

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76399**

**REFUGEE APPEAL NO 76400**

**AT AUCKLAND**

<b><u>Before:</u></b>	A N Molloy (Member)
<b><u>Counsel for the Appellants:</u></b>	D Mansouri-Rad
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Dates of Hearing:</u></b>	12 & 13 October 2009
<b><u>Date of Decision:</u></b>	13 September 2010

---

**DECISION**

---

[1] The appellants, a married couple, are nationals of the Islamic Republic of Iran. They appeal against decisions of a refugee status officer of the Refugee Status Branch (“RSB”) of the Department of Labour (“DOL”), declining them the grant of refugee status. For convenience the appellants are referred to, where appropriate, as “the husband” and “the wife”.

[2] Their claims are in part discreet and in part intertwined. In broad terms the wife’s claim relates to the cumulative impact of discrimination to which she is subject in Iran because of her gender. The husband’s claim relates to various incidents which brought him to the attention of the Iranian authorities prior to his departure from Iran in late 2005. They both claim to be at risk because they attended demonstrations in New Zealand to protest against the corrupt and violent practices of the Iranian government leading up to and following the Presidential election in Iran in June 2009.

[3] Their claims are assessed following the summary of their accounts which appears below.

### The impact of the wife's health upon the conduct of the hearing

[4] During the past decade the wife has experienced serious ongoing health problems. She had been admitted to hospital within the fortnight prior to the appeal hearings, and was in continuing receipt of outpatient care.

[5] When counsel forwarded his opening submissions to the Authority during the week before the hearing, he enclosed a letter from the wife's clinician indicating that in his view the wife was not fit to attend the appeal hearing. Counsel stated however that the wife had expressed a clear desire to proceed. She confirmed this when the Authority canvassed the possibility of an adjournment immediately before the hearings commenced.

[6] The wife was clearly in a degree of discomfort while she gave evidence. Breaks were taken at frequent intervals to allow for this and the wife was invited to inform the Authority if she needed additional consideration.

### **THE APPELLANTS' CASES**

[7] The Authority will first outline the wife's background before outlining the background of the husband and the events which led the appellants to leave Iran. It will refer to the remainder of their accounts in composite fashion.

#### The wife's account up to her departure from Iran in 2006

[8] The wife was born and raised in Town X, where she lived until she left Iran to join her husband in the United Kingdom in 2006. She is one of several siblings and has a sister who has lived in the United Kingdom for most of the last twenty years.

[9] The wife's parents are both Sufi. This occasionally gave rise to problems in the wake of the 1979 revolution which brought an Islamic theocracy to power in Iran. From time to time her father experienced difficulties with the Iranian authorities. He was harassed frequently and was detained three times; once for a day, once for a week and, most recently, for 18 days on suspicion of having played a part in the incident that led to the husband leaving Iran in 2005. This will be outlined in more detail below. In order to protect their children from such difficulties the wife's parents raised the wife and her siblings as Muslims.

[10] The wife asserts that women are discriminated against in Iran in every area of life. She points to inequalities in laws relating to divorce and custody; the fact that women can be sentenced to death by stoning and the fact that the concept of compensation for injuries or death ('blood money') applies differentially, placing a lower value on a woman than a man. She believes Islam to be responsible for the gross inequality between the sexes in Iran and eventually rejected the idea of religion altogether. She believes that this had direct consequences for her and believes that she was declined entry to medical school at a public university because she was deemed to be ideologically unsound.

[11] Undeterred, the wife enrolled in a degree course at a private tertiary institution, from which she graduated in 1998. She then completed a short specialist training course with a view to obtaining work at the University. However during a job interview the wife was asked questions about her support for the theocratic regime and about her father's Sufism. As a result of her forthright expression of opinion the interview became heated and she is certain that her non-selection was again based on ideology rather than merit. The wife later experienced similar difficulties when seeking work with the Ministry of Culture and Islamic Teaching.

[12] The wife has had to endure ongoing health problems for some years. This had an impact upon her studies and her ability to attend lectures. It also had an impact on her ability to apply for work once she had graduated.

[13] While the health problems alone would have had negative consequences, they were amplified by the fact that she could not leave her house without wearing the confining and restrictive head wear or *hijab*. This requirement made it difficult for her to venture outside, particularly during the warmer months of the year.

[14] The wife has always objected to the fact that as an Iranian woman she is forced to cover her hair, neck and her entire body when in public. Even disregarding the attendant physical discomfort, she has long considered it to be an intrusion into her personal freedom and a constant reminder of her subordinate position as a woman in Iran.

