

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2006-404-007714

UNDER the Judicature Amendment Act 1972
IN THE MATTER OF a decision made by the Refugee Status
Appeals Authority pursuant to s129O
Immigration Act 1987
BETWEEN F
Plaintiff
AND REFUGEE STATUS APPEALS
AUTHORITY
First Defendant
AND MINISTER OF IMMIGRATION
Second Defendant

Hearing: 2 April 2008

Appearances: Davoud Mansouri-Rad for Plaintiff
Mark Woolford for Second Defendant

Judgment: 28 May 2008

JUDGMENT OF HARRISON J

*In accordance with R540(4) I direct that the Registrar
endorse this judgment with the delivery time of
9:00 am on 28 May 2008*

SOLICITORS

Mansouri Law Office (Auckland) for Plaintiff
Meredith Connell (Auckland) for Second Defendant

Introduction

[1] F is an Iranian national. He was born into a Muslim family and practised that faith before travelling to Korea in his mid 20s. There he converted to Christianity. He arrived in New Zealand four years later and sought but was declined refugee status. His appeal to the Refugee Status Appeals Authority (RSAA or Authority) was dismissed.

[2] F now applies to this Court for orders reviewing the RSAA's decision. His counsel, Mr Davoud Mansouri-Rad, says that the Authority erred in law in a number of respects. Counsel for the Minister of Immigration, Mr Mark Woolford, submits that F's application is in reality an appeal on the merits.

Background

[3] F was born in Iran in 1974 and raised in the Muslim faith. He travelled to South Korea in early 2000 on a lawful passport and in accordance with a visa. There he was introduced to Christianity in early 2001 and was baptised in 2003.

[4] F met a Korean woman whom he planned to marry. He was in employment throughout his time in Korea and intended to settle permanently there. He applied to renew his Iranian passport. F told the RSAA that he visited the Iranian embassy in Seoul on at least five occasions in 2003 but was unsuccessful in obtaining a new passport. He also said that a senior official there accused him of being involved in religious propaganda denigrating Islam. Eventually, he said, the official advised F that the embassy would not give him a passport but would issue a travel document allowing him to return to Iran.

[5] F told the RSAA that these events caused him to become deeply concerned for his security in Korea. His legal permit to live there expired and he did not have an Iranian passport. He feared that he was liable to be found by the Iranian Secret Service and deported at any time.

[6] F advised the RSAA that while still in Korea he made contact with an agent who early in 2005 procured a false European passport and other forged documents and arranged for F to travel from Korea to New Zealand. As is standard practice with those seeking refugee status here, F destroyed his false documents on arrival at Auckland International Airport on 7 April 2005. He was initially detained but later released conditionally.

[7] The Refugee Status Branch declined F's application on 18 August 2005 on credibility grounds. His appeal to the RSAA was dismissed on 29 March 2006 but the decision was quashed by this Court by consent on 17 June 2006. The RSAA, differently constituted, reheard the appeal but dismissed it on 14 November 2006.

RSAA Decision

[8] F's appeal to the Authority was based on what is known as the well-foundedness ground. A refugee is a person who: Article 1A(2) Refugee Convention:

... 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.

[9] Mr Mansouri-Rad for F does not dispute that the Authority correctly identified the two-stage test for determining satisfaction with this requirement by asking: (1) is there objectively on the facts as found a real chance of F being persecuted if returned to Iran; and (2) if so, is there a Convention reason for the persecution?

[10] The RSAA made an adverse credibility finding before formally applying the two-stage test. It was satisfied that: at [72]:

[F] gave a convincing account of his religious activities in Korea and his conversion to Christianity while he was there. However, his account of his dealings with the Iranian embassy [in Korea] was inconsistent with prior accounts, implausible, unconvincing and, overall, not credible.

[11] The RSAA particularised the relevant inconsistencies in explanations given by F to the Refugee Status Authority and on both occasions on appeal: at [73]-[81], and gave reasons for its conclusion of implausibility: at [82]-[84]. Of most significance was the RSAA's satisfaction, based on inquiries made of South Korean authorities, that by October 2003 his Iranian passport was 'regularised' (presumably in order); that he left Korea using his Iranian passport in mid November 2003 and returned with the same passport a month later; that he was deported from Korea in mid May 2004 for using a forged Australian visa to go to Canada; and that he used a false French passport to return to Korea in March 2005 before departing for New Zealand in April: at [85].

