

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

**REFUGEE APPEAL NO 76454**

**AT AUCKLAND**

<b><u>Before:</u></b>	B L Burson (Member)
<b><u>Counsel for the Appellant:</u></b>	D Mansouri-Rad
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	21 January 2010
<b><u>Date of Decision:</u></b>	8 March 2010

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**DECISION**

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

**INTRODUCTION**

[2] This is in fact the appellant's third appeal before the Authority. He claims to have a well-founded fear of being persecuted in Iran by reason of his participation in a number of demonstrations held in central Auckland in June 2009 following the disputed presidential election in Iran held on 12 June 2009. As will be seen, there is no doubt that the appellant did attend these demonstrations. The central issue to be determined in this appeal is whether the appellant has a well-founded fear of being persecuted by reason of his participation in these demonstrations.

[3] The appellant arrived in New Zealand on 28 September 2004 and lodged his first claim for refugee status on 1 October 2004. He was interviewed by the RSB in respect of the first claim on 20 and 21 October 2004. By decision dated 14 January 2005 the first claim was declined. The appellant duly appealed to the Authority (differently constituted from the present panel) which by decision dated

16 November 2006 dismissed his appeal – see *Refugee Appeal No 75473* (16 November 2006).

[4] On 20 October 2008, the appellant lodged his second claim for refugee status with the RSB. He was interviewed by the RSB in respect of his second claim on 28 November 2008. By decision dated 30 January 2009, the RSB declined the appellant's second claim. Once again the appellant appealed to the Authority (differently constituted from the first and present panel) which by decision dated 25 May 2009 declined the appellant's second appeal – see *Refugee Appeal No 76318* (25 May 2009). On 17 July 2009, the appellant lodged his third claim for refugee status with the RSB. He was interviewed by the RSB in respect of his third claim on 16 November 2009. By decision dated 11 November 2009 the RSB declined his third claim for refugee status. The appellant once again appealed.

[5] As this is not the appellant's first claim for refugee status he must first establish that the Authority has jurisdiction to hear and determine the subsequent claim made by him.

### **JURISDICTION TO HEAR SUBSEQUENT APPEAL**

[6] Section 129O(1) of the Act provides:

"A person whose claim or subsequent claim has been declined by a refugee status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that the circumstances in the claimant's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer's decision."

[7] The question of whether there is jurisdiction to entertain a second or subsequent refugee application has been considered by the Authority in *Refugee Appeal No 75139* (18 November 2004). In that decision, the Authority ruled that in a subsequent claim under s129O(1) of the Act there are distinctive aspects to the appeal:

"[55] First, irrespective of the finding made by the refugee status officer at first instance, the claimant must satisfy the Authority that it has jurisdiction to hear the appeal. That is, the claimant must establish that, since the determination of the previous claim, circumstances in the claimant's home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim."

[8] The Authority further ruled at [55](e):

"(e) Jurisdiction under ss 129J(1) and 129O(1) is determined by comparing the previous claim to refugee status against the subsequent claim. This

requires the refugee status officer and the Authority to compare the claims as asserted by the refugee claimant, not the facts subsequently found by that officer or the Authority."

[9] In this appeal, therefore, it is proposed to consider the appellants' original and second claim, and the claim now presented by him, with a view to determining:

- (a) whether, in terms of s129O(1) of the Act, the Authority has jurisdiction to hear the second appeal and, if so,
- (b) whether the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

### **THE BASIS OF THE APPELLANT'S FIRST REFUGEE CLAIM**

[10] The appellant's first claim was based on his assertion that he was engaged in a same-sex relationship with another man while living in Iran and that this relationship had been discovered by the authorities. The Authority hearing the first appeal did not accept that the appellant had provided a truthful account about his sexual orientation nor did it accept his claim to have encountered difficulties as a result.

### **THE BASIS OF THE APPELLANT'S SECOND REFUGEE CLAIM**

[11] The basis of the appellant's second refugee claim was that he had sent politically provocative photographs and other material by email to one of his sisters who was a photographer. The appellant claimed that the Iranian authorities arrested his sister and searched the family home during which they seized the computer upon which his sister had stored the anti-regime material supplied by the appellant. Again, the Authority found that the appellant's claim in this regard was lacking in credibility and his appeal was dismissed.

### **THE BASIS OF THE APPELLANT'S THIRD REFUGEE CLAIM**

[12] The appellant claims to have undertaken and participated in four demonstrations held in mid-late June 2009 in downtown Auckland protesting at the disputed election results in the June 2009 presidential election in Iran. Images of

the appellant attending these protests have been broadcast on *TV One News* in New Zealand, on the *Voice of America Persian News Network*, and has appeared on YouTube. The appellant's identity is known to the Iranian Embassy in Wellington because he has been required by Immigration New Zealand to apply for a new Iranian passport or travel document to depart New Zealand following the dismissal of his previous claims for refugee status. He says that this will enable him to be easily identified by the consular officials here in New Zealand and his particulars forwarded to the immigration authorities at the airport in Tehran.