[15] Like many other women she regarded it as a matter of pride to wear the *hijab* in such a way that her hair was not completely covered. As a result she was harassed by the *basij* "any time" she was outside. On one such

occasion in 2005 the wife was detained by the Iranian authorities. She became unwell while in detention, and fainted at the detention centre. She awoke to find herself in a medical clinic where she had been placed on an intravenous drip. On another occasion she was detained and required to sign an undertaking promising that she would not infringe again.

[16] The cumulative impact of the requirement to wear *hijab*, the health problems which made it uncomfortable to do so and the possible consequences of wearing it in a manner that brought her to the attention of the authorities was such that the wife curtailed her activities. She became quite depressed as a result.

[17] The wife has experienced additional health problems since leaving Iran in 2006.

#### The husband's account

[18] The husband was born and raised in Town X, where he lived until he left Iran in 2005. After graduating from high school during the early 1990s the husband completed his compulsory military service. He then began work for his father as a cabinet-maker. The husband later began teaching music part-time while he developed a business making musical instruments. Eventually he opened his own shop.

[19] The husband's first serious encounter with the Iranian authorities occurred during the late 1990s when he composed a song with a political theme which came to the attention of the *Etela'at*. He was detained in prison for several days with other musicians. Fortunately he was released without charge after the father of one of the other musicians intervened.

[20] The husband was detained again during the early 2000s. He had married the wife by then. He was in the company of his father-in-law when the father-in-law was harassed by the Iranian authorities for being Sufi. The husband objected to the manner in which the authorities were acting, and was taken back to the prison where he had previously been detained. The husband was beaten while in custody.

[21] The husband next encountered the authorities in 2005 when he was reported for teaching a female student without a chaperone. He was detained and questioned, but not mistreated on this occasion. He was however

required to sign an undertaking that this would not happen again before being released.

*Incident at the mosque*

[22] The incident which brought about the appellants' departure from Iran occurred towards the end of 2005. The husband was working for his father, undertaking basic carpentry at a mosque, when a fire broke out. He believes it was caused by a faulty electrical cable. The husband could not find an extinguisher. He called out for help and was about to telephone the fire brigade when he heard a man outside the mosque call out that someone had deliberately started a fire.

[23] At this point it is relevant to note that during the period leading up to the incident, Iranian authorities had deliberately damaged buildings in Town X that were of great significance to followers of Sufism. Although the man did not accuse anyone in particular, the husband immediately became afraid that he would be accused of deliberately setting the mosque alight because his father-in-law is a Sufi.

[24] The husband fled and went into hiding, which either caused or contributed to the suspicions of the Iranian authorities. Within a few days the wife's parents were taken into detention and the father-in-law was accused of conspiring with the husband to burn the mosque as an act of retaliation for the damage inflicted on the Sufi buildings. The father-in-law was beaten and interrogated in custody.

[25] Arrangements were made to enable the husband to leave Iran. Bribes were paid to officials to ensure his safe departure through the airport in Tehran. He obtained entry to the United Kingdom by virtue of a false British visa endorsed in his passport. The husband stayed, at first, with the wife's sister and her family. However he soon fell out with the sister's husband, a devout Muslim who did not welcome him as a non-believer.

[26] The husband sought refugee status in the United Kingdom under a false name. He did not refer to the fire in the mosque for fear that he would create a further risk to his safety from the large Pakistani Muslim population in the United Kingdom. He relied instead upon the earlier incidents that had led to his detention on various occasions. He also claimed that he was at risk because he has rejected Islam.

[27] The husband's claim for refugee status in the United Kingdom was ultimately unsuccessful.

#### The wife's departure from Iran

[28] The wife's father was eventually released on bail after 18 days when the deeds to the house of the wife's sister were posted as security. He was later brought before a court and the matter was resolved with no charge being laid or conviction entered. The house deeds were returned to the sister.

[29] The wife initially stayed with one of her sisters and then moved in with her parents after her father's release from custody. She was continually harassed by the authorities, who demanded to know where the husband was hiding. They threatened to detain her.

[30] The threats never came to anything but the attention caused her great anxiety and the wife left Iran about six months after her husband, in May 2006. She left without difficulty, using her own passport, and entered the United Kingdom lawfully, using a visitor's visa arranged by her British-based sister. The wife's parents followed about a month later. They stayed in Britain for about three months before returning to Iran. The parents later returned to visit the wife and her sister a second time. On that occasion they remained or about a month.

#### The wife's application for refugee status in the United Kingdom

[31] The wife applied for refugee status soon after she arrived in the United Kingdom. Her claim was lodged under a false name to be consistent with the partially falsified claim already lodged by the husband. As well as adapting her name, the wife adapted the substance of her claim in the United Kingdom so that it contained no mention of the fire in the mosque, the subsequent detention of her father or the threats made to her by the Iranian authorities. She stated that she was at risk by virtue of the problems her husband had disclosed for the purposes of his claim.

