

AT AUCKLAND

Appellant:	AR (Iran)
Before:	B L Burson (Member)
Counsel for the appellant:	D Mansouri-Rad
Counsel for the respondent:	No Appearance
Date of hearing:	30 September 2011
Date of decision:	17 November 2011

DECISION

INTRODUCTION

[1] This is an appeal by an ordinary man caught up in extraordinary political circumstances inside his country of nationality, Iran. He claims to be wanted by the authorities for taking part in a banned demonstration organised by the Iranian opposition in support of popular uprisings across North Africa and the Middle East. He appeals under section 194(1)(c) of the Immigration Act 2009 (“the Act”) against a decision of a refugee and protection officer of the Refugee Status Branch (RSB) of the Department of Labour, declining to grant either refugee status or protected person status to him.

[2] The appellant’s case was heard jointly with the appeals *AS (Iran)* [2011] NZIPT 800208 (17 November 2011) (CC) and *AT (Iran)* [2011] NZIPT 800211 (17 November 2011) (BB), the appellants in these cases being his relatives. By consent, the evidence of each appellant was to stand as evidence in their own and the other cases.

[3] Given that the same account is relied upon in respect of all three limbs of the appeal, it is appropriate to record it first.

THE APPELLANT'S CASE

The Appellant's Evidence

[4] The appellant was born in the early 1960s in Tehran where he lived all his life prior to coming to New Zealand. He is married with two children.

[5] The appellant's problems began when he was caught up in the wave of public discontent following the disputed presidential election in Iran in June 2009. He and his wife attended a large demonstration on 15 June 2009 where millions of people protested against the officially declared result which returned the incumbent, President Mahmoud Ahmadinejad, to office, a result widely regarded as being rigged. They encountered no difficulty on this occasion. Although during the remainder of 2009 a number of other demonstrations took place the appellant attended no further demonstration until *Ashura*, an important Shiite religious festival, in late 2009. While this demonstration was violently suppressed by the security forces and many killed, the appellant encountered no problem himself.

[6] The appellant first encountered problems in February 2010 when he and his wife went to attend a large protest. Their house being situated a short distance from a metro station, they planned to use it to travel to the demonstration being held in central Tehran. As they neared the metro station they encountered a group of protesters, who were being chased by the security forces, running towards them from the direction of the station. The appellant and his wife ran back towards their home. As the appellant unlocked his front door and opened it, a group of about six or seven protesters followed him through the front door. Anxious not to create a disturbance as the security forces were in the area, the appellant and his wife allowed them to hide in the house. After a short period of time, the appellant showed them out via another exit opening onto an adjacent street.

[7] Two days later, the appellant was visited at home by plain clothes police who pushed their way into the house, which they searched without warrant. The appellant was handcuffed and taken to one of a number of police cars that were

waiting outside, where he was blindfolded. When the blindfold was removed, he found himself in a small cell measuring two square metres.

[8] The following day, he was taken blindfolded from his cell to another room. When his blindfold was removed, he found himself facing the wall. He was then given a piece of paper and was required to write down identifying details about himself and his family. He was then interrogated as to how he had sheltered the protesters at his house. The appellant denied that he had been at the protest and claimed that he had simply been opening his door after returning from other business when the protesters pushed inside. He was not believed and was slapped.

[9] The appellant recalls that after checking his family details, the authorities began accusing him of involvement in a monarchist group. The appellant explained that one of his distant relatives had been a high-ranking official in the SAVAK, the former Shah's secret intelligence service, and they shared the same family name. His interrogators said that because they were from the same family they must share the same political view. The appellant denied this.

[10] The appellant was interrogated about his involvement in the demonstration on approximately three or four occasions over the next four days. During these interrogations he was accused of incitement and having acted against national security. During each interrogation he was slapped, punched and kicked a few times. He was verbally abused. On one occasion one of the officers hit him with his elbow on his head causing the appellant to hit his head against the wall.

[11] The appellant was held for approximately two weeks. Prior to his release, he was made to sign an undertaking that he would not get involved in any further protest activity or get involved in actions against national security.

