

AT AUCKLAND

Appellant:	AI (Iran)
Before:	B Dingle (Member)
Counsel for the Appellant:	D Mansouri-Rad
Counsel for the Respondent:	No Appearance
Date of Hearing:	13 September 2010 and 28 February 2011
Date of Decision:	30 June 2011

DECISION

INTRODUCTION

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

[2] The appellant claims that his family's adverse political profile in Iran and his own profile will, on return, put him at risk being subjected to serious harm to the real chance threshold. The essential issue to be determined in this appeal is whether the claim is objectively well-founded.

THE APPELLANT'S CASE

[3] The account which follows is that given by the appellant at the appeal hearing. It is assessed later.

[4] The appellant is a young, single man who lived in Tehran with his family until he travelled to New Zealand. His parents and sister continue to live in Tehran.

[5] The events which have led to the appellant's refugee and protected person claims began in approximately 2005. For the purposes of this appeal his earlier life was unremarkable.

[6] From 2005 to 2007 the appellant attended secondary school. He experienced frequent difficulties there due to his repeated violations of the dress code and other 'un-Islamic' behaviour. The appellant likes to follow international trends in music, clothing and hairstyles but the appearance he adopted was considered inappropriate by the school authorities and he was repeatedly punished for it.

[7] The appellant recalls a particularly humiliating experience which occurred in 2006 at school. While lining up one day to go into class, he was called out of the line of students and berated because his hair was considered to be long and had hair gel in it. The schoolteacher then forcibly cut the appellant's hair in front of the other school students. The school authorities contacted the appellant's parents and requested them to come and collect him at which time he was threatened with suspension but his father negotiated for his return the next day.

[8] Following that incident, the appellant increasingly came in for criticism and adverse attention from the school authorities. On another occasion he was suspended for a day and, on yet other occasions, he was sent home to change his clothes or his parents would be called to school to pick him up or he would be required to stay at school for extended hours.

[9] The appellant felt oppressed by the constant demands that he conform to a conservative interpretation of the Islamic dress code and he considered leaving school on several occasions so that he could avoid constant harassment about his appearance. For two years, his parents successfully convinced him to continue at school but they agreed to let him leave before completing the third year because of their concern for his psychological health.

[10] A similarly dim view of his appearance was taken by local *Basij* and *Pasdaran* officers on the streets and he was frequently the focus of their attention.

[11] In late 2007, by which time the appellant was working with a family friend in a shop within a mall, he was caught by the mall security guards talking with his

girlfriend. The guards then called officials from *Ershad* (the Ministry of Culture and Islamic Guidance) who transported the appellant and his girlfriend to a nearby police station. The appellant was repeatedly questioned about his relationship with his girlfriend and, in the course of the questioning, was slapped, punched and kicked. After a few hours, he was permitted to contact his father who came and collected him. He was required to sign an undertaking that he would not, in future, contravene *Ershad* rules relating to appearance and that he would not talk with females.

[12] In another incident, also in late 2007, the appellant and two friends were accused of having inappropriate dress and “disturbing females” while standing on a public street. He was taken by officials to a police station where he was put in a cell with other men arrested for similar reasons. After some time the officials took the appellant to be questioned and, as they did so, they kicked, punched and verbally abused him. During the ensuing questions the appellant admitted he had previously signed an undertaking at which point he was slapped and threatened with lashes. Before being released to his father, the appellant was made to sign a second undertaking to cut his hair and not to wear western clothing. He was warned that a record of his violations had been made and that if he contravened the rules again he would be dealt with severely.

[13] Because of the appellant’s ongoing difficulties with authorities, his refusal to attend the final year of secondary school and his distress at being harassed as to his appearance, the appellant’s parents decided that he should leave Iran and study overseas. The appellant and his family were also motivated to arrange his departure before he became liable for military conscription, a requirement that he did not want to fulfil because of his hatred of the Iranian regime.