[32] The wife's application for refugee status was unsuccessful. However, her health deteriorated while she was living in the United Kingdom and she and the husband were granted leave to remain for a period of time while she underwent surgery and while she convalesced.

### Travel to New Zealand

[33] Eventually it became apparent to the appellants that they would not be able to remain in the United Kingdom indefinitely. They were afraid that if their presence was detected they would be forced to return to Iran, so they approached an agent to help them to find an alternative place of asylum.

[34] The appellants were provided with false passports, which they used to travel to New Zealand, where they arrived in March 2009. After disembarking from the aircraft they identified themselves as asylum seekers to a woman who worked at the airport. They admitted to having travelled on false passports.

[35] An immigration officer working at the airport told them they were going to be returned to the port where they embarked upon their flights to New Zealand. The appellants concealed the fact that they had lived in the United Kingdom for fear that if they were returned to Britain, they would immediately be returned from there to Iran. They told the immigration officer that they had travelled to New Zealand directly from Iran. They referred to the fire at the mosque for the first time, albeit that they said that it had happened in 2009, to avoid having to explain what had happened between 2005 and their arrival in New Zealand four years later.

[36] Immigration New Zealand subsequently discovered that the appellants had been living in the United Kingdom for several years and that they had applied for refugee status there. Only when confronted with evidence to this effect did the appellants admit their deception.

### The appellants' applications for refugee status

[37] After interviewing the appellants in May and June 2009 a refugee status officer issued decisions in August 2009, declining each of them the grant of refugee status. It is from those decisions that the appellants now appeal.

### Sur place claims: Attending protests in New Zealand

[38] By the time their appeals were heard the appellants had attended various demonstrations staged by the Iranian community in New Zealand.

These were organised following the Iranian presidential election in June 2009. Allegations of corruption and electoral dishonesty arose after the election, leading to a series of demonstrations in various cities throughout Iran. The response of the Iranian officials was rapid and violent. This in turn led expatriate Iranian communities in numerous cities around the world to demonstrate in support of their compatriots in Iran.

[39] It was in that context that the appellants heard of a demonstration to be held in Queen Street in Auckland in June 2009. They felt compelled to attend but were not aware that the demonstrations would be filmed or that their attendance might be recorded on film. As it transpired, the appellants saw themselves on the news on television that evening.

[40] Not long after, the husband received a telephone call from a former music student in Iran, with whom he had remained in touch. The student had been seen footage of the protest in Auckland on Voice of America, a satellite news service which transmits news from around the world to Iran. The New Zealand footage covered a protest march along Queen Street in Auckland in which the student had recognised the appellants.

[41] The Authority viewed footage taken from Voice of America. The footage showed protests conducted about the Iranian presidential election in June 2009 in several countries, including Iran. The footage viewed by the Authority was essentially the same as the footage broadcast by TVNZ. The commentator stated that there were approximately 150 protestors present at that demonstration.

[42] The Authority was also able to view various news clips covering protests which had been uploaded to the internet on YouTube. The coverage showed both the husband and the wife at the front of a crowd. Many of the people attending are shown to be holding placards, and a banner is shown with the statement "stop killing people in Iran". Those attending were chanting slogans, including "where is my vote?" and "down with dictator". At one point the footage shows the husband in close-up. He was clearly holding a flag associated with the Iranian monarchy.

[43] Further footage was provided of a protest in Aotea Square on around 23 June 2009. It lasted approximately one minute and showed both the appellants at the front of a line of protesters. They are seen to be joining with other demonstrators chanting "support the students". The wife said that

footage of herself and the husband has appeared on YouTube. She does not know how this was uploaded or by whom.

[44] The appellants also attended a series of demonstrations held on subsequent weekends near the Town Hall in Auckland.

#### Additional material received

[45] Prior to the appeal hearing counsel forwarded opening submissions to the Authority under cover of a letter dated 9 October 2009.

[46] During the appeal hearing counsel provided the Authority with copies of three articles accessed from the Internet in recent times relating to prisoners who have been executed since the recent political protests in Iran: "Three Iranian protesters face death penalty" *Agence France Presse* (11 October 2009), "Iran sentences three to death" *BBC News* (10 October 2009) *Iran Press News.blog.spot.com* "Iran protester gets death sentence" *Reuters* (8 October 2009).