### **ASSESSMENT OF THE JURISDICTIONAL QUESTION**

[13] The Authority plainly has jurisdiction to hear this matter. The appellant's third refugee claim is that he will be identified as a person leading protests in New Zealand at which radical slogans have been chanted in the context of the widely disputed presidential election. The protests which the appellant took part in occurred after the determination of his first and second claims. The third refugee claim is plainly based on significantly different grounds from that of his first and second refugee claims. The Authority has jurisdiction to hear the appeal.

[14] What follows now is a summary of the evidence presented in support of the third appeal. An assessment follows thereafter.

### **THE APPELLANT'S CASE**

[15] The appellant was born in the mid-1970s in Iran. His parents remain living in Tehran in the same house they have occupied for many years. His father owns a shop but, now elderly, supervises others working there. He has two brothers and three sisters. One of his brothers is in New Zealand having been recognised as a refugee. The remaining siblings live in Tehran.

[16] The appellant described his family as a middle-class family. Although not overtly political, his family were socially aware and they discussed political matters within the four walls of the family home. In particular, there was much discussion around how women were treated in Iran as his mother and sisters resented having to comply with the Islamic dress code. He recalls his father often remarking that it was wrong for the government to fund groups in Lebanon and Gaza when there were people in desperate social conditions in Iran. There were often discussions

around how unequal Iranian society was, with people living in absolute wealth while others lived in poverty.

[17] As a result of this socially aware home environment, the appellant watched programmes on satellite television broadcast from the United States. He followed political discussions and analysis of events in Iran. The appellant came of political age during the Khatami era. He voted for Khatami in both the 1997 and 2001 presidential elections because he believed that Iranian society needed substantial reform. During the 1999 student demonstrations in Tehran the appellant was one of many thousands who participated in demonstrations after the dormitory at Tehran University had been stormed by the authorities. The appellant chanted slogans supporting the students. Although these demonstrations were violently dispersed by the authorities, the appellant himself was not arrested and he encountered no problems with the authorities as a result of his participation in these demonstrations.

[18] After arriving in New Zealand in 2004, the appellant has remained in contact with his family. The appellant did not vote in the presidential election in 2005. It was widely believed that the vote was rigged in favour of a victory by a conservative candidate and the appellant was disillusioned about the value of voting in this election. However, as the 2009 election approached the appellant found himself galvanised by the candidacy of Mir Hussein Mousavi. Mousavi had been a former prime minister during the leadership of Ayatollah Khomeini. He recalled an interview where Mousavi was making clear that he had been opposed to the present Ayatollah Khomeini being made the supreme leader from the early days of the Revolution. The appellant was in regular contact with his parents and learned from them that there had been a groundswell of popular support behind the candidacy of Mousavi. Although the appellant did not agree with him one hundred per cent on all of his policies, he was by now utterly opposed to Ahmadinejad serving a further term in office.

[19] The appellant explained that, although the presidency of Khatami had not managed to secure as much freedom as possible, nevertheless, there was some liberalisation of life under his presidency. This progress had been reversed under the Ahmadinejad presidency. Furthermore, Khatami had been regarded as a positive force and figure by the international community and had considerable credibility overseas. In contrast, Ahmadinejad had undone this image. Furthermore, there had been an upswing in the number of people being executed in Iran which the appellant also found distasteful. What limited freedoms were

won by Khatami, were now reversed by Ahmadinejad. For all these reasons the appellant was opposed to Ahmadinejad serving a further term in office.

[20] The appellant became aware that there was a polling booth being established in Auckland for members of the expatriate Iranian community to cast their vote. He understood that in order to vote he would need to present his passport or certificate of identity. However, when it came to polling day on 12 June 2009, the appellant had neither. Following dismissal of his first appeal in 2005 the appellant was required, by Immigration New Zealand, to apply for a new Iranian passport or a one-way travel document. Although the appellant eventually did apply for a new Iranian passport and submitted photographs of himself, by the time of the Authority's decision in respect of the second appeal in May 2009, he had not received this back from the Iranian Embassy.

[21] Nevertheless, despite not having a valid Iranian passport or Iranian certificate of identity he turned up to the polling station and tried to cast his vote. He took with him his New Zealand driver's licence. He thought that, because the Iranian embassy had by now been dealing with his application for a new passport for some time, his identity and nationality would not be an issue. However, he was prevented from casting a vote by the polling agent because he did not have his passport or certificate of identity.

[22] The appellant was shocked when he heard Ahmadinejad being announced as the victor. Like many others he had been expecting Mousavi to be declared the winner by popular vote. On the afternoon of 16 June 2009 the appellant learnt via SMS text message that there was to be a protest held in the downtown Auckland area. The appellant attended this protest and wore a green scarf. He held a placard and chanted slogans such as "Down with the dictator" and "Death to the dictator" – dictator being a reference to Ayatollah Khamanei, the Supreme Leader of Iran. The appellant explained that it was widely considered that Ahmadinejad was simply a puppet for Khamanei and the conservative factions within the clerical establishment. The real problem was not Ahmadinejad but Khamanei.

