

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76524

AT AUCKLAND

<u>Before:</u>	M A Roche (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>	15 June 2010
<u>Date of Decision:</u>	11 August 2010

DECISION

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

INTRODUCTION

[2] The appellant claimed refugee status on arrival in New Zealand on 24 November 2009. Following an interview on 25 February 2010, her refugee status claim was declined in a decision dated 16 April 2010, leading to this appeal.

[3] The appellant claims to be at risk of being persecuted in Iran because of her participation in public protests following the June 2009 election and because she distributed an anti-regime letter at the protests.

[4] The essential issue in this appeal is the veracity of the appellant's claims.

THE APPELLANT'S CASE

[5] The appellant is a divorced woman aged in her late 20s. She is from a large, close family in Tehran who remain living together on different levels of the same building. The appellant married during her teens. The marriage was not successful and, in or around 2005, she obtained a divorce and returned to live with her family. Her family supported her during her divorce and her father paid a sum of money to her former husband to expedite the process.

[6] Following her divorce, the appellant entered into a temporary marriage with a boyfriend. She continued to live with her parents but would also spend time with her boyfriend at a different address. She did not wish to make this relationship permanent because her boyfriend was married with children.

[7] In or around 2006, the appellant established a hairdressing salon. The salon was located approximately 500 metres from her parents' home. It was a successful business and the appellant encountered no particular difficulties in running it.

[8] The appellant took considerable interest in the June 2009 elections. Like many Iranians, she disliked the repressive policies of President Ahmadinejad and was attracted to the greater freedoms offered by his rival, Mr Mousavi. In particular, she found his policy concerning greater equality between men and women, and a relaxation of the *hijab*, appealing. On several occasions, the appellant was harassed by members of the *Basij* for wearing "bad *hijabi*", although she was never prosecuted for this.

[9] On 12 June 2009, the appellant voted for Mr Mousavi. Like many other Iranians, she joined demonstrations on the following days to protest against the official result which saw Mr Mousavi defeated by the incumbent, Mr Ahmadinejad.

[10] On 15 June 2009, the appellant attended a demonstration in Tehran with her friend, AA, and AA's cousin, BB. The three travelled to the demonstration in the appellant's car. After parking the car, they joined a crowd of protesters in Azadi Square. They were there for several hours until around sunset. When they returned to the car, they found a large crowd in the area. While the appellant and the others were in the car, but before they drove away, a group of *Basiji* surrounded the car. They rocked the car and pulled one of the registration plates off it. When the appellant got out to remonstrate with them, she was told to get back into the car and one of them smashed the back window with a baton. The

appellant eventually managed to drive away and returned home. That night, she joined others on her rooftop who were shouting "Allah Akbar!" in protest at the election result.

[11] The following day, the appellant's brother arranged for her car's back window to be fixed. The appellant went to work in her salon as usual. She discussed the protests with her customers. One of them, who had a relative in the Ministry of Internal Affairs, showed the appellant a letter. This letter was addressed to Ayatollah Khamenei and set out the "real" election results. The appellant recalls that Mr Mousavi had the highest number of votes and that another candidate, Mr Karoubi, had the second highest number. She recalls that Mr Ahmadinejad was ranked third and that the total number of votes for him recorded in the letter was less than one million. The final candidate, Mr Rezai, also had a very low number of votes.

[12] The appellant asked her customer whether she could make a copy of the letter. The customer told her that she could keep it. The appellant then left the salon and went to a nearby print shop where she had between 40 and 50 copies of the letter made. That afternoon, she, AA and BB attended the demonstrations again. This time they travelled to and from the demonstrations by taxi. The appellant divided her bundle of letters between the three of them and all three gave copies of the letter out to members of the crowd at the demonstrations.

[13] On 18 June 2009, the appellant, AA and BB again attended protests in central Tehran. They had heard that Mr Mousavi was going to address the protesters although, when he did, the appellant never saw nor heard him because of the size of the crowd. The appellant and her companions had a large quantity of letters with them which AA had made. They spread out amongst the crowd in order to distribute the letters more efficiently.

[14] Suddenly, the appellant became aware of a disturbance in the crowd and AA ran towards her shouting that BB had been arrested, that she must throw away the letters and run. AA ran next to her and told her that BB had been pulled down to the ground by people who were arresting him. The appellant and AA were then chased and, during the chase, the appellant lost sight of AA and managed to evade her pursuers. She took a taxi to the nearest metro station and took the metro to the end of the line. While on the train, she called her boyfriend who told her she should go to her brother's holiday home in the north. After making this call, the appellant removed her SIM card from her mobile telephone and replaced it with another. When she reached the final metro station, she took a shared taxi

to her brother's holiday home in the north. She stayed there for several months while arrangements were made for her departure from Iran. She was in frequent telephone contact with her boyfriend and asked him to try to find out what had happened to AA and BB.