[12] Frightened by his experiences in detention, the appellant did not undertake any anti-government activity for over a year. Nevertheless, at family gatherings regularly held throughout 2010 and early 2011, which he usually attended, political affairs of the day were discussed. The appellant heard at such family gatherings, which were typically also attended by both BB and CC, that both had been arrested and detained, albeit at different demonstrations at different times.

[13] At a family gathering held in early 2011, at which both BB and CC were present, the appellant learned that the Green Movement had called for people to

come to the streets to support the revolutions that were taking place in Egypt and Tunisia. The consensus was that this was something that they should support and that there was minimal risk of encountering problems as, at the time, there was a visit by the Turkish President to Iran. They believed that the Iranian government would not dare to openly attack protesters during such a visit.

[14] Emboldened, the appellant attended this demonstration but his calculations were misplaced. The security forces attacked the demonstration which was held in an area near to where the appellant's family had a number of businesses. The appellant managed to escape and made his way to his sister's house where he stayed the night. The following day, he received a telephone call from his wife who told him that she had been advised that the authorities had come to a relative's shop asking for the name and contact address of the appellant, whose picture had been captured on a cellphone. The appellant explained that his father-in-law had a shop on that street for over 20 years and they were frequent visitors in the area. He believes that because the family was well-known in the area, a person must have told the authorities that he was associated with the relative's shop.

[15] Upon hearing that the shop had recently been visited, the appellant's wife arranged for the appellant's documents to be sent to him while they awaited further developments. Shortly thereafter, the appellant was telephoned by his wife who informed him that the family home had now also been visited by the authorities who had told his wife that they would find him wherever he was.

[16] The appellant and his family now thought it was too dangerous for him to stay in Iran. He had heard reports of protesters being sent to Evin Prison and even being executed or given lengthy jail sentences. He left the sister's home and hid at an apartment that was owned by a nephew.

[17] The appellant's brother-in-law, who had been working in a senior capacity at an airport-related business, agreed to help him leave the country. Using his nephew as an intermediary, the appellant communicated with his wife and learnt that there were visits by the authorities to the family home on two further occasions. Three weeks after the demonstration, his brother-in-law told him that the necessary arrangements had been made and he went to the airport. The brother-in-law gave the appellant instructions on what to do. Following these instructions, the appellant departed the airport without encountering any problems.

He travelled via a number of south-east Asian countries before arriving in New Zealand. The appellant claimed refugee status on arrival.

[18] The appellant is concerned that he would be sent to Evin Prison if returned to Iran because ordinary protesters like him have been detained there for lengthy periods and some have even been executed. Since he has been in New Zealand, he has been in contact with his wife on a regular basis. He has come to understand from her that one of their neighbours witnessed the appellant letting the protesters leave their house and informed the authorities. Concerned about this neighbour being an informant for the *Ettela'at*, in the last few weeks his wife has sold the family home and moved in with her parents. The appellant has also been told by his wife that his son has been questioned and interrogated by the university *herasat*, who have informed him that they know his father has a problem with the authorities. The appellant's son told the *herasat* that he has no idea where his father is.

The Evidence of BB and CC

[19] Both BB and CC confirmed they were related to the appellant by marriage on their maternal side. Both told the Tribunal that they did not have much contact with the appellant and saw him mainly at regular family gatherings held at a family member's house. Both confirmed that their departure was arranged by a relative who had formerly held a senior role in an airport-related business.

Documents and Submissions

[20] On 29 September 2011, the Tribunal received written submissions from counsel. Counsel made opening and closing submission. On 2 November 2011 Tribunal received the following country information from counsel: "Clashes reported in Iran: pro-reformist marches under way despite heavy security presence and police crackdown" *AlJazeera.net* (14 February 2011); "Police disperse Iranian protesters with tear gas" *The Independent* (14 February 2011). These reports establish that on the 14 February 2011 demonstration, the protesters attempted to converge in Azadi Square in central Tehran from various points across the city, and that up to 10,000 security personnel had been deployed to prevent that from happening. Counsel submits that this makes it more likely that individual protestors could have been identified as the appellant claims he was.

