

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76345

AT AUCKLAND

<u>Before:</u>	A N Molloy (Chairperson) B L Burson (Member)
<u>Counsel for the Appellant:</u>	D Mansouri-Rad
<u>Appearing for the Department of Labour:</u>	No appearance
<u>Date of Hearing:</u>	11 & 12 June & 7 December 2009
<u>Date of Decision:</u>	30 June 2010

DECISION

INTRODUCTION

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

[2] The appellant claims that he will be seriously harmed if returned to Iran. His claim falls into two parts. The first relates to the reasons why he left Iran. The appellant claims he absconded while on bail granted in respect of false charges brought against him by a high-ranking police officer ("the Colonel"). The Colonel has a vendetta against the appellant because he accused the Colonel's son of theft. The second part relates to events which have taken place since he arrived in New Zealand. He now believes that he will also be at risk because of his attendance at various demonstrations held in Auckland in response to the 2009 Presidential election in Iran.

[3] The appeal turns in part upon whether his claim is well-founded. This is assessed following the summary of his claim which appears below.

THE APPELLANT'S CASE

[4] The appellant is young single male who was born and raised in P where he lived with his parents and siblings until he left Iran in late 2008. He had not experienced any particular difficulties prior to the events which led to his departure.

[5] The appellant's parents are observant Muslims. While they did not place undue pressure upon their children to comply with their religious practices, the appellant and his siblings were raised to comply with societal expectations as to their behaviour. So, for example, his sisters adopt Islamic dress when in public despite their private objection to the need to do so. Likewise the appellant was always cautious about the manner in which he interacted with members of the opposite sex. He was always conscious of the way in which such actions might be interpreted, and of the need to respect his parent's expectations.

[6] After he graduated from high school during the late 1990s, the appellant enlisted for compulsory military service, deciding it would be better to dispose of this obligation sooner rather than later. He completed it in 2002, without any serious difficulties, although he briefly absconded once and, on another occasion, he disobeyed an order to detain a young man and woman who were walking together. The appellant did not believe that they were doing anything wrong. He was reprimanded in respect of both incidents, but neither had serious repercussions.

[7] The appellant then worked for a computer repair company in P before opening his own business in about 2005-06. He worked from premises owned by his parents, adjacent to the family home.

AA

[8] The appellant's difficulties began in early 2008 when he noticed a customer called AA try to leave his store without paying for an item. AA realised that he had been seen and began to run. As he did so, a large roll of cash fell from his pocket. It had been taken from the appellant's till.

[9] The appellant was unable to apprehend AA, but lodged a written complaint with the local police station. No action had been taken by the time he returned to the police station a week later. The appellant returned again about two weeks later, after the New Year holiday. The police still had no news for the appellant and told him that they would contact him if there were any developments.

[10] As he left the police station the appellant met an old friend. When the appellant explained why he was in the area the friend mentioned that he had attended university with AA. He remarked that the appellant must be very brave to take on such a person, explaining that AA's father (the Colonel) is a high-ranking police officer with a long memory and a vindictive streak.

New employee

[11] Around that time the appellant employed a young woman called BB as his shop assistant. She had pleaded with the appellant for work to help her family cope financially after the death of her father.

Police raid

[12] About a fortnight later several members of the Iranian Disciplinary Forces (the police) came to the appellant's shop. They detained BB, seized stock from the premises and ordered the appellant to close for 20 days. They also gave the appellant a notice requiring him to attend the police station the following week. When he did so the appellant was accused of having pornographic images on his computer and of having an improper relationship with BB. He denied (and denies) both. The appellant believes the Colonel was behind the police action.

[13] The appellant has not seen BB since that time. She did not return to work and the appellant's attempts to contact her were intercepted by her relatives, who claimed that she has moved away from the area.

[14] The appellant reopened his shop after 20 days. After a further 20 days three uniformed police officers returned to the premises and forcibly removed the appellant. They took him to a nearby garage where, in the presence of AA, the appellant was beaten, kicked and taunted. The appellant had a pre-existing abdominal condition and much of the attack seemed to be focussed upon that part of his anatomy. The appellant repeatedly asked why he was being beaten and protested that he did not understand what the officers meant by their taunts. He was eventually returned to his shop in great pain.

[15] The incident made the appellant too scared to remain in P. He was sure that he would be subjected to further attacks so he decided to leave immediately for his own safety and to avoid problems for his family. Later that day, after taking painkillers, the appellant caught a bus to Tehran where he arranged to stay with his cousin.