[15] At her request, he visited their neighbourhood and learned that BB had died in detention and that his body had been buried in the ZZ cemetery in Tehran. He was not able to obtain any news of AA who had disappeared. The appellant was informed by her boyfriend and her parents that her hairdressing salon had been ransacked by regime officials who had discovered a copy of letter that she had left there.

[16] The appellant's boyfriend made arrangements on her behalf for her departure from Iran. These arrangements included the payment of a large sum of money as a bribe to someone who was able to ensure that the appellant would be able to depart Iran from the Tehran airport without difficulty. On a date in mid October 2009, the appellant travelled to Tehran and was met by her boyfriend who drove her to the airport. The arrangement he had made for her was that she was to go through the airport checkpoints at a particular time, which she did, using her own passport. She experienced no difficulty and flew to Thailand where she remained for approximately one month. She was met by an agent arranged from Iran who provided her with a Spanish passport, which she used to travel from Thailand to New Zealand via Korea and Fiji.

[17] After arriving in New Zealand, the appellant learned that her parents' home had been searched by regime officials who were looking for her.

[18] During the appeal hearing the appellant learnt for the first time that BB's name is included on lists of the names of 'Green movement' protesters that had been killed by the Iranian authorities. These lists have been published on the internet.

THE ISSUES

[19] 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.

[20] 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

[21] Prior to addressing the framed issues it is necessary to make findings of fact and credibility.

Credibility

[22] The Authority finds that the appellant has embellished her account with her claims about involvement with the copying and distribution of the election results letter. Her evidence about the letter is rejected for the reasons which follow.

[23] First, she claimed that the letter source was a client who was a relative of an official of the Ministry of Internal Affairs. The widespread distribution of the letter amongst the post election protesters has been extensively reported. See Robert Fisk "Secret letter 'proves Mousavi won poll'" *The Independent* (18 June 2009) and Robert Tait and Julian Borger "Analysis: Iran election statistics muddy waters further" *Guardian* (15 June 2009). It seems unlikely that the appellant would have been one of the few who received the letter from a source directly related to the Ministry of the Interior.

[24] The appellant's evidence about the photocopying of the letter was mobile. At the hearing she claimed to have had "40 to 50" copies made for her in a photocopying shop. When asked how many she had requested she first insisted that she requested "40 to 50 copies" be made. When the implausibility of such an inexact number being requested was put to her she changed her evidence and stated that she had requested 200 copies but that because there was a shortage of paper she was only able to acquire 40 to 50.

[25] When asked about the content of the letter, she first asserted that the

results in the letter were shown in percentages. She then withdrew this and stated that a total number of votes was given for each candidate. When asked how many the incumbent Mahmoud Ahmadinejad received, she stated that it was 'a few hundreds of thousands, less than a million'. The articles by Fisk and Tait and Borger noted above record that the letter distributed at the protests stated that Ahmadinejad received 5,698,417 votes.

[26] Her counsel subsequently made a submission that she was guessing and that given the passage of time this was reasonable. On the contrary, the inference the Authority takes from the appellant's evidence about the contents of the letter is that she was not familiar with it.

[27] For the reasons noted above, the appellant's claim to have been involved with the distribution of letters purporting to contain the "real" election results is rejected.

[28] The Authority accepts that the appellant attended protests in Tehran on 15, 16, and 18 June 2010 with her friend and her friend's cousin, BB. It is also accepted that on return to her car on 15 June 2009, she was threatened by a group of *Basiji* thugs who took her licence plate and smashed her back window. Her evidence about the protests and the *Basiji* attack was credible and accorded with country information which describes the 15, 16 and 18 June protests. She was also able to provide detail without hesitation when required. For example, when asked, she provided a spontaneous account of the arrangements which were made for having her smashed back windscreen fixed.

[29] There are a number of sources available on the internet which record that a man named BB was arrested in Tehran on [a date in] June 2010, died in custody, and was buried in ZZ cemetery. See, for example, Hoseini F, "A list of 118 killed by the Islamic Republic of Iran's security forces during recent protests" *The International Committee Against Execution* (October 2009); J Shahryar Iran's Victims: "The 72 People Confirmed Killed in post-Election Conflict" *Vote For Iran* www.voteforiran.com (7 September 2009); "Iran's dead and detained updated" *Guardian.co.uk Datablog* (28 January 2010). Although for obvious reasons caution must be taken with information from the Internet, it is accepted in this case that a young man named BB was arrested and killed in the course of the post election protests.

[30] An unusual feature of this case was the appellant's clear lack of knowledge that the arrest and killing of her claimed associate had been widely publicised on

the internet. The Authority from time to time deals with appellants who falsely seek to insert themselves into an already publicised incident. In such cases findings have been made that an appellant's knowledge of an event or incident is drawn entirely from media reports. See for example *Refugee Appeal Nos 76001-4* (26 June 2007) at [114]-[117]. In this case however, the appellant provided details about BB which were entirely independent of publicity surrounding his death.