[23] During this demonstration the appellant sought out its organiser. The appellant informed the organiser that he wished to play a greater role in any further demonstrations and asked to be kept informed of any further demonstrations that were to be held. They swapped mobile phone numbers.

[24] Within a day or two, the appellant received a text message from the organiser informing him that a demonstration was to be held in the Auckland

downtown area the next day. He had been in contact with his family and was aware that protest had continued to take place in the streets of Iran and that some protestors had been arrested and some had even been shot and killed by the security forces. He learnt from his family that his mother, two of his sisters and his cousin had attended a large demonstration with an estimated “millions of people taking part” in the streets of Tehran. His brother could not attend on that day because of a back problem. From speaking to his brother he learnt that some of his brother’s friends had been beaten by anti-riot police and plain clothes police officers.

[25] While on the first demonstration the appellant discussed with the organiser the need for it to reflect what was happening in Iran. It was agreed that the appellant would become responsible for keeping the slogans chanted during the demonstrations held in Auckland current with the slogans that were being chanted on the streets of Tehran and elsewhere in Iran. From watching news coverage the appellant understood that the slogans that were being chanted by the protestors in Iran were changing daily in response to events that had taken place. Thus whereas the chants initially began with “Down with the dictator!” and “Where is my vote?” once protestors started being killed by the regime the slogans referred to these people being “martyrs” – one slogan being “My martyr brother – we will get your vote back!”.

[26] Following the first demonstration on 16 June 2009, the appellant attended a further three demonstrations, the last of which was held on 23 June 2009. Numbers attending each of these demonstrations grew progressively smaller. Whereas there were approximately 150 people attending the first demonstration on 16 June 2009, the second and third demonstrations attracted between 40 and 50 demonstrators with the final demonstration the appellant attended on 23 June attracting approximately 20 or 30 demonstrators. The appellant was responsible for organising the slogans during these later demonstrations. During the second and third demonstrations, the appellant was in front of the demonstrators leading the chanting. He also assisted with hanging up Iranian flags and face-painting.

[27] On the evening of 16 June 2009, *TV One News* screened an item of approximately four minutes duration relating to the protests in Iran and New Zealand. The footage included, briefly, the appellant’s image. On 17 June 2009, the *New Zealand Herald* published a story about the protests inside Iran and New Zealand. A photograph was published showing the appellant holding a placard.

[28] The appellant stopped protesting because he became concerned for his safety as a result of his photograph being published both in the *New Zealand Herald* and on *TV One News*. The Iranian Embassy in Wellington had his photograph and details and he believed they would have identified him from this print and television exposure. Furthermore, on Friday 16 June 2009 Ayatollah Khamanei had given a speech in which he made clear that those continuing to protest would be regarded as “hooligans and opposed to the State”. After the Guardian Council had conducted the partial recount and confirmed Ahmadinejad as the victor, the attitude of the regime hardened. Statements were being made to the effect that those continuing to protest would be considered “*moharram*” which literally means someone fighting against God. In other words, continuing to protest against the Islamic Republic and its leadership and structures was now being viewed as being opposed to God which would be regarded as an extremely serious offence.

[29] The appellant’s fears that he may be considered “*moharram*” further heightened when he learnt from his brother in late June/early July that his image had appeared on satellite television in Iran on *Voice of America’s Persian News Network* which had run a programme about the protests being held around the world, including New Zealand. The appellant was clearly identified in that footage.

[30] For these reasons the appellant has not undertaken any further demonstrations in New Zealand although demonstrations have from time to time taken place.

[31] The appellant has also become aware that his image has appeared in footage uploaded to YouTube. He was leading the demonstrations at that point.

### **Documents and submissions**

[32] On 20 January 2010, the Authority received a memorandum of counsel of the same date, together with the following items of country information:

- (a) “F Fassihi “Iranian crackdown goes global” *Wall Street Journal* (4 December 2009) (“the WSJ article”);
- (b) “Military authorities threaten the supports of the “Green Movement” outside the country” *BBC Farsi Service* (5 November 2009) with translation;



- (c) “Amnesty condemns Iranian abuses” *BBC News* (20 December 2009).