[14] In late 2007 the appellant applied to study in New Zealand and his student visa was issued in early 2008. Within a week of receiving the visa the appellant departed Iran and arrived in New Zealand. He has been issued with a series of student permits the most recent expiring in 2010.

Events since arrival in New Zealand

[15] In mid June 2009, soon after the 12 June 2009 presidential election results in Iran had been announced, the appellant attended a protest in central Auckland, voicing opposition to President Ahmadinejad and the Iranian political regime. He attended because he had supported Mr Mousavi as a presidential candidate and wanted to show solidarity with people in Iran who were protesting and exposing

themselves to potential harm from Iranian security forces in doing so. Along with other protestors, the appellant chanted slogans such as “where is my vote?”, “death to the dictator”, and “students will support you”. At the protest he was aware of media and Iranian bystanders taking photographs, whom he believed may be working on behalf of the Iranian Government. The appellant did not attend further protests because he heard speculation that Iranian officials from the embassy were taking photographs and video footage of the protestors in order to identify and record their participation.

[16] During late June and July 2009, the appellant’s sister, AA, participated in various post-election protests in Tehran. During one of the protests, she was arrested and detained for one day. As a consequence she was suspended from university for two weeks and an entry was placed on her university file noting her protest participation. She was then permitted to complete her year of study but she was not able to enrol for a further year of study. The appellant was concerned about AA’s protest participation, both for the sake of her own safety and because he thought any difficulties she had may cause adverse consequences for him when he returned to Iran.

[17] In late July 2009, the appellant’s father attended a protest to mark the 40th day memorial of Green Movement supporters killed by the regime. He was arrested by security officials and detained. Although he denied being involved in the protest and claimed to be an innocent bystander, the father was interrogated and physically mistreated for 12 days. During that time his family did not know where he was, although they assumed he had been detained because it was well known that many protestors had been. When he was released, the appellant’s father was told that he would likely be summonsed for further questioning and investigation.

[18] Fearing further detention and mistreatment, the appellant’s father departed Iran and travelled to Malaysia. His intention was to stay in Malaysia for some time, hoping that the volatile atmosphere in Iran would calm and he would no longer be of interest to the authorities.

[19] In late September 2009 the appellant departed New Zealand and travelled to Malaysia to visit his father. During the visit his father told him much information about the post-election situation in Iran and his (the father’s) own arrest and detention. After a visit of some weeks, the appellant returned to New Zealand.

[20] Although the appellant's father had intended to stay in Malaysia for longer, in mid-2010 he returned to Iran because the appellant's mother had become seriously ill. The father did not face any difficulties on his entry into Iran.

[21] However, a few days following his return, plainclothes officials came to the family home and collected the father. He was blindfolded and taken to an unknown detention facility. In detention, he was repeatedly questioned about where he had travelled to, why he had been in Malaysia and his contacts there. The father told them that he had travelled to Malaysia to explore business opportunities. He was released later that day. Before release, he was told that he must not participate in any further protests and was forced to sign an undertaking not to participate in political activities. He was informed that he may be summonsed to appear for further investigations. The appellant was informed of these events by his family approximately a week later.

[22] From this time on, the appellant became increasingly worried about his family's predicament relating to both his father and sister's arrests and his mother's illness. The appellant was unable to continue studying due to stress and depression and he began taking medication. As a consequence of terminating his formal study, the appellant's intention to pursue permanent residence in New Zealand was no longer viable.

[23] The appellant says that his father and sister's profile of being involved in anti-regime political activity, combined with his own attendance at a protest in New Zealand of which the Iranian authorities may have photographic evidence puts him at risk of being questioned, detained and mistreated on arrival in Iran. The appellant also says that he will refuse to undertake compulsory military service if he returns to Iran because the Iranian armed forces and the parallel forces of the *Pasdaran*, *Sepah* and the *Basij* are responsible for gross human rights violations against Iranian citizens, including his sister and father.