[16] The appellant was sure the Colonel was behind his beating. He telephoned his younger brother the following morning and asked him to go to the colonel's house to try to resolve the problem. Tragically the brother was killed in a motor vehicle accident *en route*.

[17] When the appellant learned of his brother's death his grief overrode any concern for his personal safety and he immediately returned to P. For the next month or so the appellant was preoccupied with his brother's funeral and the period of mourning.

[18] The appellant remained in P. After the appellant reopened his store AA began to come to the shop from time to time. He taunted the appellant and threatened to burn his shop down and "destroy" the appellant for damaging his father's reputation by laying the complaint with the police. The appellant lost his temper and retaliated with corresponding taunts and insults.

[19] Faced with this renewed attention, the appellant convinced his family members that they should move to a rental property in a different location. Although the appellant continued to work from the same premises, his parents and sisters moved out of the adjacent family home towards the end of September 2008.

Summons

[20] Towards the end of October 2008, the appellant received a summons requiring him to attend the local police station. He reported there within a few days, accompanied by his father. The appellant was accused of various offences, including assaulting an official, causing offence to an official and having an illegal relationship with his former employee, BB. He was detained overnight and taken before the prosecuting Mullah the following day. In order to secure the appellant's release on bail his father had to provide the deeds to his house as security, and the appellant and his father had to sign an undertaking not to leave P. The

appellant was told he would be required to appear at court again in order to answer the charges.

Release from detention

[21] The appellant began to ponder his future. He consulted a friend who was a law student working part time for a highly regarded lawyer in P. Through that intermediary the appellant learned that no lawyer would take his case because he was in too much trouble with the authorities. The student advised him that he would be better off getting out of Iran before the matter progressed any further. The appellant was told that once he was formally charged, it would be much more difficult for him to leave.

Departure from Iran

[22] The appellant left Iran lawfully, using his own passport, in December 2008. He travelled to a city in a third country where he was provided with a false passport which he used to travel to New Zealand. He arrived here within a few days after leaving Iran and applied for refugee status. After interviewing the appellant in January 2009, an officer of the RSB of the DOL issued a decision dated 28 April 2009, declining him refugee status. It is from that decision that the appellant appeals.

[23] Since arriving in New Zealand, the appellant has learned that another summons was served at his family home, requiring him to attend the police station again.

Sur place claim

[24] Following the presidential election in Iran in early June 2009 the incumbent, President Ahmadinejad, was returned to power amidst allegations of vote-rigging. A ground-swell of public opinion in Iran led to widespread demonstrations in various cities in Iran. The violent methods adopted by the Iranian government in responding to the demonstrations led to protests in support among the Iranian diaspora.

[25] In that context, the appellant attended a series of protests organised by members of the Iranian community in Auckland between the end of June and August 2009. He had no part in organising those events, but held placards and

joined in the chanting of slogans and chants that were led by others.

[26] Towards the end of June 2009, the appellant telephoned his family to find out what was happening in Iran. During their discussion his mother asked him about the reaction of the Iranian community in New Zealand. The appellant cannot recall precisely what he told her, however he had attended at least one protest by then and assured her that they had not “sat on their hands” and done nothing.

[27] Two or three days later (in either late June or early July 2009), the appellant’s mother contacted him and reported that two members of the Iranian authorities had visited her home earlier that day. They asked where the appellant was, whether she knew any of his friends and what she talked to the appellant about. When the mother replied that the appellant was in New Zealand they told her that they already knew that, but that they wanted his precise address. She lied and said that she did not know. The appellant told his mother that she should provide them with the address of his lawyer, which she did. The appellant does not know whether the authorities have returned since then.

[28] The appellant believes that the Iranian authorities contacted his family because they had placed a listening device on the family telephone line and had heard him discuss his activities in New Zealand following the 2009 election.

[29] In late 2009 the appellant learned that video footage of some protests had been posted onto internet sites on YouTube. Two of these contain footage in which the appellant can be seen.

[30] The appellant is visible for several seconds in one of the items, and fleetingly in the other. He is shown to be one of a large crowd of demonstrators. He appears to be holding a placard at one point.

[31] There is a third piece of footage which the appellant says was given to him by a friend. It has not been posted to the internet.

[32] The Authority was also provided with photographs showing the appellant at a meeting in Auckland, in front of various placards and banners. As far as he is aware, those photographs have not been posted onto the internet. He did not suggest that there was any likelihood that they would otherwise come to the attention of the authorities in Iran.

