

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76151

AT AUCKLAND

<u>Before:</u>	B L Burson (Member)
<u>Counsel for the Appellant:</u>	C Curtis
<u>Appearing for the Department of Labour:</u>	S Houliston
<u>Date of Hearing:</u>	17 & 18 June 2008
<u>Date of Decision:</u>	25 July 2008

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) cancelling the refugee status of the appellant, a national of Iran, pursuant to s129L(1)(b) of the Immigration Act 1987 ("the Act").

[2] The core of these cancellation proceedings revolves around two separate issues. First, that since being granted refugee status by the RSB on 27 August 2001, the appellant has travelled back to Iran using a genuine Iranian passport issued to him in 1996. Second, that the appellant gave a different account of his departure from Iran from that which he told to the refugee status officer who granted refugee status.

THE CANCELLATION JURISDICTION

[3] The cancellation jurisdiction of the Authority comprises two distinct streams which may be called the appellate and application streams. This case is under the appellate stream.

[4] The appellate stream has its origins in s129L(1)(b) of the Act, which

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provides:

“129L Additional functions of refugee status officers

- (1) In addition to their function of determining claims for refugee status, refugee status officers also have the following functions:

...

- (b) Determining whether a decision to recognise a person as a refugee was properly made, in any case where it appears that the recognition given by a refugee status officer (but not by the Authority) may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information, and determining to cease to recognise the person as a refugee in such a case if appropriate.”

[5] Where a refugee status officer ceases to recognise a person’s refugee status, that person may appeal to the Authority against that decision. See s129O(2) of the Act, which provides:

“A person who is dissatisfied with a decision of a refugee status officer on any of the matters referred to in section 129L(1)(a) to (e) and (2) in relation to that person may appeal to the Refugee Status Appeals Authority against the officer’s decision.”

[6] Under both streams of the Authority’s jurisdiction, there are two elements to the enquiry. The Authority must first determine whether the grant of refugee status may have been procured by fraud. If so, it must then determine whether the person should cease to be recognised as a refugee. That determination is, in effect, the Authority’s usual forward-looking enquiry as to whether, on current circumstances, the appellant faces a real chance of being persecuted for a Convention reason on return. That second stage of the enquiry is engaged only if the first element – that the grant of refugee status may have been procured by fraud – is established – see *Refugee Appeal No 75392* (7 December 2005) at paragraph [12].

[7] Furthermore, as noted in *Refugee Appeal Nos 76068, 76069, 76070, 76071 and 76072* (18 April 2008) at para [12]:

“[12] Given that these are inquisitorial proceedings, it is not entirely appropriate to talk in terms of the burden or onus of proof. Nonetheless, it is the Authority’s view that, in “cancellation” proceedings, it is the responsibility of the DOL to present such evidence in its possession by which it can responsibly be said that the grant of refugee status may have been procured by fraud. It is also our view that the term “may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information” is deliberately imprecise and signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion: *Refugee Appeal No 75563* (2 June 2006).”

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[8] To put the present appeal in context, it is necessary to record both the appellant's original refugee claim and the granting of refugee status to him.

The appellant's refugee claim

[9] What follows is a summary of the appellant's evidence as recorded in the refugee status interview report prepared by the refugee status officer following the appellant's interview on 3 July 2000.

[10] The appellant arrived in New Zealand on 15 January 2000 and made an application for refugee status on arrival. The basis of the appellant's claim was that he was an ethnic [...] belonging to a family who were staunchly pro-monarchist in their political views. Prior to the Revolution his father had been employed for the Shah but following the Revolution the family were targeted by officials from *Sepah* and *Komiteh* who knew his father was a monarchist. The family moved elsewhere to avoid this problem. Nevertheless, the family continued to suffer harassment from the revolutionary authorities. The family's surname identifies them as royalists and this caused constant trouble in the operation of his father's business. Furthermore, the appellant explained how he was harassed at school and during his military service because of his family name.