[12] The RSAA rejected F's assertion that this official information was false. To the contrary, it was satisfied that the information supplied from Korea was accurate and reliable: at [86]-[89]. It also found that dates on photographs produced to verify his presence in Korea in November and December 2003 were unreliable: at [90]-[95]. It gave full particulars of its adverse conclusion on credibility: at [96]-[99].

[13] Furthermore, the RSAA, while accepting F's account of his experiences in Iran before leaving for Korea, found that his evidence demonstrated that at the time of departure from Iran 'he was of no interest to Iranian authorities and used a valid passport to leave that country': at [100]. It accepted, though, that when living in Korea from mid 2000 F attended church and undertook other religious activities including introducing about 10 Iranians to his church; that he was converted to Christianity and baptised in Korea; and that he has been involved with Christian churches in New Zealand: at [100]-[103].

[14] I interpose to note that the Authority's adverse factual finding could not be challenged in this Court on review. Its effect on F's appeal was significant. It undermined the credibility of F's account generally and his specific assertion that when arriving in New Zealand in 2005 he was already of interest to the Iranian authorities. Consequently his assertion of a well-founded fear of persecution on account of his conversion to Christianity was weakened. F had to rely upon the RSAA's factual findings about whether on other grounds he would in fact be of particular interest to and at risk from the authorities if he returned to Iran.

[15] Against that background, the RSAA considered the issue of well-foundedness and found:

[106] ... [F] is no more than an ordinary convert who will not overtly seek to proselytise and convert other Muslims or take a leadership role in whatever church or Christian community with which he may become involved in Iran.

[107] He will do no more than seek to worship with other Christians in a church or in a service. He may seek to share his faith with Muslims or others but will only do so in a very discrete, careful and gradual way...

[114] [F] can be considered as an ordinary convert who will not practice his faith or share his faith with others in Iran in a manner that will cause him to be of concern to the authorities and lead to him suffering persecution. He will not engage in public overt proselytising of Muslims in Iran...

[16] The Authority's conclusion was based upon F's answers to questions from its members at the hearing and accounts given by his witnesses. Its assessment about how F would practice his faith in Iran took account of country information on the treatment of Christians in that country. It followed earlier decisions of the Authority, on 1 September 2004 and 19 October 2004, which had conducted an exhaustive examination and analysis of country information.

[17] Those decisions had concluded in summary that: (1) while conversion from Islam to Christianity is considered apostasy under Sharia law and is punishable in principle by death, executions are not now performed in practice and have not been since the mid 1990s; (2) mere apostates who do not publicly proselytise face minor intimidation and harassment such as loss of employment, checking of identities at church and official summonses for questioning and reprimanding for being influenced to reconvert to Islam; (3) an apostate is at remote risk of persecution either through lengthy detention or coupled with serious mistreatment; and (4) Christianity is an officially recognised religion in Iran, with about 15,000 Muslim converts, who are able to practice their Christianity and who, if they do so in an unobtrusive manner, will avoid serious problems: at [115]-[116].

[18] The Authority then considered at length arguments advanced by Mr Mansouri-Rad to the effect that published events occurring since the Authority's precedential decisions were delivered in September and October 2004 showed

apostate Christians were at risk. The RSAA was not satisfied, following a comprehensive review of the material, including decisions from a number of other jurisdictions, that there had been a material adverse change since 2004: at [117]-[140], concluding that:

... those at risk of harm tantamount to persecution are those overtly engaged in proselytising or Church leaders (not F). Some harassment of followers of evangelical churches in the north also occurs but [F] does not come from that part of Iran and would not need to go there to practice his faith.

[19] The Authority observed that much of the information relied on by Mr Mansouri-Rad constituted ‘broad general statements that are not properly sourced or corroborated’: at [141]. It also dismissed a number of related arguments designed to establish that F would be prejudiced in his marriage choices; that any children he might have would be subject to discrimination; and that the state would sanction discrimination against him: at [142]-[175]. Similarly it rejected arguments about the existence of the death penalty for conversion and the prospect that F might live in fear of that sanction: at [176]-[184]. It found that there is no real chance that F will suffer persecution if he returns to Iran, and that he was not a refugee within the meaning of Article 1A(2).