Material received

[33] The Authority was provided with submissions in writing by Mr Mansouri-Rad under cover of a letter dated 8 June 2009. On 10 June 2009, he lodged a statement from the appellant's father in Farsi, together with a translation.

[34] On the first day of the appeal hearing, the Authority was provided with copies of pages from two lease agreements, which the appellant relies upon to corroborate his claim that his family had shifted home because of the unwanted attention of AA towards the end of 2008.

[35] Mr Mansouri-Rad provided the Authority with extracts from the Iranian Code of Civil Procedure, together with translations under cover of a letter dated 24 June 2009.

[36] Further submissions were made in letters from counsel dated 24 August 2009 and 5 September 2009. As a result of additional evidence disclosed in those letters the hearing was reconvened to enable the appellant to give additional evidence in person on 7 December 2009.

[37] Counsel lodged additional submissions on 2 December 2009, together with country information and a further statement from the appellant dated 1 December 2009.

[38] When the hearing reconvened on 7 December 2009, counsel handed up copies of two items of country information, together with a letter from a doctor, dated 4 December 2009, indicating that the appellant was taking medication to help him sleep and to assist him with anxiety.

[39] Additional country information was forwarded to the Authority under cover of a letter dated 14 June 2010.

THE ISSUES

[40] 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.

[41] 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

General observations about credibility

[42] Before turning to address the issues identified, it is necessary to determine whether the appellant is a credible witness.

[43] The Authority accepts the appellant's claim that he attended demonstrations organised by the Iranian community in Auckland following the Presidential election in Iran in the second half of 2009. However, for reasons set out below, the remainder of the appellant's core account is rejected.

[44] The Authority does not accept that the appellant is the victim of a vendetta by a high ranking member of the Iranian police. His attendant claim to have been arrested, detained and subjected to bail conditions as a result of false accusations is also rejected. The Authority rejects the appellant's claim to have been the subject of any such difficulties when he left Iran in December 2008 and rejects his claim to have been subjected to a summons to appear in court as a result.

[45] We also reject his claim that the Iranian authorities may have learned about his involvement in protests in New Zealand through placing a listening device on his family's telephone.

[46] Our findings are not based upon any one aspect of the appellant's account. However, having considered his claim in its entirety, we find that the appellant is a mobile and self-serving witness. His evidence was inconsistent and contradictory in key respects. It also turns upon a series of contrived coincidences which cumulatively render his account implausible.

Employment of female assistant

[47] The appellant is accused of having an “improper” relationship with a young female employee, BB. She therefore plays a pivotal part in the appellant’s account, yet he was unable to provide any information of substance about her.

[48] The appellant claims that he employed BB out of pity, however it is necessary to examine that explanation in context. While not illegal, the appellant said that in the social environment in Iran it was highly unusual for a male sole-trader to employ a young single woman. Standards of public decorum are underpinned by religious practice and the appellant had always previously been cautious about the manner in which he interacted with women. He had avoided being seen in public with women out of respect for his parents and because of the possibility of scandal and potential for misinterpretation.

[49] The appellant had never previously employed anyone and he had certainly never employed a woman. While he had an ongoing arrangement with local schools to provide work experience for students who needed to include a practical component within their course, the students placed with him were, without exception, male.

[50] The appellant therefore agreed that employing BB could have led to scandalous rumours and would have made his conservative, Muslim parents uncomfortable. Despite this, he claims that he employed her to work for him in premises attached to the family home in which he lived with his family.

[51] The appellant was unable to adequately explain why he had acted in a manner which was so out of character.

[52] The Authority does not believe the appellant’s evidence about BB and finds that her existence is simply a device to provide justification for the false claim he has advanced. In reaching that conclusion it bears repeating that she happened to materialise just as the appellant had unwittingly become vulnerable to the plotting of a vengeful and powerful member of the Iranian authorities. Within a fortnight of employing her, the appellant’s work place was raided by the police. He happened to be alone in the shop with BB when the authorities arrived, providing additional ammunition for AA’s father.

Evidence about his brother

[53] The appellant was asked why he had sent his brother to meet the Colonel. He gave two contradictory versions.

[54] On the first day of the hearing, the Authority put it to the appellant that he could have tried to resolve his problem by simply withdrawing the complaint against AA. On that basis there did not seem to be any point sending his brother to find out what the cause of concern was.

[55] The appellant was adamant at that time that, by then, the problem was that laying the complaint was perceived to be a direct attack on the Colonel's pride. For that reason it was no longer a matter that could be resolved by simply withdrawing the complaint. That is why he had to send his brother to talk to the Colonel.