[11] The appellant claimed that in mid-1990 he and his father were beaten and detained by *Sepah* agents. The appellant was held for two days before being released but his father remained in detention for the next 18 months. Their shop was closed while his father was held but re-opened thereafter. In 1993 the appellant's father was arrested again on suspicion of being involved in a pro-monarchist organisation. The family home was searched and the appellant was arrested and held for two days during which time he was threatened and questioned about his father's political activities. The appellant's father was held for six months.

[12] Thereafter, the appellant decided to actively engage in political activity against the regime as a result of this harassment. He began to assist his father distributing pro-Shah literature.

[13] The appellant was detained without charge in 1995 for taking part in a demonstration. During this demonstration the appellant was stabbed. He was

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held for five months during which time he was beaten by his captors. This strengthened his resolve to oppose the regime and, after his release, he continued to distribute pro-Shah literature.

[14] In late 1998, the appellant's father fled following the arrest of two of his friends. The appellant was questioned about his father's whereabouts and threatened.

[15] The appellant decided to take part in the student protests in July 1999 at Tehran University. He travelled there in his car with his wife and sister-in-law. After joining with the main crowd of protesters for a period of time, they returned to the car which was parked in a nearby side street. As they approached the car, officials began beating the appellant but he managed to escape when other protestors came to see what was happening. The appellant, together with his wife and sister-in-law, fled back to their family home. Approximately two days later, officials came to his house. The appellant was not at home at the time. The officials stated that they knew he had taken part in the demonstration because they had seized his car and implicated the appellant in the loss of weapons belonging to them. His wife and sister-in-law were arrested.

[16] After returning home and finding out what had happened, the appellant immediately fled. He hid at a relative's house for the next five months. He ascertained by telephone that his wife and sister-in-law had been detained for a day and that when his brother went to recover his car from the site of the demonstration he had been arrested and held for four days.

[17] The appellant stated that he fled overland into Turkey by unlawful means. He used an agent who smuggled him across the border for a fee. From Turkey he flew via a number of countries before arriving in New Zealand.

The grant of refugee status

[18] By decision dated 27 August 2001, the refugee status officer deciding the appellant's claim ("the granting officer") found that the appellant had a well-founded fear of being persecuted. His credibility was accepted. The granting officer noted there were four relevant factors for consideration in the claim namely:

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- (a) The appellant's participation in the demonstration outside Tehran University in July 1999, the subsequent confiscation of his car and the arrest of his wife, brother and sister-in-law.
- (b) The appellant's pro-monarchist political activities and family background.
- (c) The appellant's ethnicity.
- (d) The appellant's illegal departure from Iran.

[19] The granting officer accepted the appellant's credibility. He noted that the Iranian authorities were aware of his involvement in the demonstration and that the appellant was the subject of official interest in relation to a claim that weapons had been stolen during the demonstration. The granting officer considered that it was likely that the appellant would be arrested and questioned in relation to this matter should he return to Iran and that he would be unlikely to face a fair trial. In this regard the refugee status officer held that the appellant's pro-monarchist activities and political family background together with his ethnicity would be aggravating factors. The granting officer noted the appellant's illegal departure which combined with the possible case against him relating to the alleged theft of the weapons, caused the granting officer to conclude that the appellant was likely to lose his right to leave and return to Iran. The granting officer also concluded that his illegal departure was likely to be viewed by the Iranian authorities as an expression of political defiance.

Notice of intended determination concerning loss of refugee status and cancellation of refugee status by the RSB

[20] On 27 February 2007, the appellant was served with a notice dated 21 February 2007 advising that it was intended to make a determination as to whether his original grant of refugee status may have been improperly made. The notice referred to his return to Iran between July and August 2004 using a genuine Iranian passport. Furthermore, this passport showed that he had departed Iran in 1999 via Mehrabad airport and had previously travelled to Greece and Turkey, travel details which were not disclosed during his refugee claim.

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[21] The appellant filed a statement in response to this notice and thereafter was interviewed by a refugee status officer on 7 May 2007. A report of that interview was prepared on 30 May 2007 in which further issues were raised. The appellant replied to that report on 18 June 2007. By decision dated 12 October 2007 the RSB concluded, after considering all of the information, that his grant of refugee status may have been procured by fraud. Following that finding, it then held that it should cease to recognise the appellant as a refugee. The appellant appeals to this Authority against that decision.