[33] At the conclusion of the hearing Mr Mansouri-Rad made closing submissions. He submitted that the evidence in this case was sufficient to elevate the risk to the appellant as crossing over the real chance threshold. Mr Mansouri-Rad highlighted the following matters:

- (a) The Iranian Embassy has the appellant’s photograph and particulars as a result of the passport application he made at the request of Immigration New Zealand following dismissal of his previous refugee applications;
- (b) The appellant has been readily identifiable in television news items broadcast both here in New Zealand and in Iran as well as in the print media in the form the *New Zealand Herald* article;
- (c) The appellant has been recorded as having a leadership role in the chanting of slogans in at least two of the demonstrations held in Auckland;
- (d) The slogans the appellant was chanting were of a radical nature;
- (e) Country information shows that people who are returned to Iran from overseas are being questioned about their participation in demonstrations overseas and shown images of their participation. The statements made by the deputy chief of the armed forces and the commander of Iran’s law enforcement forces have also made clear that the regime was actively trying to identify individuals involved in protesting overseas and vowed they would be “confronted at the appropriate time”.

[34] Mr Mansouri-Rad submitted a copy of the Canadian Immigration and Refugee Board, Research Directorate Iran: *Treatment by Iranian authorities of relatives of persons who have left Iran and claimed refugee status, including former members of the Bureau of National Security (Savak), Fedayeen Organisation Corp or opposition protestors* IRN103327.E (4 January 2010).

## **THE ISSUES**

[35] 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."

[36] 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**

### **Credibility**

[37] There can be no doubt that the appellant has participated in the demonstrations and lead the chanting of slogans in two of them as he has claimed. This involvement is clearly demonstrated by the various video footage that the Authority was shown, namely :

- (a) The *TV One News* broadcast of 16 June 2009;
- (b) A copy of the broadcast on *Voice of America's Persian News Network* on 17 June 2009;
- (c) Four separate YouTube video footages in which the appellant is identifiable as participating in the demonstrations. In two of these he is shown to be leading the protestors in the chanting.

[38] As for the appellant's assertion that his brother saw footage of him on *Voice of America's Persian News Network* ("VOA") on a satellite television broadcast in Iran, the Authority notes the appellant has been found not credible by previous Authority panels. While his evidence is to be approached with some caution, as against that, VOA demonstrably has broadcast footage of the June 16 protest in

Auckland which briefly features the appellant. Moreover, VOA has broadcast programmes to Iran in Persian since the early 1940s with intermittent breaks, and continuously since 1979. It is estimated to reach approximately 29 per cent of Iranians in Iran— see United States Department of State and the Broadcasting Board of Governors, Office of Inspector General 2009, *Report of Inspection: Voice of America's Persian News Network*, March 2009 <http://oig.state.gov/documents/organization/126688.pdf>. It is, therefore, entirely likely that footage of the appellant protesting in New Zealand has been shown in Iran. This is the important point for present purposes. Whether his brother saw him is irrelevant in terms of assessing the risk to him. What is relevant is that, having regard to the history of VOA broadcasting into Iran, it seems plausible that VOA's broadcast during this volatile period in Iran might also be monitored by the Iranian intelligence services.

[39] The question is whether by these facts the appellant has a well-founded fear of being persecuted.

**Objectively, on the facts as found does the appellant have a well-founded fear of being persecuted?**

[40] To understand something of the appellant's predicament, it is necessary to situate the protests in New Zealand alongside what is taking place in Iran.

#### **The protests in Iran – context**

[41] In *Refugee Appeal No 76344* (24 July 2009), at [53]-[55], the Authority considered the wider economic and demographic context against which current protests are taking place. Other factors contributing to a sense of crisis include:

- (a) a controversial subsidy reform package recently passed in the Iranian parliament at Ahmadinejad's behest which threatens to increase inflationary pressures – see Kramarenko *et al*, *Islamic Republic of Iran; Selected Issues* International Monetary Fund, Washington (August 2008) at p26; Parliament *Iran's Parliament rejects subsidy bill withdrawal* Press TV, Tehran (3 January 2010) M Farnik *Ahmadinejad's Economic Plans Under Attack* Institute of War and Peace Reporting (2 February 2010). See also, M Javedanfar "No Respite for Ahmadinejad" *The Guardian* (12 February 2010); and

- (b) signs of some discontent among the merchant class who have been increasingly economically displaced by the vast economic expansion of Iran's Revolutionary Guards Corp (*Sepah*) now effectively a military-industrial conglomerate, which has substantively benefitted from the existing arrangements – see International Crisis Group *Iran: What does Ahmedinejad's presidency mean?* at p10; Wehrey *et al* *The rise of The Pasdars: Assessing the Domestic Roles of Iran's Revolutionary Guards Corps* Rand Corporation, Santa Monica, 2009; J Borger and R Tait "The Financial Power of the Revolutionary Guards" *The Guardian* (15 February 2010).

### **The changing nature of post-2009 election protest in Iran**

[42] Public protest inside Iran in response to the 2009 election has over time changed in nature and, to a lesser extent, in focus. In terms of its nature, in the face of a heavy crackdown by the state security and law enforcement agencies public protest has been transformed from the large scale, spontaneous mass demonstrations by up to millions of people seen in June 2009 into a series of discrete and opportunistic hijacking of pre-existing calendar events. Opposition tactics have been to mobilise around key commemorative calendar events which government simply cannot cancel such as Qods Day (September); Students Day, celebration of takeover of United States embassy (November); Ahsura (December) and 22 Bahman, the anniversary of Khomeini's effective seizure of power (11 February). Each of these dates have seen demonstrations of differing sizes in Tehran, and other places, and clashes with the security forces.