[47] Counsel provided an extract from an Iranian blog [www.rezafazeli.net](http://www.rezafazeli.net), a blog in the name of an Iranian dissident who was assassinated in Germany many years ago. This contains a posting to the site on 13 July 2009. This country information had been submitted in respect of an earlier appeal; *Refugee Appeal No 76367* (5 October 2009). The appropriate extract was translated as follows for the purposes of that appeal:

Important news for Iranians living/residing overseas: according to the news, a lot of people (Iranians) who attended the (post-election) protests outside Iran, any one of them who has been identified (by Iranian government) have been arrested on their arrival at (Iranian) airport.

This is classified by the blog as "breaking news".

[48] Mr Mansouri-Rad wrote to the Authority on 6 November 2009, requesting that the Authority make enquiries in connection with the completion of passenger arrivals cards by each of the appellants. Information was sought and obtained by the Authority and was forwarded to counsel under cover of a letter to Mr Mansouri-Rad dated 29 January 2010.

[49] Additional country information was provided under cover of a letter dated 4 November 2009, together with a copy of the wife's Iranian passport, and evidence relating to the completion of the passenger arrival card completed on the appellants' behalf when they arrived in New Zealand.

Further country information was forwarded to the Authority on 9 December 2009 and 14 June 2010.

### Medical evidence

[50] The Immigration New Zealand files contain two letters written by a doctor who has been treating the wife in New Zealand. They corroborate the wife's evidence with respect to the nature and seriousness of the health problems she has faced.

[51] Counsel also provided the Authority with an additional letter from a different doctor in Manukau, confirming the nature of the chronic health problems which afflict the wife. The letter is dated 8 October 2009.

## **THE ISSUES**

[52] 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.

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

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

## **ASSESSMENT OF THE APPELLANTS' CASE**

### Credibility

[54] Before addressing the principal issues identified above it is first necessary to determine whether the appellants' claims are credible. The Authority finds that they are, in large part. The exception is that part of their

claim which relates to the incident which supposedly led to their departure from Iran, namely the fire in the mosque.

[55] For reasons set out below, the Authority finds that their account relating to the fire in a mosque has been fabricated for the purpose of bolstering a claim for refugee status.

The Authority rejects the evidence relating to the fire at a mosque

[56] When the appellants first arrived in New Zealand they told a series of lies to Immigration New Zealand in order to hide the fact that they had left Iran four years earlier. The appellants claimed that they had never been issued with Iranian passports; that they travelled direct to New Zealand at the beginning of 2009; that they had never lived outside Iran and that they had never previously applied for asylum.

[57] It has since become apparent that, contrary to those claims, the appellants both had genuine Iranian passports; they left Iran around the end of 2005 or the beginning of 2006; they spent some three or four years living in the United Kingdom and that they had there applied (unsuccessfully) for refugee status.

[58] The appellants claim that they had every intention of admitting the truth about their circumstances when they arrived in New Zealand. They claim that they lied out of fear caused by the actions of a single official in New Zealand, who told them that they were going to be repatriated to the United Kingdom, from where they believed they would be deported to Iran. They claim that there really was a fire in a mosque, and that they were at risk of being persecuted by the Iranian authorities because of it; it just occurred in 2005, not 2009.

[59] The Authority does not believe them.

[60] If the appellants had fled from Iran in 2005 for the reasons now given, it is inevitable that the stated reasons for doing so would have formed the basis of their applications for asylum. Yet they made no reference to such an incident for the purposes of their application for refugee status in the United Kingdom.

[61] When asked to explain this extraordinary omission the husband claimed that he was too scared to refer to it. He did not believe he could

safely reveal the true circumstances of his predicament to the authorities in the United Kingdom because of the presence of Islamic fundamentalists within the large Pakistani population in the United Kingdom. In all the circumstances of these appeals the Authority is satisfied that this explanation is disingenuous.

[62] In itself it makes little sense, given that the other incidents he relied upon might also cause offence to Islamic “fundamentalists”. It is also notable that the appellants have provided no independent corroboration about the claim that Iranian authorities destroyed Sufi houses of worship during the period prior to the supposed fire in the mosque.

[63] Further, the account is implausible when considered in its entirety. The husband could not offer any sensible explanation as to why anyone outside the mosque should immediately leap to the conclusion that the fire was the result of arson. Nor is there any apparent reason why the husband would panic in the manner described, given that it was he who had raised the alarm and when there was an obvious explanation for the fire starting: that he was working with power tools.

[64] Subsequent events are also somewhat inconsistent with the reprisals the appellants claim that they face. For example, the father-in-law was supposedly implicated in the plot to start the fire. He was supposedly detained and mistreated for eighteen days. Despite this he was able to leave the country lawfully to visit family in the United Kingdom, not just once but twice; the first time within approximately two months after his supposed detention. The wife was also allowed to leave using her own passport.

[65] The Authority has not overlooked the appellants’ claim that they only withheld information from Immigration New Zealand about their true circumstances out of fear.