ASSESSMENT

[21] Under section 198 of the Act, the Tribunal must determine whether to recognise the appellant as:

- (a) a refugee under the Refugee Convention (section 129); and/or
- (b) a protected person under the Convention Against Torture (section 130); and/or
- (c) a protected person under the International Covenant on Civil and Political Rights (“the ICCPR”) (section 131).

Credibility

[22] The Tribunal accepts the appellant as a credible witness. His evidence was consistent and detailed. It was corroborated by both CC’s and BB’s evidence. Documentary evidence relating to the former employment of the relative who helped him escape from Iran was submitted. Country information confirms that the demonstration in February 2011, organised by the Green Movement to support the popular revolutions in Egypt and Tunisia, took place during a state visit by the Turkish President. See: “Turkey’s Gul, in Iran, urges respect for people power” *Reuters* (14 February 2011); Saban Kardas “Turkish-Iranian Economic Ties Flourish” *Eurasia Daily Monitor* Vol 8 Issue 35 (18 February 2011).

[23] The Tribunal was provided with the handwritten notation of the translator used to read back to the appellant, the content of the record of the interview conducted with him on arrival. This records he had received a call from the shop, contrary to his evidence to the Tribunal. This interpreter’s note establishes that as soon as the appellant became aware of this he instructed the interpreter that this was incorrect and that the call had been made to his wife. Furthermore, while a discrepancy ostensibly arose on the face of the RSB interview record in relation to the telephone calls he received about visits to the shop and home, the appellant disputed the accuracy of the RSB interview record. Accordingly, the Tribunal listened to the audio recording of the interview which was translated for the Tribunal. It was established that the RSB interview record inaccurately recorded the appellant’s answers. The Tribunal is fully satisfied that at no stage has the appellant maintained that he received a call from the shop and that such

'discrepancy' as appeared to have arisen has occurred as a result of translation or recording error.

[24] Furthermore, while the RSB had doubts about the appellant's account of his being able to circumvent security procedures at the airport, the Tribunal notes that the Refugee Status Appeals Authority (RSAA) has, on numerous occasions, accepted that while difficult, this is not an impossible thing to do, particularly given high levels of corruption in Iran. See, for example, *Refugee Appeal No 76014* (30 May 2007) at [85]-[86] and *Refugee Appeal No 75990* (14 January 2008) at [79]-[80]. Having subjected the appellant's evidence to close examination, his account was generally credible and his claim of having a close family member orchestrate such departure must be considered in this context.

[25] For these reasons, the appellant's account is therefore accepted in its entirety.

Findings of Fact

[26] The Tribunal therefore finds that the appellant has participated in a number of post-election demonstrations and in two of these he has encountered trouble. On the first occasion, he was detained for two weeks during which time he was interrogated and suffered mild mistreatment. He was threatened with being sent to Evin Prison and made to sign an undertaking not to get involved in further protest activities.

[27] In breach of this undertaking, the appellant has taken part in another demonstration in February 2011 organised by the Green Movement to support the popular revolutions in Egypt and Tunisia. The authorities are aware of his involvement and are searching for him.

The Refugee Convention

[28] 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."

[29] In terms of *Refugee Appeal No 70074* (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 Claim to Refugee Status

Relevant principles

[30] For the purposes of refugee status determination, the correct approach to interpreting “being persecuted” has been determined by the RSAA to comprise 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]–[125]. Put as a convenient shorthand formulation, it has been expressed by the RSAA as comprising serious harm plus the failure of state protection – see *Refugee Appeal No 71427* (17 August 2000).

[31] As to the degree to which a risk of being persecuted must be established on the evidence, the RSAA has consistently adopted the approach taken in *Chan v Minister of Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), which held that a fear of being persecuted is well-founded when there is a real, as opposed to a remote or speculative, chance of such persecution occurring. This entails an objective assessment as to whether there is a real or substantial basis for the anticipation of being persecuted. Mere speculation will not suffice. See *Refugee Appeal No 76044* (11 September 2008) at [57].