[43] Alongside these protests, a widespread civil disobedience campaign is taking place. Currency is being defaced with anti-regime slogans or pictures of Neda Agha Soltan. Goods advertised on state television or produced by *Sepah*-affiliated companies are being boycotted. Graffiti is appearing on public walls – see Robin Wright "Is this Iran's Berlin wall Moment?" *Times Online* (28 December 2009); F Ghadar *Iran's latest protests: Critical questions* Centre for Strategic and International Studies, Washington, (December 2009).

[44] As to the focus of protest, in the days following the 2009 election, the focus of protest was to demand no more than a new election or a recount of the vote. However, opposition demands have evolved in from simply questioning the legitimacy of Ahamdinejad's presidency to questioning the legitimacy of the system of governance itself and, in particular, the role and office of the supreme

leader – see I Black “Frail but fierce, Iran’s supreme leader Khamenei answers his critics” *The Guardian* (19 June 2009); I Black “Guardian Council rules out fresh Iran election” *The Guardian* (26 June 2009), F Ghadar *Iran’s latest Protests: Critical Questions* Centre for Strategic and International Studies, Washington; Y Baji “Protestors ready to stand up to security force” *Institute for War and Peace Reporting* (4 November 2009). In January 2010, no less than three separate political manifestos were issued by senior figures associated with the Green Movement. While they differed in emphasis and reach, each called into question some aspect of existing governance arrangements in Iran – see R Wright “An opposition manifesto In Iran” *Los Angeles Times* (6 January 2010) available at <http://robinwrightblog.blogspot.com/2010/01/opposition-manifesto-in-iran.html> Y Baji *The subtlety of slogans: Why death to Khamenei does not mean what it says* Institute for War and Peace Reporting (25 January 2010); R Tait and N Hoesiny “The Iranian revolution grinds to a halt on the eve of its anniversary” *The Observer* (7 February 2010).

[45] In response, state-sponsored pro-government rallies in December 2009 explicitly endorsed the supreme leader. There were calls from the crowds for Mousavi and other Green Movement leaders to be executed – see Associated Press ‘Pro-Government rallies call for death of Iran’s opposition leaders’ *The Guardian* (30 December 2009). On 8 January 2010, some 500, apparently armed, pro-government demonstrators surrounded the offices of Medhi Karroubi, another defeated presidential candidate, and shot at his car – R Tait “Iran opposition leader Mousavi ready to die for reform” *The Guardian*; during the 22 Bahman celebrations, Karroubi was attacked again, his son detained along with the brother of former President Khatami.

[46] On 5 February 2010, giving a Friday prayer sermon at Tehran University, the head of the guardian council called for more executions, to act as a deterrent – see R Tait and N Hoesiny “The Iranian revolution grinds to a halt on the eve of its anniversary” *The Observer* (7 February 2010).

### **Human rights abuses against persons participating in protests**

[47] The reaction by the Iranian regime to those participating in the post-election protests has to be considered against its generally poor human rights record. Country information establishes that the torture and detention of detainees

remains a common feature of the Iranian criminal justice and security landscape. As Amnesty International *AI report: Iran* (2008) states:

“Torture and ill-treatment of detainees were common, facilitated by prolonged pre-charge detention, denial of access to lawyers and family, and a longstanding pattern of impunity for perpetrators.”

See also, Human Rights Watch *World Report: Iran 2009* (January 2010) at p1 and United States Department of State *Country Reports on Human Rights Practices 2008: Iran* (25 February 2009) at section 1a.

[48] It is, therefore, unsurprising that within the context of the disputed presidential election in June 2009, human rights abuses have occurred. There have been many arrests. As at 13 August 2009 – that is, some two months after the elections – a spokesman for Iran’s judiciary confirmed that by then some 4,000 people had already been detained – Human Rights Watch *World Report 2009: Iran* (January 2010). This figure will be higher substantially following more recent protests – see Amnesty International *Iran: Hundreds held in Iran after Ashoura protests* MDE 13/004/2010 (8 January 2010). Some protestors have been killed although estimates of people killed vary: 40 by official reckoning up to around 80 killed by unofficial estimates. One unofficial reckoning puts the figure as high as 178 as at mid-December 2009 – see C Lamb “Lessons in revolution via YouTube” *Times Online* (13 December 2009); Associated Press “Iranian opposition leader Mehdi Karroubi survives car shooting” *The Guardian* (8 January 2010). Recently, two people were hanged for pro-monarchist activities, claimed by representatives of Iran’s judiciary to have been “surely arrested in the recent riots” and other people have reportedly been sentenced to death – I Black “Mousavi attack on dictatorship in name of religion seen as Iran protests call” *The Guardian* (2 February 2010).