Documents and Submissions

[24] The Tribunal has been provided with a copy of the RSB file, a copy of which was also provided to the appellant.

[25] The Authority received counsel's opening written submissions for the refugee claim on 10 September 2010. Following the refugee appeal hearing, under cover of a letter of 28 October 2010, counsel also provided a medical certificate from Dr Garsing Wong of Auckland Central Medical and Health Centre

(dated 22 October 2010) which confirmed that the appellant suffered from anxiety and was prescribed medication.

[26] On 3 February 2011, counsel provided written submissions in respect of the appellant's protected person appeal. Oral submissions were also made during the hearing. On 7 March 2011, counsel filed further country information relating to the February 2011 arrests of opposition leaders Mir Hossein Mousavi and Mehdi Karroubi and an article concerning the treatment of youths who display 'un-Islamic' behaviour.

Credibility Assessment

[27] The appellant's account, given over the course of two days, was generally consistent with what he had said previously. His evidence is not inconsistent with the available country information and there is no reason for the Tribunal to disbelieve it. The Tribunal accepts the appellant's evidence as credible.

JURISDICTION

[28] Because this appeal was lodged with the Refugee Status Appeals Authority ("the RSAA") prior to 29 November 2010 and had been allocated to a member of the RSAA by that date, it is to be completed by that member and the member is deemed to be a member of the Immigration and Protection Tribunal for that purpose. See section 448(9) of the Immigration Act 2009 ("the Act").

[29] Further, pursuant to section 448(2), the appeal is to be determined as if it were an appeal under section 194(1) of the Act.

[30] Pursuant to section 198 of the Act, on an appeal under section 194(1) the Tribunal must determine (in this order) whether to recognise the appellant as:

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

THE REFUGEE CONVENTION – THE ISSUES

[31] 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."

[32] 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

[33] For the purposes of refugee determination, "being persecuted" has been defined as the sustained or systematic violation of basic or core human rights, demonstrative of the failure of state protection; see *Refugee Appeal No. 2039/93* (12 February 1996). Put another way, persecution can be seen as the infliction of serious harm, coupled with the absence of state protection.

[34] In determining what it means that a fear be "well founded" as referred to in Article 1A(2) of the Refugee Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), where it was held that a fear of being persecuted is established as well founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective.

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

Country Information

[35] Iran is a constitutional, theocratic republic in which Shi'a Muslim clergy, and political leaders vetted by the clergy, dominate the key power structures including

the various branches of the domestic security forces (United States Department of State *Country Reports on Human Rights Practices for 2010* (8 March 2011)). There is an abundance of country information which describes the increasing intolerance of all forms of political and social dissent in Iran in recent years, particularly marked since the disputed 2009 presidential election. Recent country information indicates that this trend has intensified in 2011. The trend falls against a backdrop of widespread human rights abuses by Iranian authorities against those perceived to oppose or criticise the regime.

[36] A useful summary of the deterioration in human rights in post-2009 election Iran is the Human Rights Watch *World Report: Iran* (2011) p523 which gives the following summary:

“Iran’s human rights crisis deepened as the government sought to consolidate its power following 2009s disputed presidential election. Public demonstrations waned after security forces used live ammunition to suppress protestors in late 2009, resulting in the death of at least seven protestors. 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.”

[37] As to the situation in 2010, the United Kingdom: Foreign and Commonwealth Office, *Human Rights and Democracy: The 2010 Report*, (31 March 2011) (“the UK Foreign Office Report”) records that the year was marked by:

“a determined government crackdown against protesters and a continuation of the suppression of rights that followed the disputed June 2009 presidential election. January saw a further wave of arrests, and riot police and armed militia members were a visible presence on streets across the capital Tehran; peaceful vigils were broken up, and on 28 January, two young political prisoners were executed. By mid-February, an overwhelming security presence put an end to large public demonstrations. Throughout the year arrests and intimidation continued, particularly among lawyers, opposition politicians, journalists, student and trade unionists, and religious and ethnic minorities. An already heavily proscribed media faced further restriction, and military resources were increasingly used to monitor and restrict internet usage. Alongside the political repression, executions increased to over 650 in 2010, according to NGO figures, an execution rate surpassed only by China. Iran ended the year with human rights more restricted than at any time during the last decade.”