THE RESPONDENT'S CASE ON APPEAL

[22] The Authority heard from Maya Mills, the refugee status officer who made the decision cancelling the grant of refugee status. Ms Mills confirmed that her reasoning in respect of the cancellation of the appellant's grant of refugee status was contained in the decision dated 12 October 2007. She also confirmed that she had read the further statements filed by the appellant dated 18 February 2008 and the appellant's wife dated 20 February 2008 but, having read those statements, had nothing further to add in relation to the matter.

THE APPELLANT'S CASE ON APPEAL

[23] The Authority heard from the appellant and his wife. What follows is a summary of their evidence.

The appellant's evidence

[24] The appellant told the Authority that, with the exception of the manner in which he departed Iran in 1999, his underlying account of his family background, pro-monarchist activities and involvement in the 1999 demonstration was true.

As to the arrest in 1999

[25] The appellant confirmed that at the 1999 demonstration he was detained by plain clothes officials when he had attempted to move from the site where the demonstration was taking place to an outlying street where his car had been

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parked. He explained how he had been reluctant to leave the demonstration and separated from his wife and sister-in-law by a few metres. As he approached his car, he was arrested and placed into a minivan and taken to a government facility which, while not ordinarily used as a detention facility, had nevertheless been given over for this purpose because of the sheer number of people at the demonstration and the number of arrests being made. He was kept in this facility with many other people for a few hours. At this time his brother-in-law, who had been an electronics engineer with the *Sepah* for a number of years, managed to secure a visitor's pass to see him. His brother-in-law said that he would trade places with the appellant. Because of his background of employment with the *Sepah* they would not believe that he would have had anything to do with the protest and believed his explanation of being simply an innocent bystander. This brother-in-law was aware of the appellant's history of problems and his family background and for this reason decided to help him.

[26] The appellant went back to where his car was but, seeing officials still in the vicinity, he decided to leave it there. He then went to his sister's house as she was the wife of the person who traded places with him. There was a heated discussion about what had taken place. The appellant could not recall what he did next after leaving her house. However, he did ask his brother to get his car but his brother was arrested when he tried to do so.

As to his mode of departure in 1999

[27] The appellant told the Authority that he did not leave overland via the land border with Turkey illegally as he had claimed to the granting officer. Rather, he left on an Iranian passport issued to him in 1996. He had applied for the passport because of the increasing pressure his circumstances were placing him under. The appellant explained that, although the passport is genuine, he had to pay a bribe to obtain it as a clerk in the passport office refused to issue him with a passport bearing his family's surname.

[28] The appellant confirmed that the stamp in his passport showing a lawful departure from Mehrabad airport in 1999 was a genuine stamp and that he had in fact left Iran in this manner. He stated that he had decided to risk this route rather than travel overland because he had taken this overland route in 1997 in an attempt to travel to Canada to ease his various problems in Iran. However, he

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was unsuccessful in his attempt to do so and ended up being arrested in Greece while awaiting transportation from there to another European country in order to travel onwards to Canada. He was released into the custody of an Iranian man residing in Greece who arranged for false stamps to be placed in his Iranian passport which he then used to return to Iran.

[29] The appellant further explained that because of the problems he faced on this trip, he decided that he would first seek to travel to Malaysia from the airport in Tehran. He was aware that Iranians could enter Malaysia without a visa and there were many flights between the two countries on a weekly basis. He took the precaution of having his sister's husband purchase the ticket with an open departure date. When he was ready to travel he went to Tehran and presented his ticket which then enabled him to travel on the next available flight. Furthermore, there were many checkpoints between his place of hiding and the Iranian/Turkish border because of its geographical proximity to Turkey. There were no such checkpoints between his place of hiding and the airport in Tehran. The appellant encountered no difficulties in leaving via the airport.

