

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76511

AT AUCKLAND

<u>Before:</u>	M L Robins (Member)
<u>Counsel for the Appellant:</u>	D Mansouri-Rad
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	11 & 12 May 2010
<u>Date of Decision:</u>	24 November 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 citizen of the Islamic Republic of Iran.

INTRODUCTION

[2] The appellant arrived in New Zealand in October 2009. She lodged her application for refugee status on arrival. Her application was declined by the RSB in March 2010. It is from this decision that the appellant appeals.

THE APPELLANT'S CASE

[3] There follows the account given by the appellant and her witness to the Authority. An assessment of its credibility will be made later in this decision.

[4] The appellant is a 40-year-old woman born in Tehran, the oldest of four siblings. The appellant's father was Turkish and he, like all of the appellant's close family, harboured antipathy towards the Islamic government of Iran. They were not a religious family.

[5] The appellant had only five years of schooling, between the ages of six and 11 years, a circumstance she attributes to the fact that she was not studious and preferred to stay at home and help her mother with the housework. In 1987, aged 16, she married her husband. A year later, in August 1988, her son AA was born.

[6] In 1989, the appellant was pregnant with her second son, BB, when she hailed a taxi on the street. She was feeling unwell and asked the taxi driver to take her to her doctor. The taxi driver and another man in the taxi told her they were going to take her somewhere else and that it would be fun. The appellant took off her shoe and bashed the taxi driver on the back of his head whereupon the other man advised the taxi driver that they should let the appellant get out of the car. As a result of this experience, the appellant became fearful of going out alone. From this time, until she left Iran twenty years later, she avoided venturing outside unless accompanied by a family member.

[7] BB was born in April 1990 and, in 1991 when she was breast feeding him, her sister asked her to act as chaperone while the sister met a young man. It was illegal for unmarried people of the opposite sex to meet without a chaperone. The appellant (taking her baby with her) accompanied her sister and the young man to a coffee house. Some police officers started questioning them and the man ran away. His frightened departure made the police officers very suspicious. They arrested the appellant (with her baby) and her sister, and took them to the police station. At the police station the appellant became very upset and uncooperative because there were no grounds to arrest them – the young couple had a chaperone and all were therefore acting lawfully. The appellant argued with the officers and criticised both the regime and Ayatollah Khomeini.

[8] The appellant and her sister were then both charged with having an illegal relationship with the man and were detained in a prison cell. It was winter time and the cell was extremely cold. They were given meagre rations of food and water. The appellant was anxious about her baby's wellbeing. They were detained for two weeks and then brought before a court. The judge sentenced the appellant to death by stoning because she was a married woman. Her sister was sentenced to 25 lashes. The judge commuted the appellant's death sentence to a fine of 500,000 *tomans* because her husband agreed to that course of action. The sister's punishment of 25 lashes was administered immediately at the end of the court hearing. This incident instilled in the appellant a more intense hatred of the regime.

[9] In 1993, the appellant's third and last child, a daughter, CC, was born.

[10] In 1997, police officers reprimanded the appellant on the street for non-compliance with the Islamic dress code. The appellant argued with the police officers and, as a result, she was arrested. At the police station the appellant was uncooperative. There was a physical altercation in which the appellant hit her head, rendering her unconscious. When she regained consciousness the police officers confiscated her clothes and gave her a long, loose black coat and a large black head scarf to wear. Before they would release her, she was forced to sign an undertaking not to breach the dress code again.

[11] Around this time the family purchased a satellite dish so they could watch Turkish programmes. One evening police officers burst into their home and confiscated the dish and satellite equipment. The appellant's husband was arrested and detained for two nights and the family was fined.

[12] In 1999, the appellant's only brother, DD (the second oldest sibling), became involved in the student demonstrations of that year. The Iranian authorities became interested in him as a result of his political activities so he escaped from Iran in October 1999 and made his way to New Zealand. He applied for refugee status which was granted in 2002 by a differently constituted panel of this Authority.

[13] After DD's departure in late 1999, the Iranian authorities interrogated the appellant's father to ascertain his whereabouts. He suffered a heart attack and died in early 2000, a consequence which the family believes was directly attributable to the interrogations he endured. The appellant was extremely close to her father and was devastated by his death. Already a quiet and introspective woman, she was subsequently diagnosed as suffering from depression. A year after her father's death the appellant, her husband and their three children moved into the appellant's mother's apartment.

[14] The appellant was, at this time, still avoiding going outside alone. By this means she managed to avoid further confrontations with the authorities. In 2007, the appellant and AA (now aged 20) were walking in the street. They were questioned by police officers who accused them of being boyfriend and girlfriend. Despite their protestations they were taken to the local police station and detained overnight while the police checked their story. The next morning, the appellant's husband arrived at the police station with the documents to prove that the appellant was indeed AA's mother.

[15] On Friday, 12 June 2009, there was a general election in Iran. The appellant and all members of her family voted for Mr Mousavi. It was widely believed that Mr Mousavi would win the most votes but also a fear that the government would rig the results and would announce the re-election of Ahmad Ahmadinejad.