[66] Even if this had been the only aspect of their claim that caused concern, the Authority would have rejected this explanation as disingenuous. By the time the appellants arrived in New Zealand they had considerable experience of the nature of due process inherent in the refugee determination and humanitarian systems which operate in the United Kingdom. They would also have been fully aware of the concept of *non-refoulement* which underpins the rights arising out of the 1951 Refugee Convention.

[67] There is no reason to believe that they would believe the situation to be any different in New Zealand. It is also relevant to note that their failure to refer to the “true” circumstances of their claim extended well beyond their arrival at the airport in Auckland. They did not admit the “truth” when completing their applications for refugee status almost two weeks after their arrival, despite being informed that they would not be removed from New Zealand before their claims had been completed. They did not admit it during their first interview with a refugee status officer, at which time they were represented by a lawyer (whose expenses were covered by the state), despite the caution given by the refugee status officer about the need for them to tell the truth. Nor did they admit it in response to queries raised by the refugee status officer in an interview report forwarded following their interview.

[68] The appellants only conceded the fact that they had lied after Immigration New Zealand made it clear that they had information about the appellants’ claims in the United Kingdom, at which time they had no reasonable option open to them.

[69] Taking into account all of the factors referred to, the Authority rejects the appellants’ account relating to the fire in a mosque.

The remainder of their account is credible

[70] The fact that the appellants have not been truthful in respect of one aspect of their account does not automatically mean that the remainder of their account is also false. The Authority must evaluate the appellants’ claims upon the basis of facts as found, not upon the basis of assertions which are rejected.

[71] In respect of the remainder of their accounts the Authority finds that each appellant was credible. The husband’s account of his life in Iran was plausible and consistent with previous accounts he had given. The wife’s account was also plausible, consistent with country information, and consistent with her previous accounts. She spoke spontaneously and sincerely about her upbringing and about the frustrations of living with limitations imposed by the patriarchal society. She also provided medical evidence to support her claims with respect to her health problems.

[72] With respect to the appellants’ attendance at demonstrations in New Zealand in June 2009 and subsequently, the Authority is satisfied both that

they attended these, and that they did not do so with any view to bolstering their claims for refugee status. It is accepted that their involvement in these events was the result of spontaneous personal responses to unforeseen events in Iran which were entirely beyond their control. There is no evidence that their involvement in such events was in bad faith.

#### Summary of findings as to the wife

[73] The Authority therefore finds that the wife is a young married Iranian national. She is well-educated and articulate and has a clear sense of grievance about what she perceives to be her inferior status as a woman in Iran. Ongoing health problems have made her physically frail. Despite this she has continued to manifest her objection to the repressive and discriminatory society in which she was raised. Accordingly she came to the attention of the Iranian authorities on several occasions by virtue of her refusal to conform strictly to the hijab requirements.

[74] It is also accepted that since arriving in New Zealand the wife has attended a series of demonstrations in Auckland in June and July 2009.

[75] The wife's claim will be dealt with on this basis.

#### Summary of findings as to the husband

[76] The husband is a young married Iranian national. He has had several encounters with the Iranian authorities in the past and has been detained and mistreated on more than one occasion. Despite these incidents he was able to leave Iran at the end of 2005, legally and without difficulty. He then spent some four years living in the United Kingdom where he applied unsuccessfully for refugee status. After arriving in New Zealand the husband attended a series of demonstrations in Auckland in June and July 2009.

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

[77] Having determined the basis upon which the appellants' appeals are to be determined, the Authority turns to the principal issues identified.

[78] For the purposes of refugee determination, "being persecuted" has been described as the sustained or systemic violation of basic or core human

rights, such as to be demonstrative of a failure of state protection; *Refugee Appeal No 2039/93* (12 February 1996), adopting Hathaway, *The Law of Refugee Status* (1991) at 104, as cited with approval in *Canada (Attorney General) v Ward* [1993] 2 SCR 689 (SC: Can), per La Forest J.

[79] Put another way, it has been expressed as comprising serious harm, plus the failure of state protection; *Refugee Appeal No 71427* (16 August 2000).

[80] The threshold is not whether an appellant will be persecuted, but whether there is a real chance of the appellant being persecuted if returned to Iran. In that context, the Authority has consistently adopted the approach set out in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), in which it was held that a well-founded fear of being persecuted is established when there is a real, as opposed to a remote or speculative, chance of such persecution occurring. The standard is entirely objective.

#### Evaluation of the wife's claim

[81] The wife is a well educated woman. For many years she has resented the impact of Islam upon every aspect of her life. She objects to the discrimination to which she had been subjected as a woman in Iran.