As to his return to Iran in 2004

[30] The appellant admits he returned to Iran but claims he had no effective choice but to do so. He first applied to have the passport extended at the Iranian consulate in New Zealand in 2004. He then travelled to Japan via Australia Thailand in order to see a Korean woman with whom he had been living in New Zealand but who had now taken up residence in Japan prior to the arrival of his wife and child in New Zealand in mid-2003. The appellant told the Authority that he and this Korean woman had struck up a romantic relationship, as a result of which they had explored a business opportunity dealing in Persian carpets here in New Zealand. The appellant told the Authority that this Korean woman was constantly asking him to travel to Japan. Sensitive to the jealousy this may cause in his wife – who was aware that he had a romantic relationship with this woman prior to her arrival in New Zealand – the appellant hid his travel to Japan from his wife. He only explained to his wife that he was travelling to Australia and Thailand the purpose of conducting business in relation to the carpets.

[31] The appellant duly travelled to Thailand via Australia and found that the night life was agreeable. He then travelled to Japan where he stayed with the

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Korean woman for two weeks. Wanting to experience the night life of Thailand one more time prior to returning to New Zealand, the appellant stopped over there yet again. However, he suffered an allergic reaction following his taking some tablets whilst engaged in sexual activity in Thailand. This caused him to have an extreme allergic reaction in his genital region. He visited a hospital in Thailand. Aware that it would have been difficult to discuss this matter with his wife, the appellant telephoned a friend, who was living in Malaysia, for advice and support. He travelled to Malaysia and discussed the matter with his friend. He left a bag containing much of his possessions with his friend because it was difficult for him to carry such a weight in his distressed condition. The condition caused bleeding and made it difficult for him to walk.

[32] The appellant returned to Thailand whereupon he telephoned his sister. His sister convinced him that it would be better for him if he would come to Iran to consult a specialist who would hopefully clear the matter up before he returned to New Zealand. Although concerned about his safety, the appellant felt he had no choice in his circumstances and decided to do so. He then travelled back to Malaysia to pick up the luggage he had left with his friend. The appellant then travelled to Iran. The appellant remained in Iran for approximately one month. During this time he stayed principally with his sister in Tehran. He entered Iran some two weeks after he had first encountered the medical problem in Thailand.

[33] He went to a hospital in Iran on two occasions and was given a prescription which made him feel better and within two weeks of his arrival he found he could walk freely. However, the appellant was still in pain. He stayed for one month. During this time he kept a low profile and did not venture out. He went to see family members for a few days and to retrieve some carpets.

As to his risk on return

[34] The appellant maintains that despite his return to Iran and his not telling of the actual way in which he fled the country his original grant of refugee status was not procured by fraud. Moreover, he claims that were he to be returned to Iran now he would still be at risk. He stated that he would face a lot of difficulties because of his name. He explained that previously life was a constant battle with the Iranian authorities because of his name and this would continue to be the case. It is possible that at any time he is questioned and harassed about his name

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they may open up his file and see all his previous arrests, his father's arrests and that he had been implicated in the theft of weapons during the 1999 demonstration.

The appellant's wife's evidence

[35] The appellant's wife told the Authority that she knew of the appellant's arrest in 1999 because she had been there with him along with her sister. She stated that as they were leaving her husband was caught by *Sepah* officials who searched his pockets. Upon finding his certificate of identity which showed his family name, he was taken by them. The wife and her sister ran away. The husband was detained for either one or two nights. He then returned home but decided he needed to go into hiding. After that officials came to the family home and arrested the wife and her sister. The sister was kept for a few hours and the wife detained overnight and questioned as to where he was.

[36] Towards the end of 1999, the husband came back to the family home and told her that the house needed to be sold as he had to leave Iran. The appellant's wife was reluctant to do so as she did not want to leave but the appellant told her he did not believe it was safe for him. He stayed for one night and went back into hiding. She received 1 million *tomans* from the sale of the house which was used to support herself and her son. The wife and the couple's then only son moved to a town in the north of Iran where her mother lived. She had no further contact from the officials about her husband after the house was sold.

[37] As for the appellant's return to Iran, the wife explained the first she knew of it was when the appellant telephoned her after already arriving in Tehran. As far as she was aware the appellant was travelling to Thailand and Japan in relation to a carpet business that he was trying to establish. The appellant explained to her that he needed to return because of a medical problem.