[49] There are credible reports of some detainees being sexually assaulted and subjected to other forms of torture in detention – Human Rights Watch briefing *Iran: stop covering up sexual assaults in prison* (6 November 2009). Indeed, in July 2009, the Iranian parliament established a “Special Parliamentary Committee to Investigate the Status of Post-Election Arrestees” to investigate allegations of torture and abuse of detainees arrested in the post-election crackdown. On 10 January 2010, the panel investigating detentions determined that Iran’s deputy prosecutor general was directly responsible for the ill-treatment of detainees in a prison facility outside Tehran and for the deaths of three detainees there – see Human Rights Watch *Iran: prosecute Mortazavi for detention deaths* (13 January 2010).

[50] Reports of other ill-treatment include sleep deprivation, subsection to mock executions and threats to family – Human Rights Watch *World Report 2009: Iran* (2010). An overview of the human rights abuses that have occurred are usefully summarised in the recent Human Rights Watch report *The Islamic Republic at 31: Post-election Abuses Show Serious Human Rights Crisis* (February 2010). The report, at p18, concludes:

“As the rulers of the Islamic Republic commemorate the 31st anniversary of the overthrow of the Shah, they confront the results of their continuing efforts to suppress the extensive peaceful protests provoked by alleged official vote-rigging in the June 12 presidential election. Their attacks have left scores dead, untold hundreds injured, and thousands arbitrarily arrested. Show trials of ordinary protestors and prominent reformist figures have displayed to Iranians and the world a flagrant disregard for the rule of law. Nearly 9 months after the disputed election, the government has not acted to investigate and hold accountable those responsible for ordering or carrying out these serious human rights abuses. Instead, authorities continue their campaigns of intimidating, arresting, and convicting individuals for peacefully exercising their opposition to the government and protesting its policies.”

### **Evidence of problems on account of protest activity while overseas**

[51] Threats have been made by senior figures within the regime’s security apparatus that the regime was looking at the activities of the Green Movement abroad – see “Military authorities threaten the supporters of the Green movement outside Iran” *BBC Farsi Service* (5 November 2009). In this report, the cultural deputy of Iran’s armed forces is quoted as stating that the regime was identifying “many protestors inside and outside Iran” and that they would be confronted “at the appropriate” time. He goes on to state that “a large number of individuals” involved in a rally held on 4 November had been identified and they would be confronted “in time”. He is reported as stating that the regime would not “allow agents of regime change and soft coup to plot against it and if forced to, shall even create serious challenges for agents of the coup outside the country”.

[52] This *BBC* report also quotes a report from the website of the political office of the Revolutionary Guards (“the *Sepah* report”) which lists who *Sepah* regard to be the five main supporting groups of the Green Movement abroad, namely: secular intellectuals, journalists, student activists, artists and counter-revolutionary groups such as pro-monarchists, infidels, and members of *Mojahedin e-Khalq*. It goes on to assert that “the large number of Iranians” have not only supported the protest movement after the election but have also engaged in “activities against the Islamic Republic”. The *Sepah* report goes on to list a number of allegations against those outside the country, namely:

- (a) Attacking the status of the Islamic leadership, the principle of *Velayat-e-Faghih* (rule of the Supreme Islamic Jurist);
- (b) Making accusations of corruption and incompetence;
- (c) Reiterating the subject of vote rigging;
- (d) Instructing and instigating riots to create unrest and insecurity;
- (e) Instructing and instigating domestic supporters to engage in civil disobedience;
- (f) Damaging the reputation of senior figures in the Islamic Republic;
- (g) Questioning the credibility of the Islamic Republic's legal institutions such as the Guardian Council, Ministry of the interior, Judicial Branch, Law Enforcement Forces, Ministry of Intelligence, *Sepah* and the *Basij*.

[53] The WSJ article also notes a report from Germany that the Iranian intelligence services were monitoring the activities of about 900 critics of the regime inside Germany. See also Iran Emrooz online *The Iranian government's spying abroad to identify its opponents* (15 October 2009) which summarises an interview to this effect with an official from Germany's intelligence service broadcast on German television.

[54] The WSJ article involved interviews with 90 Iranians "living abroad" some of whom had been back to Iran following election-related activity abroad. The article records that:

"Dozens of individuals in the U.S. and Europe who criticized Iran on Facebook or Twitter said their relatives back in Iran were questioned or temporarily detained because of their postings. About three dozen individuals interviewed said that, when travelling this summer back to Iran, they were questioned about whether they hold a foreign passport, whether they possess Facebook accounts and why they were visiting Iran. The questioning, they said, took place at passport control upon their arrival at Tehran's Imam Khomeini International Airport.

Five interviewees who travelled to Iran in recent months said they were forced by police at Tehran's airport to log in to their Facebook accounts. Several reported having their passports confiscated because of harsh criticism they had posted online about the way the Iranian government had handled its controversial elections earlier this year."