[82] The prohibition of discrimination is fundamental to the Authority's understanding of "being persecuted". In *Canada (Attorney General) v Ward* [1993] 2 SCR 689 (SC:Can), La Forest J described the concept of discrimination in matters affecting those "basic human rights" as "central to an understanding of the Convention" (at 733). In doing so, he drew a link to the Preamble to the Refugee Convention, which draws in turn upon the Charter of the United Nations and the Universal Declarations of Human Rights, affirming the principle "that human beings shall enjoy fundamental rights and freedoms without discrimination".

[83] The Authority's task is to determine whether the level of discrimination to which the wife would be subject in Iran would amount to a level of harm tantamount to being persecuted. The Authority finds that in all the circumstances relating to the wife, it does.

[84] Previous decisions of the Authority recognise that the level of state-sponsored and state-condoned discrimination against women in Iran can

amount to a breach of fundamental human rights law. The Authority conducted a detailed analysis of academic writing and country information relevant to the circumstances faced by women in Iran; most notably in *Refugee Appeal No 2039* (12 February 1996) and *Refugee Appeal No 71427* (16 August 2000).

[85] In the latter of those two decisions the Authority found:

The 1979 Iranian Constitution does not expressly relegate women to second-class status: Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (3rd ed, 1999) 113-114. However, the cumulative effect of the laws of Iran and of the so-called Islamic form of governance certainly produces that result. See for example the legal provisions concerning marriage, divorce and custody and the provisions of the Islamic Penal Code earlier referred to and the country information discussed in *Refugee Appeal No. 2039/93 Re MN* (12 February 1996) (para [74]).

[86] The Authority found that the state-legislated relegation of women to a substantially inferior status is in breach of fundamental human rights law which prohibits discrimination on the basis of gender. It made reference in particular to Articles 2, 3 and 26 of the International Covenant on Civil and Political Rights, 1966 ("ICCPR") and to Articles 2 and 3 of the Convention on the Elimination of All Forms of Discrimination against Women, 1979 ("CEDAW").

[87] Articles 3 and 26 of the ICCPR provide that:

Article 3

The States parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[88] Article 2 provides in effect that the rights identified in Articles 3 and 26 cannot be undermined upon the basis of one's sex.

[89] It is not necessary to reproduce in their entirety the provisions of CEDAW, however Articles 2 and 3 call upon states to take various legislative steps to eliminate discrimination against women (Article 2) and "to ensure the full development and advancement of women, for the purpose of

guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men” (Article 3).

[90] In this appeal the wife complains about the discriminatory oppression and lack of freedom to which she has been subjected as a woman in Iran. This has had some impact upon her ability to obtain employment of her choice, although that in itself would not be tantamount to being persecuted.

[91] More importantly this has manifested in the fact that she is forced to adopt *hijab*. She finds this degrading and objects to the lack of freedom to express herself and to choose her own mode of dress.

[92] The Iranian penal code provides that if a woman appears in public without appropriate *hijab* (that is, where it is brightly coloured or does not completely cover the hair) she can be sentenced to lashing or imprisonment. See Immigration and Refugee Board of Canada, *Iran: Enforcement of the Official Dress Code (2005 – Dec. 2007)* IRN102671.E (10 January 2008).

[93] The wife was been harassed by the *basiji* on numerous occasions. She was detained more than once for “bad-hijabi”, and required to sign an undertaking that she would not offend again. Since her departure from Iran it appears that the Iranian government has intensified the campaign to target women on the basis of their apparent non-compliance with the dress code. According to one source 20,000 women were arrested for *bad-hijabi* during 2007, while more than half a million received warnings: United States Department of State *Country Reports on Human Rights Practices in Iran* (11 March 2008) (“the 2008 DOS Report”) (section 1 f).

[94] The 2008 DOS Report contains reports of the use of violence by police against such women and there are also widespread reports of vigilante violence against women breaching *hijab* rules. For example the 2010 DOS report (11 March 2010) reports that throughout 2009 vigilantes attacked people considered to be “unislamic” in their dress or activities. It also stated that “During the year the government continued its crackdown on un-Islamic dress or ‘bad hijab’” (section 1 f).

[95] The wife considers the imposition of such control by enforced wearing of *hijab* to be degrading and to be a direct infringement of her freedom. For her the consequences of this discrimination are magnified by the serious health problems she has experienced over a period of some years. The

obligatory requirement that she wear the *hijab* severely truncated her ability to attend to normal everyday tasks.

[96] It is likely that the wife's health problems would affect her movements to some extent even if she were not required to wear the *hijab*. However it compounds her difficulties to such an extent that it adds a disincentive to venture outside. This is caused by both the level of discomfort she experiences when required to wear the garment, (particularly during the summer when the combination of heat and pollution exacerbate her affliction) but also because of the risk that her *bad hijab* might once again bring her to the attention of the Iranian authorities.