[38] The UK Foreign Office Report goes on, under the heading “Access to Justice”, to note a dramatic increase in executions, growing number of arrests and reliable reports of forced confessions, staged trials and a lack of access to independent legal counsel in 2010. Particular concern was expressed over the persistent use of ill-defined or vaguely worded charges, often on the charge of “*moharebeh*” (enmity towards God) which is applied both to political protesters and to those accused of acting against the regime.

[39] The treatment of detainees is also widely reported to be characterised by serious mistreatment. The United States Department of State *Country Reports on Human Rights Practices: 2010* (8 April 2011) records torture and ill-treatment being routinely used against those held in custody. It notes that, while the constitution and law prohibit torture, there were numerous credible reports that security forces and prison personnel tortured detainees and prisoners. It also notes that a 2010 study by the United Nations Special Rapporteur on Torture stated there were "credible" allegations that the country's security forces committed politically motivated torture following demonstrations in 2009. It goes on to list the use of various methods of torture (which need not be detailed here) and states that:

"[S]ome 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 centers outside the national prison system where abuse reportedly occurred. The government reportedly used white torture especially on political prisoners, often in detention centers outside the control of prison authorities, including Section 209 of Evin Prison."

[40] A recent article reports a practice amongst prison guards to distribute condoms to criminals and to encourage them to systematically rape young men accused of being opposition activists. See: Saeed Kamali Dehghan "Iran giving out condoms for criminals to rape us, say jailed activists" *The Guardian* (24 June 2011).

[41] There is also limited country information to indicate that some individuals who protested overseas following the 2009 election were identified by Iranian authorities when they returned to Iran, some on arrival at Imam Khomeini airport. See: "Using Photographs of Protests Outside Iran to Intimidate Passengers at the Airport" *International Campaign for Human Rights in Iran* (7 February 2010) and F Fassihi, "Iranian crackdown goes global" *Wall Street Journal* (4 December 2009). Such information is consistent with the threats made by senior figures within the regime's security apparatus that the regime was looking at the activities of the Green Movement abroad - see "Military authorities threaten the supporters of the Green movement outside Iran" *BBC Farsi Service* (5 November 2009). The *BBC* reports the Cultural Deputy of Iran's armed forces as stating that the regime was identifying "many protesters inside and outside Iran" and that they would be confronted "at the appropriate" time. He is quoted as stating that the regime would not "allow agents of regime change and soft coup to plot against it and if forced to, shall even create serious challenges for agents of the coup outside the country".

[42] As noted above, the intensity of the regime crackdown on perceived opponents is not easing. The Amnesty International *Annual Report 2011: Iran* (13 May 2011) records:

“Security officials, generally in plain clothes and without showing identification or arrest warrants, continued to arrest arbitrarily government opponents and people seen to be dissenting from officially approved values on account of their views or lifestyle. Among those arrested were human rights activists, independent trade unionists, students and political dissidents.

Those arrested were often held for long periods during which they were denied contact with their lawyers or families, tortured or otherwise ill-treated, and denied access to medical care. Some were sentenced to prison terms after unfair trials. Others sentenced after unfair trials in previous years remained in jail.”

[43] The appellant is from a family who now have an adverse profile with Iranian authorities on account of their respective political activities in the post-election period. The father was arrested most recently in 2010 after he returned from Malaysia and he was interrogated about the purpose of the trip and who he met there. He has been told he may be summonsed for further investigation.