[55] In addition, one person from a "German-speaking area of Europe" said airport officials in Tehran showed him pictures of him demonstrating abroad and he was told that he would face trial for anti-regime activities abroad if he did not



act as an informant. He was asked to identify other persons in the demonstrations. During his interrogations he was “blindfolded, kicked and physically abused”. He agreed to do so and then fled overseas after his passport was returned. Another person was made to log onto Facebook on return to Iran. His passport was confiscated and he was interrogated on several occasions over next month before being allowed to leave.

[56] The Authority notes, however, that the interviewees in the WSJ article appear to be persons who were able to subsequently leave Iran to take up residence abroad in the United States or Europe. They do not appear to be people who have returned to Iran having either been removed or making a voluntary departure after refusal of an asylum claim and having no right to enter another country. They do not appear to be similarly situated persons to the appellant.

[57] The Authority is not aware of any report by Human Rights Watch or Amnesty International dealing with what happens to persons removed or deported to Iran whom the Iranian authorities know or are suspected of participating in post-election protests while abroad. An email to the Refugee Research and Information Branch dated 27 January 2010 from the Iran Human Rights Document Centre, a United States-based NGO of prominent lawyers and academics, which is seeking to systematically document the history of human rights abuses inside Iran states (*verbatim*):

“We do not have much first-hand knowledge about what will happen to someone returning to Iran after participating in demonstrations. But, we can say the following:

On one end of the spectrum, everyone who participated in anti-Iranian government demonstrations after the June 12 elections will not be stopped at the airport and/or arrested. On the other, everyone is not entirely safe. Iranians have good reason to fear begin photographed at demonstrations, as the Iranian regime peruses photographs and then tries to identify individuals. But, whether the Iranian government will stop such people at the airport depends on factors such as where the demonstration was held (photographing is more likely outside Embassies), when it was held, and what else the person has done in relation to the government. Even before the election, the authorities often questioned returning Iranians about their activities outside the country. Sometimes this was all that happened, sometimes people were told to report to the local station periodically, and sometimes people were detained.

Also, it seems to be much more likely that Iranians who have hosted anti-government blogs will be stopped and questioned at the airport. This happens to average citizens-not just well-known people.

As for the issue of what happens to deportees, we have no information at this point.”

### **The role of new media**

[58] Forms of new media such as Twitter, Facebook and YouTube as well as mobile phone technology have become the basic infrastructure of the protest movement – see generally *The Role of New Media in the 2009 Iranian elections* Centre for International Media Assistance, Washington DC (20 November 2009). YouTube is mentioned as being used by at least one very prominent dissident to orchestrate protest inside Iran from the United States – see WSJ article; see also C Lamb “Lessons in revolution via YouTube” *Times Online* (13 December 2009).

[59] Country information establishes that the Iranian security and intelligence services, including those personnel working at the airports, are increasingly sensitised to the role new media can play as an intelligence gathering tool or as a mechanism to stifle dissent. In particular, in late 2009, a 12-person cybercrime unit was established to review websites with a view to the prosecution of persons “spreading lies” and “insults” against the Islamic system – see R Tait “Iran moves to silence opposition with internet crime unit” *The Guardian* (15 November 2009). During the 22 Bahman demonstrations, the authorities have used SMS text messages to ask people to inform on protests by texting ‘113’ to a designated number – see Iran protests: live Blog *The Guardian* (11 February 2010). Furthermore, the WSJ article reports of person being required to declare if they have a Facebook account and, if so, log onto it and of *Sepah* agents creating false Facebook identities to infiltrate protest groups.

### **Application of country information to the appellant’s case**

[60] In making an assessment of the appellant’s predicament by reference to this country information, the Authority notes the following:

- (a) Both the TVNZ broadcast and YouTube videos are available for viewing. In light of an increasing sensitivity by the regime to the role of new media in assisting with intelligence gathering, there is an increased likelihood that these might have been viewed, by embassy staff here in New Zealand and some participants identified;
- (b) The broadcast by VOA into Iran increases the chance that some participants may be identified by the Iranian authorities;
- (c) The appellant is clearly identifiable in the TVNZ and VOA broadcasts and videos posted on YouTube;

- (d) On at least two occasions he can be clearly seen standing on his own at the front of the group leading other protestors shouting slogans. This more prominent role will distinguish him from someone who appears only at the margins of the demonstration;
- (e) The slogans the appellant was encouraging the other protestors to chant were, in part, radical. In one of the YouTube videos the appellant is identifiable encouraging people to chant that they should fight back against the regime even if they have to die one by one. This increases the risk that he is regarded by the Iranian authorities as someone supporting calls for a fundamental recasting of Iran's governance arrangements.

