amounts to serious harm.

Convention reason

[33] Clearly, any harm the appellant suffers would be for reason of political opinion.

CONCLUSION

[34] For the reasons mentioned above, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"J Baddeley"

J Baddeley
Member