Decision

[20] Mr Mansouri-Rad mounted a strong argument in support of F’s application for review. He founded it on F’s fears of detention, torture and possibly death at the hands of state and non-state agents in Iran; near impossibility of practising his faith there; lack of recognition by the Islamic theocratic regime in Iran of F’s Christian faith; the practical consequences of not being recognised as a Christian in Iran including the impossibility of getting married as a Christian there; and systemic state sanctioned discrimination. However, the existence or validity of these fears are not relevant in this Court. As Mr Woolford emphasises, this Court’s jurisdiction is confined to the question of whether or not the RSAA committed a reviewable error.

[21] F’s statement of claim is very long and reads like an extensive submission. It raises disparate grounds of review which Mr Mansouri-Rad helpfully compressed in oral argument into two primary grounds of unreasonableness. He submits that the

Authority acted unreasonably in: (1) finding that F was a private and low level proselytiser, thereby committing a mistake of fact; (2) even if that finding was correct, finding without an evidential basis that a private and low level proselytiser is not at risk of persecution in Iran.

[22] Additionally or alternatively, Mr Mansouri-Rad submits that the Authority committed a range of reviewable errors, also amounting to unreasonableness, in distinguishing F's claim from an earlier decision (*Refugee Appeal No. 73945*, 27 June 2006); in failing to consider persecutory measures resulting from the fact that F as a convert would remain a Muslim for official purposes in Iran; in rejecting F's fear of living under the shadow or threat of the death penalty; and in failing to adequately consider persecutory measures resulting from the state sanctioned discrimination against non Muslims in Iran and its punitive effect on F.

[23] I shall consider Mr Mansouri-Rad's arguments in that sequence. First, he urges that what has become known as the 'hard look' approach, justifiable by the existence of fundamental human rights and liberty being at issue, should be adopted in determining whether or not the RSAA's primary findings of fact that F was a private and low level proselytiser were unreasonable; that is, the intensity of the standard or scale of review must be appropriate to the seriousness of the subject matter: *Wolf v Minister of Immigration* [2004] NZAR 414, Wild J; *A v Chief Executive of the Department of Labour* CIV 2004-404-6314 HC AK 12 October 2005, Winkelmann J.

[24] It is unnecessary for me to enter the debate about whether the hard look standard is appropriate to applications to review refugee decisions. It is not the issue. The sole question is whether or not the RSAA had an adequate evidential basis for its conclusion that F was a private and low level proselytiser. Mr Mansouri-Rad challenges this finding by reliance on F's membership of the Grace and Truth Church, which practices under the evangelical Jesus Assemblies of God Churches. He says the evidence showed a committed and active proselytiser whose activities were carried out in public and openly.

[25] Evidence of F's membership of a particular church does not of itself approach the threshold necessary to satisfy this Court on review that a tribunal had no evidential basis for its finding. F's answers to the RSAA's questions provide an ample factual basis, supported by the evidence of one witness in particular, EE (she was called in support of F's appeal but ironically Mr Mansouri-Rad sought to diminish her observation that F would be discrete about revealing his faith to others in Iran: at [109]). The RSAA also considered extraneous evidence in reaching this conclusion. I am satisfied, on reflection, that Mr Mansouri-Rad's argument bears out Mr Woolford's submission in answer that F was essentially advancing an argument on the merits under the guise of an application for review: see *Huang Xiao Qiong v Minister of Immigration* CIV 2005-404-5202 HC AK 29 September 2006, Asher J at [46]-[49].

[26] Second, F's second or alternative ground of unreasonableness must also fail. Mr Mansouri-Rad submits that the RSAA acted unreasonably in finding that a private and low level proselytiser is not at risk of persecution. He relies principally upon the Authority's decision in *Refugee Appeal No. 73945* delivered on 27 June 2006. In that case the RSAA found that Iranian converts suffered a real chance of persecution because their conversion had come to the attention of Iranian authorities through attending a church, participating in bible study, sharing their faith with others in their personal, work and school spheres, wishing to pray and worship in a free and unrestrained manner, having a genuine and ongoing commitment to the Christian faith, being evangelical and proselytising in a manner consistent with their respective personalities, attending an evangelical church similar to the one they presently attend, and not being capable or willing to confine the practice of their religion in attending a place of worship to the private realm.