[56] When this aspect of his claim was revisited on the second day of the hearing the appellant contradicted the evidence he had previously given. He said that he *did* ask his brother to approach the colonel in order to find out whether the complaint about AA was the cause of the problem. The appellant said that if his brother had reported back that this was the cause then he would have sought to withdraw the complaint about shoplifting to bring the matter to a close. If it was something else, he would then be able to address that.

[57] Mr Mansouri-Rad submitted that this second explanation was consistent with evidence the appellant had given during his interview with the RSB. However that does not explain why the appellant has given conflicting accounts, it merely highlights the fact that he has done so.

[58] The appellant's actions following the death of his brother are inconsistent with his claimed predicament. When asked why he did not withdraw his complaint about AA after his brother had died, and after he had returned to P, he prevaricated. He said he had been too busy and that he had observed a period of mourning after the death.

[59] Other aspects of the appellant's claim that he asked his brother to intercede are contrived. For example, having claimed that he left P immediately after he was beaten by the police because the assault had made him extremely fearful for his own safety, he then asked his younger brother, a student, to approach the vindictive and powerful man responsible for his predicament. If true, the appellant's decision to ask his brother to intercede would clearly have jeopardised

his brother's safety.

[60] It will also be recalled that the appellant claimed that his problem arose because laying the complaint against AA had impugned the Colonel's sense of pride and self-importance. Yet the decision to send a young student to the Colonel's private residence, unannounced, would inevitably have been perceived as compounding the insult. The appellant agreed that it would have been more culturally acceptable to send his father and again he was unable to adequately explain why he had not done so.

Summonses

[61] The appellant produced copies of the summonses to corroborate his claim to be the subject of interest of the Iranian authorities. Because it is not unusual for false documents to be advanced in appeals, and because the veracity of such documents is often difficult or impossible to determine, the Authority tends to view such documents as neutral.

[62] For the reasons given the Authority has rejected the appellant's core account and therefore finds that no weight can be placed upon the summons. We note in addition further concerns which arise from the content of the second summons. The first was supposedly served on the appellant at his family home towards the end of September 2008. The second was served on a member of the appellant's family in December 2008, after the appellant had left Iran.

[63] The second summons records that it was served on the appellant's sister, "at the address referred to above". It records the address of the appellant's family home which was adjacent to his business premises. The salient point is that by the time the appellant's family had supposedly moved to a different address out of fear. Neither the appellant's sister nor any other member of the appellant's family was actually living at that address in December. Accordingly the notation on the document was inconsistent with the appellant's oral testimony.

Contrived evidence

[64] Various other aspects of the appellant's account also appear contrived. The Authority refers in particular to the appellant's account of his departure from P after the beating administered in AA's presence.

[65] Despite being in severe pain after his prolonged beating, the appellant claims that his immediate response was to board a bus to Tehran on which he would have to travel sitting upright for several hours. When asked why he did not at least seek local medical treatment first the appellant's answers appeared glib. He replied that he had access to extremely powerful painkillers as a result of his pre-existing condition, although he was unable to give the name of the painkillers. He also said that he wanted to seek treatment from a specialist in Tehran whom he knew because he had a pre-existing kidney complaint for which the specialist had previously treated him. The appellant has provided no corroboration for his claim to have a serious physical affliction.

Listening device

[66] The Authority does not believe the appellant's claim that the Iranian authorities came to his family home in late June or early July 2009, or that they knew that he was living in New Zealand at the time. There are only two reasons put forward for why they might have done so. The first is that they may have been observing the appellant for the reasons he has given in support of his refugee claim. However, the Authority has rejected the appellant's core claim.

[67] The only other reason they might have come to the family home is if they had, as the appellant suggested, overheard the content of a telephone conversation he had with his mother. However, given that the appellant's core claim has been rejected, there is no apparent reason why the Iranian authorities would have installed a listening device on his family telephone in the first place.

[68] The Authority therefore also rejects the appellant's claims that the Iranian authorities tapped his family telephone line; that they overheard a conversation in which he may have disclosed some involvement in demonstrations in Auckland, or that they visited his family home to find out his exact address in New Zealand.

Overview: coincidences

[69] The appellant's account depends upon a remarkable series of coincidences.