[97] When confronted by authorities in the past the wife has not hesitated to express her personal views, sometimes to her detriment. There is no reason to believe that she would act any differently in the future. If anything, having lived in comparatively free western societies for the past four years she would be more likely to voice or manifest her opposition to the *hijab* rules. In the current political environment in Iran it cannot be said that the risk that the wife might be subjected to violence at the hands of the Iranian authorities is so low as to be remote or speculative. Her poor health increases the risk that, for her, the consequences of detention would be serious and would amount to serious harm.

[98] In order to avoid such circumstances the wife is faced with the requirement either to repress her views and her self-expression or to truncate her normal movements. However that too would amount to the deprivation of the enjoyment and exercise of core human rights.

[99] In all the circumstances the Authority finds that objectively, on the facts found, there is a real chance of the wife being persecuted if returned to Iran.

#### Convention reason

[100] The reason why the wife is at risk of being persecuted in Iran is because of her status as a woman. The Authority has previously determined that gender can be the defining characteristic of a social group and that, given the pervasive discrimination and mistreatment of women in Iran because of their gender, "women" may be a particular social group in Iran: *Refugee Appeal No 71427* at [106].

[101] Accordingly, the wife's predicament is due to her membership of a particular social group, namely women.

[102] Because of this finding it is not necessary to consider the wife's predicament in the context of her attendance at demonstrations in New Zealand during 2009. This is, however, relevant to the evaluation of the husband's claim, to which the Authority now turns.

### Evaluation of the husband's claim

#### *Protests following the 2009 general election in Iran*

[103] The Authority has found that there is no credible evidence to suggest that the husband was at risk of being seriously harmed at the time he left Iran in 2005 or at the time he arrived in New Zealand in 2009. However the Authority's task is to assess the prospective risk to the appellant if he were to return to Iran now, taking into account the political upheaval that followed the controversial presidential election in Iran in June 2009.

[104] The Authority has considered the predicament of various appellants in light of those events; for example, *Refugee Appeal No 76344* (24 July 2009), *Refugee Appeal No 76454* (8 March 2010), and *Refugee Appeal No 76445* (20 April 2010). Counsel for the present appellants also appeared in each of those appeals. It is not proposed to revisit all of the country information referred to in those decisions.

[105] In short, the announcement of President Ahmadinejad as the winner of that election gave rise to a series of protests and demonstrations throughout Iran. The nature of the protest movement evolved from large spontaneous gatherings of people calling for a new election into a broad campaign of civil disobedience calling for a change in the very nature of government. This spread throughout the Iranian diaspora.

[106] The reaction of the Iranian state to demonstrations following the presidential election of mid-2009 was in keeping with its longstanding record of human rights abuses.

[107] From the outset Ayatollah Khamenei authorised the use of force to suppress dissent; Amnesty International "*Iran: Khamenei's speech gives legitimacy to police brutality*" (19 June 2009).

[108] In *Refugee Appeal No 76454* (8 March 2010) the Authority summarised credible reports that the Iranian authorities have detained individuals who participated in the protests. They have faced arbitrary detention, severe physical mistreatment, sexual violation, sleep deprivation, mock executions and threats to family members: United States Department of State *Country Report on Human Rights Practices 2009: Iran* (3 March 2010) (“the 2009 DOS report”) at section 1a and 1c.

[109] Human Rights Watch has documented the arrests of hundreds of protestors and states that hundreds “languish in jail”. Many of those are held arbitrarily without charge and without access to due process, and up to 15 have been executed. It refers to credible reports of the mistreatment of some individuals held in custody after participating in the demonstrations. In any event, the government’s response has effectively driven the protest movement underground; Human Rights Watch “*Iranian Society More Closed Than Ever*” (11 June 2010).

[110] The Iranian government has not wholly confined its attention to the domestic environment but has also taken some steps to identify individuals who may have participated in protests outside Iran. One article supplied by counsel refers to an announcement from the Iranian Intelligence Minister, Heydar Moslehi about the training of “Senior Internet Lieutenants” to confront Iran’s virtual enemies online; Fanaz Fassihi “Iranian Crackdown Goes Global” *Wall Street Journal* [www.online.wsj.com](http://www.online.wsj.com) (4 December 2009) (“the WSJ article”).

[111] The WSJ article refers to a post-election campaign monitoring new media activity of Iranians. It collates information garnered from interviews with approximately 90 expatriate Iranians. Upon returning to Iran some were questioned at passport control about whether they held a foreign passport, whether they possess Facebook accounts and why they were visiting Iran. Five were forced by police to log into their Facebook accounts. Some were physically mistreated and many of those interviewed reported that relatives in Iran had been questioned or detained because of their postings on Facebook, Twitter and YouTube. Evidence of criticism of the Iranian government has been met with “threats intended to silence them”.