Documents and submissions received

[38] On 27 November 2007, the Authority received from counsel a memorandum in which it was accepted that the appellant had returned to Iran in 2004 and had left via Mehrabad airport in 1999 and not overland. However, it was submitted that the appellant maintained that he "is still a refugee and cannot return to Iran". On

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21 February 2008, the Authority received from Ms Curtis witness statements for the appellant and his wife, together with a copy of a business card for a person whom the appellant visited in Australia in relation to his carpet business together with a copy of a hospital card issued by the hospital the appellant attended in Thailand. On 26 March 2008, the Authority received a memorandum from Mr Houliston with a witness statement of Ms Mills attached thereto. On 12 June 2008, the Authority received further submissions from Mr Houliston together with information relating to a particular medical condition suffered by the appellant. On 17 June 2008, the Authority received a letter from Ms Curtis enclosing further documents relating to the appellant's medical history in relation to his particular medical condition. On the morning of 18 June 2008, the Authority received from Ms Curtis a translation of a medical document dated December 2004 relating to the appellant's particular medical condition.

[39] During the hearing, the appellant produced a photograph of himself taken in a [...]. At the conclusion of the hearing both counsel addressed the Authority orally. On 3 July 2008, the Authority received a partial copy of the sale and purchase agreement for the appellant's home in Tehran dated July 2001.

ASSESSMENT OF THE APPELLANT'S CASE

The Stage One Inquiry – May the grant of refugee status to the appellant have been procured by fraud?

[40] Ms Curtis accepts that the appellant has concealed relevant information from the refugee status officer who granted refugee status in failing to disclose the fact that he had legally departed Mehrabad airport in 1999 but submits that, had the granting officer been told of the difficulties the appellant had previously faced in seeking to travel via the illegal overland route into Turkey, the granting officer would not have drawn an adverse credibility finding in relation to the appellant's underlying claim. Ms Curtis submits that it is unlikely that there would have been a record of his involvement at the demonstration because of the sheer number of people involved in the demonstration and the relative technological unsophistication of information systems at the time. In relation to the appellant's return to Iran in 2004, Ms Curtis submits that the medical evidence on the file

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confirms that the appellant did in fact suffer from a medical condition in Thailand and that this corroborates his account of the reason for his travel. In other words, there is no basis to impugn the underlying nature of his claim for refugee status.

[41] In contrast, Mr Houliston submits this test is clearly met. The granting officer's decision clearly indicates that the mode of illegal departure was a significant factor in the reasoning. Furthermore, the appellant has admitted that he failed to disclose his true manner of departure because he thought it would be "more effective" to have his case accepted by the officer. This, Mr Houliston submits, displays a positive intention to mislead – something which is not required under the New Zealand statutory provisions. This establishes, he submits, not only that the grant of refugee status "may have been procured by fraud" but that it was in fact intentionally procured by this fraud.

[42] In *Refugee Appeal No 76094* (30 June 2008) at paragraphs [71] and [72], the Authority considered what amounted to the concealment of relevant information for the purposes of s129L(1)(b) of the Act and held that the information must be such that it has some potential utility in terms of the administrative task being performed by the granting officer – that is, in assisting that officer to determine the claim.

[43] In this case, the granting officer was plainly denied the opportunity to consider the credibility of the appellant's underlying claim and whether he had a well-founded fear of being persecuted based on a true and accurate picture as to the appellant's true mode of departure.

[44] However, as recognised in *Refugee Appeal No 75977* (22 November 2007) at paragraphs [74]-[82], the Authority must be satisfied the concealment may have procured the grant of refugee status. While Ms Curtis may be right in that perhaps the granting officer may ultimately have reached the same conclusion, the Authority need not be satisfied that the granting officer would have come to a different conclusion, only that the concealed information may have caused the granting officer to reach a different conclusion.