[70] The appellant claimed to be the victim of shoplifting conducted by a thief whose father, the Colonel, is not only vindictive in nature; he is a person of authority. The appellant learned of the Colonel's vindictive nature soon after

lodging his complaint with the police, when he happened to meet a friend outside the police station. During the ensuing conversation, the appellant happened to name the thief about whom he had just lodged a complaint. His friend happened to have attended university with the thief and was therefore able to tell the appellant about the Colonel, and mentioned where he lived. The appellant was able to recall that information some months later when he rang his brother from Tehran.

[71] The appellant's difficulties manifested within a week or two after he employed a young, single woman, in breach of unwritten social conventions. Unfortunately for the appellant his predicament was aggravated by the fact that he was working with the young woman, un-chaperoned, when the police arrived, having been sent by the Colonel.

[72] His attempt to address the problem directly with AA's father was thwarted when the brother he sent to act as an intermediary was tragically killed *en route*.

[73] Subsequently the appellant's involvement in anti-government protests in New Zealand happened to come to the attention of the Iranian authorities because he made indiscreet comments, unaware that his family telephone was tapped.

[74] While none of these claims are inherently implausible, they take place in the context of contradictions and inconsistencies, the cumulative impact of which leads the Authority to conclude that the appellant's account is not true.

Summary of factual findings

[75] The Authority has rejected the core elements of the appellant's account. However, when addressing the principal issues identified for consideration on appeal the Authority is required to assess the appellant's claim on the basis of the facts found, not the assertions rejected.

[76] The Authority finds in respect of this appellant that he is a young single male who is a citizen of Iran. He was able to leave Iran lawfully, using his own passport. There is no credible evidence that he has ever been in serious trouble with the Iranian authorities or that he was of any interest to the Iranian authorities when he left Iran in late 2008.

[77] We find that the appellant attended a series of protests and demonstrations in Auckland in June and July 2009 and that recordings of two protests in June and

July 2009 were posted on the internet, on YouTube. The appellant's image was visible at the beginning of the footage.

[78] It is accepted that in attending the protests the appellant was acting spontaneously, in response to events which he could not have foreseen and which he had no part in orchestrating. No question of bad faith arises in that respect.

[79] The appellant's claim will therefore be addressed on that basis.

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

[80] 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; see *Refugee Appeal No 2039/93* (12 February 1996) and *Refugee Appeal No 74665/03* [2005] NZAR 60; [2005] INLR 68 at [36] to [125]. Put another way, it has been expressed as comprising serious harm, plus the failure of state protection; *Refugee Appeal No 71427* (16 August 2000).

[81] 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.

Protests following the 2009 general election in Iran

[82] The general background to the political upheaval that accompanied the outcome of the presidential election in Iran in June 2009 was outlined in *Refugee Appeal No 76344* (24 July 2009). The Authority will not traverse all of the country information referred to in that decision. In summary, it is clear that the announcement of President Ahmadinejad as the winner of the election was the catalyst for a series of protests in various parts of Iran. The nature of the protest movement has evolved over time. What began as spontaneous gatherings of large numbers of people calling for the election to be run afresh later became a more broad based campaign of civil disobedience, supported by calls for the

system of government to be changed. In part the Iranian diaspora has sustained the momentum for this.

[83] The human rights record of the Iranian state is notoriously poor. Its reaction post-election has been typically direct and 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).

[84] According to Human Rights Watch, one year after the disputed election, 250 protestors arrested during or following the protests have been tried and convicted. In addition, hundreds "languish in jail"; many held arbitrarily without charge and without access to due process, and up to 15 have been executed. There are credible reports that some individuals who participated in the demonstrations in Iran have been mistreated while in custody. 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).

Steps taken to identify protestors overseas.

[85] The Iranian government has also taken steps to monitor and identify individuals who may have participated in protests outside Iran; Fanaz Fassihi "Iranian Crackdown Goes Global" *Wall Street Journal* www.online.wsj.com (4 December 2009) (the WSJ article). That article 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.

[86] Some indication of the profiles of those targeted by the authorities is evident from an article supplied by counsel which refers to the website of the Pasdaran Revolutionary Guards. It identifies the groups believed to be behind the 2009 protest movement as "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; BBC Farsi "*Military authorities threaten the supporters of "Green Movement" outside the country*" (5 November 2009).

[87] However, the evidence does not establish that all individuals identified as having participated in the protests have been routinely mistreated.

[88] Collating information garnered from interviews with approximately 90 expatriate Iranians who returned to Iran, the WSJ article refers to a post-election campaign monitoring new media activity of Iranians, including on Facebook, Twitter and YouTube. Many reported that because of their postings, relatives in Iran had been questioned or detained. Evidence of criticism of the Iranian government has been met with “threats intended to silence them”. Upon returning 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.