[44] The appellant will be returning as a young man who has spent nearly three years in a western country. Having been absent from Iran for a matter of years, and in the context of the highly sensitive political and security situation in Iran, the Tribunal accepts that there is a real chance that the appellant will be questioned about his activities abroad on arrival. He attended a protest in New Zealand at which photographs were being taken by Iranian bystanders and it possible that those photos will be available to security officials. If so, there is a real chance that the appellant will be arrested, detained and mistreated in the manner outlined in the country information

[45] Even in the absence of such photographs, the Tribunal finds that, if the appellant is questioned, several aspects of his profile will likely come to light. First, that his father has been of recent interest to the authorities because of participation in a protest and travel to Malaysia. The appellant’s passport will indicate that he too was in Malaysia at the same time. Further, that his sister was arrested and briefly detained on account of protest participation and was then subsequently excluded from university. It may also become apparent to officials, should they investigate, that the appellant himself has previously been detained for short periods and has signed undertakings to act in accordance with Islamic dress and behavioural rules.

[46] Noting the current sensitivity of the Iranian authorities to individuals perceived to be ‘pro-western’, the Tribunal is satisfied that the risk of the appellant

being persecuted on return cannot be dismissed as mere speculation. It accepts that the adverse profile of his father and sister combined with his own previous low-level difficulties with *Ershad* officials, his extended stay in a western country and participation in an anti-regime protest creates a real chance that the appellant will be detained for questioning and seriously mistreated, either on arrival in Iran or on being apprehended at some later point.

[47] Given that the country information confirms that: the Iranian authorities continue to seriously mistreat detainees; and, instances of forced confessions of ‘vaguely worded political offences’ arising from a detainee’s political activity and the political activity connected to the post-2009 election protests frequently form the basis of criminal convictions, the Tribunal accepts that the detention and physical mistreatment of which the appellant is at risk amounts to his being persecuted.

[48] The first principal issue is therefore answered in the affirmative.

[49] The appellant has also claimed that he objects to undertaking compulsory military service in Iran on the grounds that he has a fundamental objection to serving a regime which oppresses its citizenry on account of conservatively interpreted religious principles. In light of the findings above, it is unnecessary to address that part of his claim.

Convention Ground

[50] In *Refugee Appeal No 72635* (6 September 2002), the Authority considered the standard of causation required to sufficiently establish a nexus between the harm feared by a refugee claimant and one of the five Convention grounds. The Authority stated:

[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.”

[51] In this case, the appellant’s predicament is caused by the adverse political view in which his father and sister are held by the authorities, together with the appellant’s own political opinions, informed by his un-Islamic record of behaviour and his participation in the protest in Auckland as a manifestation of his

own anti-regime political opinions. The second principal issue is also answered in the affirmative. The relevant Convention ground is political opinion.

CONCLUSION ON CLAIM TO REFUGEE STATUS

[52] For all the reasons given above, the Tribunal finds that the appellant has a well-founded fear of being persecuted if returned to Iran, for a Convention reason. The appellant is recognised as a refugee.

THE CONVENTION AGAINST TORTURE – THE ISSUES

[53] 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."

Assessment of the claim under the Convention Against Torture

[54] The appellant has been recognised as a refugee. In accordance with New Zealand's *non-refoulement* obligations under Article 33 of the Refugee Convention, he cannot be deported from New Zealand, by virtue of section 129(2) of the Act (the exceptions to which do not apply). Accordingly, there are no substantial grounds for believing that he would be in danger of being subjected to torture if deported from New Zealand. He is not a person requiring protection under the Convention Against Torture. He is not a protected person within the meaning of section 130(1) of the Act.

THE ICCPR – THE ISSUES

[55] 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."

[56] For the reasons already given, the appellant cannot be deported from New Zealand. Accordingly, there are no substantial grounds for believing that he would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if

deported from New Zealand. The appellant is not a person requiring protection under the ICCPR. He is not a protected person within the meaning of section 131(1) of the Act.

CONCLUSION

[57] 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;
- (c) is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[58] The appeal is allowed.

"B. Dingle"
B Dingle
Member

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