[45] The Authority finds there is considerable force in Mr Houliston's submissions that the mode of departure was relevant to the granting officer's decision. There can be little doubt that, in the general context of claims from Iran

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– a state which possesses a significant security intelligence apparatus - the question of whether a refugee claimant effects a legal or illegal departure is a relevant factor to the granting officer’s task of determining the claimant’s refugee claim – see *Refugee Appeal No 75989 14 June 2007*) at paragraphs [57]-[59] and *Refugee appeal No 75802* (23 January 2007) at paragraph [57].

[46] It simply cannot be said that the appellant’s failure to disclose a legal departure was of such marginal relevance to the granting officer’s reasoning in recognising the appellant as a refugee so as to support a finding that the “may have been procured” threshold has not been crossed. A review of the decision granting refugee status shows that the claimed illegal nature of the appellant’s departure from Iran was a significant factor in the reasoning process of the granting officer in refugee status. In the granting officer’s reasoning, the claimed illegal departure was intimately bound up with the claim of ongoing interest in him as a result of his participation in the demonstration and implication in the theft of weapons. His illegal departure was, the granting officer concluded (see page 18 of the decision), “expressly politically motivated as officials were searching for him at the time he departed unlawfully into Turkey without documentation.” Such departure was, in the granting officer’s reasoning “likely to be viewed as an act of political defiance”.

[47] Having regard to the entirety of his claimed background – including the claimed illegal departure – the granting officer reasoned (see page 18 of the decision) that “it is virtually certain that should [the appellant] return to Iran, he would be detained at his port of entry, questioned and arbitrarily imprisoned for a further period”. In the circumstances, the granting officer further concluded that he would be likely to lose his right to leave and return to Iran in the future.

[48] Given this linkage, the possibility that the granting officer may not have accepted that the appellant was, at the time of the decision, of interest to the Iranian authorities as a result of his involvement in the 1999 demonstration cannot be dismissed as being so remote that the required causal nexus is not established.

[49] In light of the foregoing, the Authority is satisfied that the grant of refugee status to the appellant may have been procured by the concealment of relevant information by the appellant, namely that he left Iran in 1999 through normal

immigration channels at Mehrabad airport using a passport that had been lawfully issued to him.

The Stage Two inquiry – Should the Authority cease to recognise the appellant as a refugee?

[50] This stage involves the Authority's orthodox forward-looking inquiry. 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."

[51] 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?

Credibility

As to the 1999 detention

[52] The DOL introduced no evidence to directly challenge the appellant's underlying claim to have participated in the 1999 demonstration or the other detentions and political activities he claims. Rather they invited the Authority to draw an adverse inference regarding his claimed involvement based on the fact that he left Iran legally and returned in 2004.

[53] During the course of the oral evidence, a discrepancy emerged in relation to the appellant's participation in the 1999 demonstration. In his refugee application, the appellant stated that he had managed to escape being arrested and detained when a bystander somehow distracted the officials who were beating him. He claimed he then went straight home with his wife and sister-in-law. He stated that the following day he sent his brother and a friend to collect his car but that the car

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had been impounded by the *Sepah* authorities. When his brother and the friend went to the pound his brother was arrested. The appellant claimed that his brother's friend came home to tell him of this news but he was out. By the time the appellant returned he found out not only that his brother had been arrested but that the authorities had come to his house looking for him and had detained his wife and sister in his absence. This evidence was repeated in his interview with the granting officer

[54] Before the Authority, however, the appellant indicated that he had not gone straight home as claimed previously but that he had in fact been arrested and detained at the demonstration and held for a few hours. He told of how his brother-in-law had traded places with him. While he recalled that he had then returned to his sister's house to tell her what had happened to her husband, he could not recall when he next went home. The appellant could offer no explanation as to why he had failed to disclose this during his initial refugee application.

[55] The wife's evidence broadly matched the appellant's new account. She recalled that he had been detained at the demonstration and held for a short period. She could not, with the passage of time, recall for how long – she thought that it might have been for only one or two nights. She had no knowledge of what the appellant had originally claimed but could clearly remember their participation in the demonstration and the husband's detention.