Objectively, on the Facts as Found, is there a Real Chance of the Appellant Being Persecuted if Returned to Iran?

General human rights situation in Iran

[32] Here, country information makes for grim reading. The Iranian regime continues to be repressive and intolerant of dissent. Human Rights Watch *World Report 2011: Iran* (January 2011) observes that:

“Iran’s human rights crisis deepened as the government sought to consolidate its power following 2009’s disputed presidential election. Public demonstrations waned after security forces used live ammunition to suppress protesters in late 2009, resulting in the death of at least seven protesters. Authorities announced that security forces had arrested more than 6,000 individuals after June 2009. Hundreds—including lawyers, rights defenders, journalists, civil society activists, and opposition leaders—remain in detention without charge. Since the election crackdown last year, well over a thousand people have fled Iran to seek asylum in neighbouring countries. Interrogators used torture to extract confessions, on which the judiciary relied on to sentence people to long prison terms and even death.”

[33] The introduction to the United States Department of State *Human Rights Report 2010: Iran* (8 April 2011) (“the 2010 DOS report”) summarises the position:

“The government severely limited citizens’ right to peacefully change their government through free and fair elections, and it continued a campaign of postelection violence and intimidation. The government committed extrajudicial killings and executed persons for criminal convictions as juveniles and through unfair trials, sometimes in group executions. Security forces under the government’s control committed acts of politically motivated violence and repression, including torture, beatings, and rape. The government administered severe officially sanctioned punishments, including amputation and flogging. Vigilante groups with ties to the government, such as Basij militia, also committed acts of violence. Prison conditions remained poor. Security forces arbitrarily arrested and detained individuals, often holding them incommunicado. Authorities held political prisoners and continued to crack down on women’s rights activists, ethnic minority rights activists, student activists, and religious minorities. There was little judicial independence and few fair public trials. The government severely restricted the right to privacy and civil liberties including freedoms of speech and the press, assembly, association, and movement; it placed severe restrictions on freedom of religion. Authorities denied admission to or expelled hundreds of university students and professors whose views were deemed unacceptable by the regime. Official corruption and a lack of government transparency persisted. Violence and legal and societal discrimination against women, children, ethnic and religious minorities, and lesbian, gay, bisexual, and transgender persons were extant. Trafficking in persons and incitement to anti-Semitism remained problems. The government severely restricted workers’ rights and arrested numerous union leaders. Child labour remained a serious problem.”

It is against this generally poor human rights background that the particular predicament of the appellant must be considered.

Treatment of persons detained for anti-regime activity

[34] In *Refugee Appeal No 76454* (8 March 2010), at [41], the RSAA considered in some detail the context against which the protests were taking place and, at [47]–[50], detailed reports of the serious ill-treatment of some of those detained in the immediate aftermath of the protests held in mid-to-late 2009 in the aftermath of the disputed election. This mistreatment included torture, rape, sleep deprivation and subjection to mock executions.

[35] Other country information confirms this position. In the report by Amnesty International *From Protest to Prison: Iran one year after the election* (June 2010), the arrest and detention of persons involved in the protest movement arising from the presidential elections of June 2009 is outlined. Amnesty International observes, at page 5, that given that the official estimate is that approximately 5,000 people had been detained since protests erupted in June 2009, the true figure was “almost certainly higher”. It is noted that:

“Those who demonstrated against the Government were met by security forces wielding batons, using tear gas and sometimes firing live rounds. Hundreds of others have been arrested at their homes or workplaces, usually by unidentified plain clothes officials bearing generic arrest warrants. Some have been detained in conditions amounting to cruel, inhuman and degrading treatment. Many have been tortured, including by beatings, rape and solitary confinement in small spaces for long periods. Hundreds have been sentenced after grossly unfair trials to lengthy prison sentences, while many others are still held without charge or trial. Some have been sentenced to death.”