[89] While some were physically mistreated, these appear to be a small minority and there is no information as to the particular profiles of the individuals concerned.

[90] 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 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).

[91] The first article documents the detention and questioning of two Iranian students living in Australia. One was called in for questioning on 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 threatened that his activities in Australia warranted the death penalty. He was shown a list of names of pro-democracy activists in Australia. *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.

[92] Counsel submits that these reports indicate that the Iranian authorities are engaged in identifying protesters who take part in protests and that there is a risk of such persons being persecuted. On the contrary, however, there is no evidence that the individuals referred to in the Australian articles were detained for any length of time or subjected to serious harm. Irrespective of any threats made, neither suffered a sustained or systemic denial of human rights.

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

[93] The appellant claims that he will face questioning about his participation in protests if he returns Iran. He also submits that there is a real chance that he will be seriously mistreated in a manner that amounts to being persecuted.

[94] Counsel submits that the appellant has an existing profile with the Iranian authorities and identified various risk factors which, he submits, indicate that the appellant is at risk of being searched and questioned. He relied upon earlier decisions of the Authority in support, such as *Refugee Appeal No 76344* (24 July 2009) and *Refugee Appeal No 76349* (30 June 2009). However both of those decisions concern appellants found by the Authority to have a particular profile which was relevant to the assessment of risk. In that regard, the Authority has found as a fact that the appellant with which this appeal is concerned had no profile with the authorities at the time he left Iran, and that he was able to leave Iran without difficulty using his own passport. Neither of the decisions referred to is analogous.

[95] Nor does the Authority accept counsel's submission that the Appellant will be treated as a deportee upon arrival in Iran. There is no evidence that the Iranian authorities will be aware that the appellant has been required to leave New Zealand, and there is no credible reason why the appellant might disclose this. If he was to be questioned about where he has been, the appellant will be able to point to the fact that he has lived in New Zealand lawfully since 2008.

[96] The Authority therefore has to consider whether the Iranian authorities will know or find out about the appellant's participation in demonstrations in New Zealand in 2009.

[97] We have already rejected the appellant's claim that the Iranian authorities were privy to a telephone conversation between the appellant and his mother from which they might have drawn that inference.

[98] However, the Authority has accepted that the appellant attended various protests in Auckland in June and July 2010. It has also accepted that footage of two of those protests was posted to You-Tube nearly twelve months ago, and the appellant is visible, briefly, in each item. There is no evidence that the Iranian authorities have been in contact with the appellant's family in Iran as a result of

viewing such footage. However the appellant claims that he is at risk of being identified at the airport upon arrival or at some time in the future.

[99] While country information indicates that the Iranian authorities are attempting to identify individuals who have been involved with protests outside Iran, that that does not mean that they will succeed in identifying all of them, or that everyone identified is at risk of being persecuted.

[100] It strikes the Authority as extremely unlikely that the appellant would be identified as the result of brief footage posted to YouTube approximately a year ago. Even if he was, the footage records that the appellant was one among many individuals. He, like almost everyone else, was shown to be holding a placard and shouting. He played no part in leading the organisation of the protests and nor does he appear to be doing so in the footage made available to the Authority. He appeared to be no more than an ordinary protestor. The appellant has no history of posting material critical of the Iranian government on the internet, whether in a blog, on Facebook or Twitter. Nor does he fall within any of the categories referred to in para [86] above.

[101] Even if the appellant was to be detained briefly and questioned on return, the country information does not establish that ordinary protesters such as the appellant are at risk of serious harm.

Summary of findings

[102] The Authority finds that there is no credible evidence that the appellant was a person of interest to the Iranian authorities when he left Iran in 2008.

[103] There is country information which 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.

[104] The risk of serious harm can never be entirely eliminated. However in determining whether the appellant's fear is objectively well-founded there must be a substantive basis for that fear. Mere speculation is not sufficient. The Authority finds that it is unlikely that the appellant would be identified upon return to Iran as having participated in protest in New Zealand but, even if he were, finds that any risk that to him of being seriously harmed by the Iranian authorities is remote to

the point of being speculative. It might be appropriate to assess the risk differently for an individual with an existing profile or who appeared to have had some leadership role in the protests. That is not the case with the appellant.

CONCLUSION

[105] The first principal issue identified for determination is answered in the negative. That being the case, the second principal issue does not fall for consideration.

[106] For the above reasons, the Authority finds that the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

"A N Molloy"
A N Molloy
Chairperson