[56] After giving this matter anxious consideration in light of the appellant's failure to give a truthful account of his departure, the Authority finds it is left in some doubt as to the question of the appellant's involvement in this demonstration and brief detention. In this regard, the Authority notes the demeanour of the wife who impressed as a credible witness. She spoke of her own direct knowledge of his involvement in the 1999 demonstration and that he had been detained for a brief period of time. It further notes that neither the appellant nor the wife made any claim that any official interest in him at the time of this detention arose from his engaging in subterfuge with the brother-in-law to leave the *de facto* detention facility. In other words, the appellant has not sought to alter the core of his claim to be at risk. The benefit of the doubt must be extended to the appellant in accordance with usual principles. The Authority therefore accepts that the

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appellant did attend the 1999 demonstration and that he was briefly detained as he claimed in his oral evidence.

[57] The Authority further accepts the appellant's ethnicity and that his family name has caused him the difficulties that he claimed in his original refugee application and in his evidence to the Authority. It accepts that the appellant suffered his earlier detentions in 1993 and 1995 for the reasons that he claims. It accepts that his father and he may have been active in distributing pro-Shah literature at least until the 1999 demonstration. It has no reason to doubt these underlying facts.

[58] The appellant also told the Authority that, on a date after he arrived in New Zealand that he could not now recall, he had been telephoned by his sister who had told him that an unknown person had come to their home asking where he was and what he had brought into the country and where he had gone. The implication is that this visit arose following his return trip to Iran in 2004. However, this visit had not been mentioned in his statement that he filed in support of the cancellation application or in his cancellation interview. The Authority finds this to be a 'spur of the moment' embellishment.

As to the 2004 return

[59] Having seen and heard from the appellant and the wife, and noting the medical evidence on file including the Thai hospital card, the Authority accepts he returned to Iran in the circumstances he claimed.

[60] The appellant's claim will be assessed against this background.

A well-founded fear of being persecuted

[61] The Authority does not accept that the appellant now faces a well-founded fear of being persecuted. While the Authority takes full note of the fact that Iran remains a country in which significant human rights abuses do take place, nevertheless, the appellant managed to exit Iran legally in 1999 without problems using his genuine passport. He then managed to enter and exit Iran in 2004 without encountering any difficulty. He used normal immigration channels to enter and exit, on a genuine passport extended at the Iranian consulate in New Zealand in 2004. He paid no bribe. While he was stopped by immigration officials both on

This is an abridged version of the decision. Some particulars have been removed from or summarised in the decision pursuant to s129T of the Immigration Act 1987. Where this has occurred, it is indicated by square brackets.

entry and exit from Iran, he was only asked routine questions relating to customs matters. There was no mention made of any political activity he had undertaken in relation to pro-monarchist organisations in the past or of any aspect of his involvement in the 1999 demonstration. Also, his wife was able to leave Iran in 2003 without any problems being encountered by her in relation to any prior activity of the appellant.

[62] Furthermore, the appellant confirmed that he has undertaken no political activity of any kind here in New Zealand which would have been likely to bring him to the attention of the authorities. Moreover, he is aware that his father has left Tehran. He does not know whether his father has carried on any political activities there.

[63] In other words, there is nothing in the appellant's profile as of 2008 which establishes that he has a well-founded fear of being persecuted in Iran because of his past political activities or participation in the 1999 demonstration. Any interest in him as a result of the latter that existed at the time has well and truly dissipated to the point of irrelevance with the passage of time.

[64] The Authority does accept the appellant's evidence that his family name has caused him to encounter discrimination from officials who take exception to its royalist implications. The Authority accepts that the appellant (and, for that matter, his two sons) may well encounter low-level discrimination and harassment in seeking to conduct their ordinary affairs. However, given the lack of any ongoing interest in him in relation to events in 1999 or his historical political activity there is nothing to establish that the harassment the appellant may encounter, whilst making life more difficult for him, would result in the appellant suffering such serious harm as to amount to his being persecuted.

[65] The Authority therefore decides that it should cease to recognise the appellant as a Convention Refugee.

CONCLUSION

[66] The Authority finds that the appellant's grant of refugee status may have been procured by fraud and that it should cease to recognise the appellant as a Convention refugee. The appeal is dismissed. Refugee status is denied.

"B L Burson"

B L Burson
Member