[112] Another article supplied by counsel identifies various groups that the authorities have identified to be behind the 2009 protest movement. They include “secular intellectuals, journalists, student activists [and] artists” living

outside Iran, together with longstanding opponents of the regime such as pro-monarchists and veteran counter-revolutionaries; “Military authorities threaten the supporters of “Green Movement” outside the country” *BBC Farsi* (5 November 2009).

[113] Reports of individuals being identified as having participated in offshore protests are still being received. Under cover of a letter dated 14 June 2010 counsel provided the Authority with copies of two articles referring to the experiences of Iranian nationals interrogated by the authorities when they returned to Iran from Australia early in 2010; Sally Neighbour “Iranian students living in Australia held on trips back to Iran” *The Australian* (8 April 2010) and Sally Neighbour “Iranian Court targets Iranian Expats”, *The Australian* (9 April 2010) (“the Australian articles”).

[114] The articles document the detention and questioning of Iranian students living in Australia. One was questioned during a trip home in February 2010. She was told that the Iranian authorities knew that she had taken part in post-election demonstrations in Australia. The second was questioned on arrival at the airport in March 2010 and was told that his activities in Australia warranted the death penalty. *The Australian* also reported that the Iranian Embassy in Canberra monitors Iranian students in Australia closely and films and photographs persons taking part in protests.

*Whether the husband will be identified and, if so, whether he is at risk of being seriously harmed*

[115] The Authority has accepted that the appellants attended demonstrations in Auckland in mid-2009. It has also accepted that they appear in footage which has been shown on television in New Zealand, and by satellite in Iran, and in additional footage of protests posted to YouTube.

[116] The husband claims that as a result of his attendance at demonstrations in Auckland he will be identified by the Iranian authorities. He also claims that they will face questioning about their participation in protests if they return to Iran. They also submit that there is a real chance that they will be seriously mistreated in a manner that amounts to being persecuted.

[117] The Authority has considered claims in respect of several individuals who have attended demonstrations in New Zealand and who claim to be at risk of being seriously harmed upon return to Iran because of that fact.

[118] Every appeal has to be considered in light of all of the relevant circumstances and accordingly it is unhelpful to look too closely at analogous appeals. In general terms, however, the Authority has acknowledged that the risk to some individuals with an existing profile may be a sufficient basis upon which to recognise them as a refugee.

[119] The Authority has found that at the time he left Iran in 2005 the husband was not a person of interest to the Iranian authorities. That is not to say, however, that he has no profile. While the appellant's past history was sufficiently benign that it did not impede his lawful departure from Iran in 2005, he would be returning in a different context in 2010.

[120] The husband is a musician and teacher who has been living outside Iran for several years. He was detained by the Iranian authorities some years earlier, by virtue of having composed a politically themed song which came to their attention. He had also been detained on two other occasions; during one of which he was beaten and mistreated.

[121] There is country information that indicates that the Iranian authorities have an interest in identifying those who may have participated in demonstrations overseas. There is also country information that indicates that some individuals have been identified as having participated at demonstrations overseas. The evidence does not establish that all individuals identified as having participated in the protests have been routinely mistreated, but there is evidence that some have been subjected to such treatment.

[122] The Authority finds that the husband's claim is at the margin. It notes, however, that in an earlier decision to which reference has already been made, the Authority observed that in such circumstances it may be appropriate to apply a benefit of the doubt in favour of the appellant; *Refugee Appeal No 76454* (8 March 2010) at [62]-[63].

[123] The risk to the husband is impossible to quantify. However it cannot be said to be remote to the point of being speculative. There is a real chance that the appellant will be identified as a person of interest by the Iranian authorities upon arrival in Iran and that he will be detained and interrogated about his activity. In all the circumstances the Authority finds, by a narrow margin, that there is a real chance that the husband will be subjected to serious harm amounting to his being persecuted because of his particular

background and because of his involvement in the demonstrations in Auckland.

[124] The first principal issue is answered in the affirmative with respect to the husband. His predicament arises by virtue of his political opinion and accordingly the second principal issue is also answered in the affirmative.

### **CONCLUSION**

[125] For the reasons given the first principal issue is answered in the affirmative in respect of each appellant. The Convention reason in respect of the wife is membership of a particular social group, namely women. The Convention reason in respect of the husband is political opinion.

[126] The Authority therefore finds that both appellants are refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is recognised in respect of each of them. Their appeals are granted.

"A N Molloy"

A N Molloy  
Member