[27] I have considered the decision in *Refugee Appeal No. 73945* with care. It is, as Mr Woolford submits, based primarily on findings of fact. While the essential element of an Iranian Muslim's conversion to Christianity outside the country of birth was common to both appeals, the facts were very different and the decision was, as the Authority found, distinguishable from F's case in many respects. Principally, though, it was based upon what Mr Woolford calls a 'resounding finding

of credibility’ and the Authority’s satisfaction that the couple and their 10 year old daughter: at [76]:

... are a close and devout Christian family whose faith is pervasive and manifests itself in their daily lives in consistent and meaningful ways. We accept that they will continue to be evangelical in their social, work and school environments and will not deny their faith to others.

[28] In this respect, the Authority in *Refugee Appeal No. 73945* found expressly that the appellants ‘will actively encourage those others [with whom they share their faith] to become Christians’: at [79]. Furthermore, in reaching conclusions on well-foundedness in *Refugee Appeal No. 73945*, the RSAA recognised the trend of findings in that jurisdiction ‘that refugee status is not justified on the basis of conversion to Christianity alone’: at [99], and, after noting that ‘every case will fall to be determined on its facts’: at [101], concluded: at [103](c):

They are demonstrably evangelical and proselytise in a manner consistent with their respective personalities. The adult appellants have manifested their Christian faith by evangelical outreach emanating from their personal lives. In effect, such activity has taken their Christianity well into the public realm. The Authority has no doubt that they would continue to evangelise if they were to return to Iran, despite the danger this might entail ... The Authority accepts that this family would not be capable or willing to confine to the private realm the practice of their religion in attending a place of worship.

[29] As Mr Woolford submits, each case turns upon the Authority’s assessment of character and personality. The commitment to Christianity may be the same. But in *Refugee Appeal No. 73945* the RSAA made sustained findings to the effect that the appellants were public advocates of the Christian faith and would act in the same way if forced to return to Iran. By contrast, the Authority found that F was, and was likely to remain in Iran, a discrete, quiet or low level convert whose activities would not attract official attention.

[30] The decisive feature is the manner of the individual’s likely manifestation and practice of Christianity in Iran. Contrary to Mr Mansouri-Rad’s submission, the RSAA was not imposing an expectation or edict on F that he behave discretely. It was doing no more than expressing its conclusion, based upon a current assessment of the relevant facts, about F’s likely conduct on return to Iran. This is precisely the predictive evaluation which the Authority is called upon to undertake in determining

whether or not an existing fear of persecution for reason of religion is well-founded within the meaning of Article 1A(2). A decision of the Authority in one case which differs from the result in another, when each undertakes an intensely factual assessment, cannot be characterised as manifestly unreasonable on that account. Again, I think, this ground is really an argument on the merits.

[31] Third, and finally, Mr Mansouri-Rad submits that the Authority's decision was wrong in law or unreasonable in failing to give any or proper consideration to information currently available that F would be subject to persecutory measures, including living under the shadow or threat of a death penalty and with the consequences of state sanctioned discrimination against non Muslims, if he returned to Iran. He devoted a good deal of oral argument in this Court to reviewing the RSAA's assessment of country information on the treatment of Christians in Iran.

[32] I do not mean any disrespect to Mr Mansouri-Rad's careful argument by addressing it only briefly. I cannot discern where the RSAA made a reviewable error in this respect. It analysed the additional country material submitted by Mr Mansouri-Rad in great detail. It concluded that there was no material adverse change of conditions in Iran since the Authority's two seminal decisions in 2004; and that the country information did no more than confirm what was already recognised by the Authority in 2004 – namely, those who adopt high, public or leading profiles in practising a Christian religion in Iran are likely to attract the attention and disapproval of the authorities.

[33] This conclusion was open to the RSAA on all the material. Once it had reached that conclusion it was bound to dismiss F's appeal given its earlier finding of fact that he would practice Christianity in a private or discrete way. That finding, which is at the heart of the Authority's decision, is unchallengeable and this ground fails accordingly.

Result

[34] F's application for an order reviewing the RSAA's decision in Refugee Appeal No. 75933 dated 14 November 2006, dismissing F's appeal against a

decision of a Refugee Status Officer to decline the grant of refugee status, is dismissed.

[35] I wish to express my appreciation to Messrs Mansouri-Rad and Woolford for the careful and informed submissions advanced in argument on this application.

Rhys Harrison J