Amnesty International observes, at page 8, that the vast majority of persons arrested have been “ordinary citizens”.

[36] The 2010 DOS report states, at section 1a, that the government has been implicated in numerous cases of unlawful killing, particularly in the context of the disputed 2009 presidential election. As to the treatment of those detained, the report states, at section 1c:

“The constitution and law prohibit torture, but there were numerous credible reports that security forces and prison personnel tortured detainees and prisoners. A February 5 study by the UN special rapporteur on torture stated there were “credible” allegations that the country’s security forces committed politically motivated torture following demonstrations in 2009.

Common methods of torture and abuse in prisons included prolonged solitary confinement with extreme sensory deprivation (sometimes called “white torture”), beatings, rape and sexual humiliation, long confinement in contorted positions, kicking detainees with military boots, hanging detainees by the arms and legs, threats of execution, burning with cigarettes, pulling out toenails, sleep deprivation, and severe and repeated beatings with cables or other instruments on the back and on the soles of the feet. To intensify abuse, perpetrators reportedly soaked prisoners before beating them with electric cables, and there were some reports of electric shocks to sexual organs. Prisoners also reported beatings on the ears, inducing partial or complete deafness; blows in the area around the eyes, leading to partial or complete blindness; and the use of poison to induce illness.

Some prison facilities, including Evin Prison in Tehran, were notorious for cruel and prolonged torture of political opponents of the government. Authorities also maintained unofficial secret prisons and detention centres outside the national prison system where abuse reportedly occurred. The government reportedly used white torture especially on political prisoners, often in detention centres outside the control of prison authorities, including Section 209 of Evin Prison.”

[37] More recent country information paints something of a mixed picture as regards to the regime's attitude to those involved in pro-opposition activities. On the one hand, in August 2011 the regime freed 100 political prisoners linked to the protests and others had had their sentences reduced or suspended. The authorities have also allowed newspapers sympathetic to the opposition and reformist movement such as *Etemaad Alman*, *Roozegar* and *Sargh*, closed in the aftermath of the disputed presidential election, to resume publication. Political activists are also reportedly enjoying greater freedom in criticising the government of President Ahmadinejad; see Saeed Kamali Dehghan "Iran Frees 100 Political Prisoners" *The Guardian* (30 August 2011). On the other hand, Kamali Dehghan reports in "Iran bans mention of opposition leaders in press" *The Guardian* (23 August 2011) that on 18 August 2011, Iran's Ministry of Culture and Islamic Guidance issued a top secret and urgent ruling to the editors of newspapers and news agencies in Iran banning them from publishing any news about the defeated presidential candidates in the 2009 presidential election or the former reformist president Mohammed Khatami.

[38] The seemingly contradictory trends in allowing greater political freedom to political movements to criticise the Ahmadinejad government while banning mention of the leaders of the Green Movement arguably relates more to the power struggle between Supreme Leader Ali Khamanei and President Ahmadinejad, for a discussion of which, see: James Reynolds "Analysis: Row between Iranian leaders comes to a head" *BBC News* (7 May 2011); Saeed Kamali Dehghan and Julian Borger "Ahmadinejad enemies sent blood in Iran power struggle" *The Guardian* (19 May 2011); Ian Black "Iranian MPs say Ahmadinejad broke law in oil ministry takeover" *The Guardian* (1 June 2011); Jane's Intelligence Weekly *Iran's leadership falls out with itself* (1 July 2011); Saeed Kamali Dehghan "Iranian President Ahmadinejad denies aid is linked to bank scam" *The Guardian* (15 September 2011).

[39] It must be remembered that both Mir Hossein Mousavi and Mehdi Karroubi, senior figures in the Green Movement, have remained under house arrest since calling for public demonstrations in support of the revolutions in Egypt and Tunisia in February 2011, the very demonstrations the appellant attended. This, coupled with the recent edict to media outlets banning reporting on them or the former reformist President Khatami suggests that the recent partial relaxation of media restrictions may have more to do with domestic politics rather than signal any genuine opening up of the political space. It may suit the Supreme Leader to have

public criticism of the president aired in the media while at the same time keeping wider criticism of and protest at the country's governance structures under strict control.