[61] As mentioned, however, there is a lack of direct evidence available to the Authority regarding the predicament of persons who have been deported or removed back to Iran from Western countries after having engaged in some form of public protest in response to the 2009 election. Although not clear, it seems that the instances cited in the WSJ article relate to persons who had some ability to subsequently leave Iran and resume "living abroad" suggesting that they might have residence or citizenship status in the United States or Europe at the time they were interrogated.

[62] In terms of assessing the risk to the appellant against this evidential void, the Authority notes the documented history of serious human rights abuses perpetrated against detainees in Iran generally and, more specifically, against some persons detained after engaging in peaceful public protest over the 2009 elections. It is in these circumstances appropriate for the Authority to apply a benefit of the doubt. Noting that the appellant has on occasions played a more 'leadership' role and the radical tone of the appellant's activity on these occasions has been captured in YouTube video postings, the Authority finds, by a narrow margin, that there is a real chance the appellant will be detained on arrival and interrogated about that activity. In this circumstance the Authority accepts that there is a real chance that he will be subjected to serious harm amounting to his being persecuted because of the particular nature of his involvement in leading the chanting of radical slogan on these occasions. The first principal issue is answered in the affirmative.

[63] In reaching this conclusion two things must be borne firmly in mind. First, this case turns on its own specific facts and each appeal case must be assessed

on a case-by-case basis. Second, the situation inside Iran is dynamic. Although underlying drivers of popular discontent relate to factors embedded within the structuring of the Iranian state, the extent to which opposition and open protest will continue in the face of a severe clampdown by the state during the 22 Bahman celebrations remains to be seen – as to which see Jane’s Intelligence Weekly *Security forces Iran’s opposition underground* (18 February 2010). It may be that with the further passage of time any risk which may presently exist on the individual facts of any one case may dissipate to below the real chance threshold. The situation will need to be kept under ongoing review.

### **Nexus to a Convention reason**

[64] The appellant’s predicament is being contributed to by his political opinions. The second principal issue is also answered in the affirmative.

### **Bad faith**

[65] In *Refugee Appeal 76204* (16 February 2009) the Authority reviewed and confirmed its ‘bad faith’ jurisprudence. The Authority noted:

“[133] As para [96] of the *Handbook* recognises, a person may become a refugee *sur place* as a result of his or her own actions "such as associating with refugees already recognized, or expressing his political views in his country of residence". There is nothing exceptional about these two examples. The first circumstance refers to situations in which the risk of being persecuted arises almost unwittingly and the second to circumstances where the individual has exercised a fundamental human right. It is quite another matter for someone who is not at risk of being persecuted to deliberately manipulate circumstances to create such a risk for the purpose of subsequently justifying a claim to refugee status. This Authority has held that where an individual so acts he or she is not a person to whom the Refugee Convention applies. See *Refugee Appeal No. 2254/94 Re HB* (21 September 1994) also reported in (1995) 7 IJRL 332. In that case the Authority stated at 36; 352:

What must be recognised ... is that a person who, not being at risk of fundamental marginalization or disfranchisement in the country of origin, wilfully creates a set of circumstances simply as a means of accessing the benefits of the Refugee Convention cannot be said to be a refugee for the purpose of the Refugee Convention.

[134] In concluding that there is a good faith requirement the Authority at p 59; 352 stated:

We intend adopting and applying the three-part classification devised by Grahl-Madsen, namely:

- (1) Actions undertaken out of genuine political motives.
- (2) Actions committed unwittingly, or unwillingly (eg as a result of provocation), but which nevertheless may lead to persecution "for reasons of" (alleged or implied) political opinion.
- (3) Actions undertaken for the sole purpose of creating a pretext for invoking fear or persecution.

Our decision to interpret the Refugee Convention as requiring, implicitly, good faith on the part of the asylum seeker turns on a value judgment that the Refugee

Convention was intended to protect only those in genuine need of surrogate international protection and that the system must be protected from those who would seek, in a *sur place* situation, to deliberately manipulate circumstances merely to achieve the advantages which recognition as a refugee confers. The sooner abuses of this kind are detected and eliminated, the longer the integrity of the refugee status determination procedures and the protection afforded by the Convention will enable the *bona fide* asylum seeker to escape persecution. Clearly this is the underlying assumption of the Convention.

However, the good faith principle must be applied with caution, not zeal. The precise application of Grah-Madsen's third category must be determined on a case-by-case basis."

[66] Although the fact that this appellant has been found to not be credible in his two previous refugee claims requires careful consideration of his motivation for taking part in the demonstrations, the Authority is satisfied that this is not a case where the bad faith principle should be invoked against the appellant. The protest in New Zealand was a spontaneous one organised by other persons and in response to what has become a serious political challenge to the regime. In fairness to the appellant, he spoke with a fair degree of conviction and knowledge about political matters inside Iran and the Authority finds that his participation in the demonstration was out of a genuine desire to support calls for change in the Iranian political system and not simply to manipulate his circumstances so as to gain recognition as a refugee.

## **CONCLUSION**

[67] 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.

**"B L Burson"**

B L Burson  
Member