[31] Although the RSB decision referred to the internet reports about BB's arrest and death, these reports were not raised with her by the RSB during the processing of her claim. Neither of the counsel who have represented her presented evidence about the reports or made submissions concerning them at the RSB or to the Authority prior to the Authority itself raising their existence with the appellant. She learnt of the existence of the reports for the first time when questioned about them by the Authority at the appeal hearing. Prior to learning of the internet reports she had provided BB's name, the fact of his arrest (albeit on a different day from the date widely reported) the fact that he was from XX (the location of the police station where he died) and the site of his grave. Her ability to provide this information suggests that she knew him. It follows that she did not manufacture an untrue association with BB after learning about his fate from the internet.

[32] It is accepted that the appellant was an associate of BB, and that she attended post election protests in Tehran with him and his cousin. It is accepted that, on the final occasion she attended a protest with him, he was arrested. Her evidence that the arrest took place on 18 June 2009 is inconsistent with the internet reports which record him as being arrested on [a different date]. There are a number of explanations for this discrepancy including inaccurate reporting or the possibility that he was rearrested or the possibility that his arrest was not formally recorded prior to his delivery to his local police station. The discrepancy is not a matter which in itself provides a basis for rejecting the appellant's claimed association with him.

[33] The Authority has had some doubt concerning the balance of the appellant's account which involved her escape to her brother's holiday home, a period in hiding there, a raid on her hairdressing salon a few days after BB's arrest and a later raid on her home. It is not implausible however that, having taken her number plate and perhaps BB having identified her as his companion at the protests, she became a person of interest to the Iranian authorities. It is relevant that some of the internet reports about BB's death suggest that he was a victim of

torture. This would add to the likelihood that he might have named the appellant as one of the persons with whom he was protesting.

[34] In the circumstances, the Authority resolves to extend the appellant the benefit of the doubt, in accordance with the principle articulated in *Refugee Appeal No 523/92 Re RS* (17 March 1995). Given the country information concerning the serious mistreatment of detained protesters during the post-election unrest and beyond, the consequences of mistakenly rejecting the appellant's claim to have been of interest to the authorities during this period could be very grave.

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

[35] 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* (17 August 2000).

[36] [62] The Authority has consistently adopted the approach 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.

[37] In the introduction to a report published in June 2010, *From Protest to Prison – Iran one year after the election*, Amnesty International records that thousands were arrested during the election protests and hundreds more were arrested at their homes or workplaces. Many of these were subjected to torture, beatings, rape, mock executions and solitary confinement in small spaces for long periods. Others were killed while in detention. The latest United States Department of State report on human rights in Iran (the DOS report) records that estimates of the numbers killed vary between 35 (the official figure) and 200 (the figure relied on by human rights groups). The DOS report records that a number of the bodies of those who died in custody were burnt or partially burnt prior to their return to their families, allegedly (according to the families) to hide evidence of the rape and torture of the deceased: United States Department of State

Country Reports on Human Rights Practices for 2009: Iran (11 March 2010).

[38] Having accepted the appellant's account (except for the embellishment of the letter) for the purpose of this decision, it is necessary to determine whether she has a well founded fear of being persecuted should she return to Iran. Acceptance of the appellant's account includes acceptance of the fact that she was of sufficient interest to the authorities in June 2009 (because of the tracing of her licence plate or disclosure of her identity by BB or both) that her hairdressing salon and her home were raided. It cannot be assumed that the passage of a year has expunged this interest in her. Should she return to Iran it is likely that she will be identified as the subject of previous interest and, at the very least be detained and investigated.

[39] Given country information regarding human rights conditions in Iran there is a real chance that in the course of such an investigation, the appellant will be subjected to measures such as arbitrary detention, torture and lengthy solitary confinement. Her fears of persecution are therefore well-founded.

[40] For completeness it is noted that the appellant also claimed to be at risk because of her participation in green movement protests in Auckland following her arrival here. In support of this claim she filed a photograph showing her participating in a protest and provided a reference to a YouTube video clip of a protest in which she can be identified. In the picture and the clip the appellant appears alongside other protesters and plays no prominent role. The Authority does not accept that her modest role as a protester in New Zealand, alongside many others, would of itself lead to her being seriously harmed on return to Iran. Given the finding that has already been made concerning the risk to her on return arising from events in Tehran in June 2009, it is unnecessary to determine whether her participation in the Auckland protest is a matter that has aggravated this risk.

[41] The answer to the first issue framed for consideration is "yes".

Convention reason

[42] Turning to the issue of Convention ground, the interest in the appellant by the Iranian authorities arises from her participation in elections protesting against the re-election of President Ahmadinejad. The relevant Convention reason is political opinion.

CONCLUSION

[43] For the reasons mentioned above, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"M A Roche"

M A Roche
Member