[40] The mass demonstrations in Iran during late 2009 and early 2010 foreshadowed the uprisings in Tunisia, Egypt, Libya, Syria, Bahrain and Yemen in what has become known as the "the Arab Spring". These popular uprisings resonate with both the clerical establishment and the political opposition inside Iran, albeit with different emphases. Both sides appear to be trying to co-opt these popular revolts to shore up their domestic position. See "Iran police fire tear gas at opposition rally in Tehran" *BBC News* (14 February 2011) which notes:

"Analysts say Tehran is trying to stop opposition groups from using the Egypt rally as a means to re-ignite anti-government protests of 2009.

Both the Iranian government and the opposition have claimed credit for the recent popular uprisings in Tunisia and Egypt.

The government says the mass protests were inspired by Iran's 1979 revolution, while the opposition says its 2009 protests encouraged the unrest. The opposition also says peaceful rallies do not need permission."

See also, Farnaz Fassihi "Tehran Beats Back New Protests" *Wall Street Journal* (15 February 2011).

[41] For the clerical establishment, the overthrow of regimes in Egypt and elsewhere brings the potential for a more favourable regional political realignment as well as greater commercial relations, both vital for ongoing regime stability in Iran. Support for Shia uprisings in Bahrain further projects Iranian influence in the region. See Jane's Islamic Affairs Analyst *Iran's fortunes and the Arab Spring* (15 June 2011); Ali Reza Eshraghi "Iran looks on calmly as Arabs Protest" *Institute of War and Peace Reporting* (2 February 2011).

[42] Ensuring regime stability means a different response is taken by the Iranian authorities to opposition protest inside Iran. As the Jane's Islamic Affairs Analyst (*op cit*), at p 1, observes:

"Tehran's violent and ongoing response to the 2009 post-election protest leaves no doubt that regime stability is its top priority."

The Iranian regime remains extremely sensitive to popular shows of support for the uprisings in Egypt, Tunisia and elsewhere, particularly in the run-up to parliamentary elections scheduled for March 2012. The BBC Persian TV Service was jammed from within Iran due to its coverage of the unrest in Egypt; see

Rory Greenslade “Iran Jams BBC’s Persian TV service” *The Guardian* (11 February 2011). Mass demonstrations have taken place which have resulted in the massive deployment of security forces personnel, unlawful killings, and mass arrests of protestors including the arrest of 1,500 demonstrators at one demonstration alone; see Simon Tisdall “Egypt revolt has Iran in a spin” *The Guardian* (1 February 2011); Saeed Kemali Dehghan “Iranian Opposition calls for fresh protests over pair killed during rally” *The Guardian* (19 February 2011); Meir Javedanfar “Iran’s repressive regime cannot last” *The Guardian* (22 February 2011).

[43] Regime sensitivity to organised demonstrations supporting the popular revolutions across the region needs to be seen in light of the changing nature of the protests inside Iran which, over the course of 2009 and 2010, developed from demands for a fair election into calls for fundamental change in Iran’s governance arrangements, including the abolition of the Office of the Supreme Leader; see *Refugee Appeal No 76454* (8 March 2010) which notes:

“[44] As to the focus of protest, in the days following the 2009 election, the focus of protest was to demand no more than a new election or a recount of the vote. However, opposition demands have evolved in from simply questioning the legitimacy of Ahamdinejad’s presidency to questioning the legitimacy of the system of governance itself and, in particular, the role and office of the supreme¹³ leader – see I Black “Frail but fierce, Iran’s supreme leader Khamanei answers his critics” *The Guardian* (19 June 2009); I Black “Guardian Council rules out fresh Iran election” *The Guardian* (26 June 2009), F Ghadar *Iran’s latest Protests: Critical Questions* Centre for Strategic and International Studies, Washington; Y Baji “Protestors ready to stand up to security force” *Institute for War and Peace Reporting* (4 November 2009). In January 2010, no less than three separate political manifestos were issued by senior figures associated with the Green Movement. While they differed in emphasis and reach, each called into question some aspect of existing governance arrangements in Iran – see R Wright “An opposition manifesto in Iran” *Los Angeles Times* (6 January 2010) available at <http://robinwrightblog.blogspot.com/2010/01/opposition-manifesto-in-iran.html> Y Baji *The subtlety of slogans: Why death to Khamenei does not mean what it says* Institute for War and Peace Reporting (25 January 2010); R Tait and N Hoesiny “The Iranian revolution grinds to a halt on the eve of its anniversary” *The Observer* (7 February 2010).

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

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

A sharp rise in use of capital punishment

[44] Echoing the call issued by the head of the powerful Guardian Council in February 2010 for more executions, there has seen a sharp escalation in the use of capital punishment by the regime in 2011. Iran has acknowledged the execution of 190 people for the first six months of 2011 but according to Amnesty International, another 130 have also been reported as executed. This combined figure of 320 persons executed in the six months to June 2011 – almost two per day – is also recorded by the International Campaign for Human Rights in Iran (ICHRI), while the Norwegian non-governmental organisation Iran Human Rights has recorded 390 executions: see Saeed Kemali Deghan “Iran escalates use of capital punishment” *The Guardian* (7 July 2011). According to ICHRI’s Executive Director, the regime is using execution as a means of intimidating the population. He states:

“The sharp rise of executions in Iran is a clear message that the state has no hesitation in using violence and applying it, no matter how arbitrarily, in holding on to power.”

[45] That the rise in executions is linked to maintaining political power in the face of the most sustained pressure the regime has encountered to its existence, and not as punishment for drug-trafficking as the regime claims, is a view shared by Shrin Ebadi, a human rights activist and Nobel Peace Prize laureate. See Simon Tisdall “Iran’s judicial killing spree” *The Guardian* (7 July 2011) who quotes Ebadi as stating:

“The Iranian authorities have shown that they are no longer content to repress those contesting the re-election of Mahmoud Ahmadinejad by arresting and convicting them – they have shown they will now resort to execution. They are using the familiar tactic of carrying out political executions at the same time as mass executions of prisoners convicted of criminal offences. These executions may increase if the world is silent.”

[46] Concern about the increase in the use of capital punishment for political offences is echoed in *The Interim Report of United Nations Secretary General on the Situation of Human Rights in Iran* United Nations Human Rights Council (60th Session), 14 March 2011, A/HRC/16/75 which, at [14], refers to:

“A worrying trend [in] the increased number of cases in which political prisoners are accused of Mohareb (enmity against God) offences which carry the death penalty.

In Iran's law, Mohareb relates to the use of armed violence, however special procedures mandate holders and other independent experts have questioned the problematic and arbitrary nature of such charges. At least 22 persons charged with Mohareb have been executed since January 2010."

The report notes that at least two people have been executed for their alleged participation in post-election unrest and contact with banned groups.

Application to appellant's case

[47] It is difficult to know the extent to which the authorities will punish the appellant given his low level of involvement in the protest movement. He has had only a minor part to play in the drama unfolding on the streets of Iran. As against that, he is wanted by the authorities for taking part in a banned demonstration in support of popular revolutions which have toppled repressive regimes elsewhere in the region.

[48] The authoritarian nature of the Iranian regime is something which simply cannot be ignored in cases of this kind. Its tendency to authoritarianism, institutional propensity to violence, and general disregard for the human rights of its citizens renders it more likely to commit serious human rights abuses against those it identifies as advocating for some form of regime change, regardless of the level of involvement the individual has had.

[49] The disproportionate and severe punishment of persons who have played no major role in opposition movements is an integral part of oppression, sowing fear amongst the ordinary population. The deliberate and arbitrary use of disproportionate violence to inculcate fear in ordinary persons against seeking to exercise their right to freedom of expression through peaceful protest is the keystone upon which the whole edifice of state repression of its citizens rests. Country information establishes that this is certainly the case in Iran.

[50] From this perspective, and having found that the Iranian authorities are interested in locating the appellant for taking part in a banned demonstration in support of the 'Arab Spring', the notion that he faces a real chance of suffering serious harm in the form of torture, or cruel, inhuman or degrading treatment or punishment in breach of Article 7 of the International Covenant on Civil and Political Rights, 1966 notwithstanding the low level of his involvement, cannot be dismissed as pure conjecture or surmise. On the contrary, given the country information relating to serious human rights abuses committed by the Iranian regime to preserve the political hegemony and economic dominance of the clerical

establishment and its associated apparatus at a time of unprecedented regional turmoil, it is real and substantial. For these reasons, the Tribunal finds the appellant has a well-founded fear of being persecuted if returned to Iran. The first principal issue is answered in the affirmative.

Nexus to a Convention Reason

[51] The jurisprudence of the RSAA makes clear the standard for establishing causation is a low one. In *Refugee Appeal No 72635* (6 September 2002) the RSAA held:

“[173] We are of the view that it is sufficient for the refugee claimant to establish that the Convention ground is a **contributing** cause to the risk of “being persecuted”. It is not necessary for that cause to be the sole cause, main cause, direct cause, indirect cause or “but for” cause. It is enough that a Convention ground can be identified as being relevant to the cause of the risk of being persecuted. However, if the Convention ground is remote to the point of irrelevance, causation has not been established.”

[52] The appellant’s predicament is inextricably linked to his political opinions. The second principal issue is also answered in the affirmative.

Conclusion on Claim to Refugee Status

[53] The Tribunal finds that the appellant is entitled to be recognised as a refugee under section 129 of the Act.

THE CLAIM UNDER THE CONVENTION AGAINST TORTURE

[54] Section 130(1) of the Act provides that:

“A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand.”

[55] Section 130(5) of the Act provides that torture has the same meaning as in the Convention Against Torture, Article 1(1) of which states that torture is:

“... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It

does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

[56] Because the appellant is recognised as a refugee he is entitled to the protection of New Zealand from *refoulement* to Iran. The recognition of the appellant as a refugee means that he cannot be deported from New Zealand to Iran; see Article 33 of the Refugee Convention and sections 129(2) and 164 of the Act. The exception to section 129 which is set out in section 164(3) of the Act does not apply. Therefore, there are no substantial grounds for believing the appellant would be in danger of being subjected to torture in Iran.

THE CLAIM UNDER THE ICCPR

[57] Section 131(1) of the Act provides that:

“A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.”

[58] Pursuant to section 131(6) of the Act, “cruel treatment” means cruel, inhuman or degrading treatment or punishment but, by virtue of section 131(5):

- (a) treatment inherent in or incidental to lawful sanctions is not to be treated as arbitrary deprivation of life or cruel treatment, unless the sanctions are imposed in disregard of accepted international standards; and
- (b) the impact on the person of the inability of a country to provide health or medical care, or health or medical care of a particular type or quality, is not to be treated as arbitrary deprivation of life or cruel treatment.

[59] Again, because the appellant is recognised as a refugee he is entitled to the protection of New Zealand from *refoulement* to Iran. For the reasons already given in relation to the claim under section 130 of the Act, there is no prospect of the appellant being deported from this country. Therefore, there are no substantial grounds for believing that the appellant is in danger of being subjected to arbitrary deprivation of life or to cruel, inhuman or degrading treatment or punishment in Iran. Accordingly, the appellant is not a person who requires recognition as a protected person under the ICCPR.

CONCLUSION

[60] For the foregoing reasons, the Tribunal finds that the appellant:

- (a) is a refugee within the meaning of the Refugee Convention;
- (b) is not a protected person within the meaning of the Convention Against Torture; and
- (c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[61] The appeal is allowed.

"B L Burson"

B L Burson

Member

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Member