[16] On Saturday, 13 June and Sunday, 14 June, the appellant's husband, three children, and her sister (who lived with them in the mother's apartment) joined the demonstrations in Tehran aimed at forcing the government to honour the election results. The appellant was too frightened to participate in the demonstrations and asked her children not to go. Her sister, however, encouraged them to go and assured the appellant she would look after them. They attended the demonstrations on these two days without incident.

[17] On Monday, 15 June, the family members again joined the mass demonstrations. This time they persuaded the appellant to join them. They wore green denoting their support of Mr Mousavi and they travelled by two cars to Azardi and Engelaab Streets where they joined thousands of other demonstrators. The appellant witnessed police beating people. After just one hour on the streets the appellant insisted that they all return home, which they duly did.

[18] On Tuesday, 16 June and Wednesday, 17 June, the appellant's family (but not the appellant) again joined in the demonstrations. The appellant was too frightened to go and, once again, she unsuccessfully tried to persuade her children not to go. On Thursday, 18 June, the appellant relented under pressure from her family and, against her better judgement, joined them on the demonstrations that day. She witnessed people being beaten, others covered in blood. She saw shops on fire and windows broken, and she saw batons and tear gas being used. She became so terrified that she insisted that her family members leave the demonstration which they did after about an hour.

[19] On Friday, 19 June, exactly one week after the election, the appellant joined her husband, AA and her sister in the demonstrations. They made their way to the university where the Supreme Leader, Ayatollah Khomeini was going to make a speech. They stood among the large crowd outside the university walls. The speech was broadcast so that everyone, inside and outside the university, could hear. The Ayatollah gave his support for Ahmadinejad, gave his assurance that the election was fair, and warned the demonstrators that they would be responsible for the consequences of their actions if they continued to dispute the

election result. Upon hearing this, the crowd immediately became hostile and unruly. The authorities threw tear gas canisters into the crowd and started beating people.

[20] Two men began arguing with the appellant's husband and son. The men started beating them. The appellant shouted at the men to stop and then joined the fray in an attempt to defend them. In the melee, her buttons and head scarf were ripped off and she lost her shoes.

[21] The two men pulled out handcuffs and handcuffed the husband and AA. At this instant, the appellant realised she had to escape to avoid being handcuffed herself. She made a run for it. Her last view of her husband and AA was of them being led to a police car with their hands cuffed behind their backs. The appellant ran down back streets and alleyways and eventually managed to flag down a motorist who drove her home.

[22] Once home, the appellant told her mother what had happened. Her mother told her to pack some clothes and she arranged a taxi to take the appellant to a relative of a maternal aunt who lived some two hours' drive from Tehran. The appellant hurriedly packed and left Tehran in the taxi.

[23] For the next three months, the appellant stayed at the house of the aunt's sister-in-law. On one occasion her mother called and said she (the mother) had twice been taken for interrogation. The authorities asked the mother where her daughter was. The mother answered that she had no idea. The mother told the appellant she had not received any news about the appellant's husband and AA. She said she had secured an agent who would arrange the appellant's departure from Iran to New Zealand. She said the agent, EE, would arrive soon.

[24] EE arrived at the appellant's hiding place between 15 and 22 September 2009. He made all the arrangements for the appellant's departure although the appellant was unaware what those arrangements were. On or about 5 October 2009, the appellant and EE departed Iran through Ayatollah Khomeini Airport in Tehran. The appellant used her own passport, EE having (the appellant assumed) paid a bribe to somebody at the airport.

[25] EE and the appellant flew from Iran to Thailand where EE booked her into a hotel and introduced her to a Thai national who EE said would take her from Thailand to New Zealand. EE departed Thailand the day after his arrival taking the appellant's Iranian passport with him. In Thailand the appellant stayed alone in a

room in the hotel, surviving on food left for her by EE. She was very surprised, a few days after her arrival in Thailand, when DD arrived at her hotel room door. She had no idea he was coming. DD said their mother had called him and asked him to visit the appellant in Thailand to make sure she was alright.

[26] The appellant stayed in Thailand for eight nights and then departed with the Thai agent, bound for Fiji. DD was on the same aircraft but sitting somewhere else. The appellant and the agent stayed in a grass hut in a rural area in Fiji. DD stayed in a hotel. After four or five days in Fiji the appellant said goodbye to DD and the agent, and made her way to Auckland alone where she claimed refugee status on arrival. DD went from Fiji to another country although the appellant did not know where he went.

[27] The appellant was placed in the Mangere Accommodation Centre. On 23 November 2009, some five weeks after she arrived in New Zealand, she was interviewed by the RSB.

[28] On 30 December 2009, the appellant attended a demonstration in front of the Town Hall in Queen Street, Auckland. She produced to the Authority a photograph which showed her clearly visible in a group of 10 to 15 people. She also produced a You Tube video which showed the side of her head (but no facial features) for two or three seconds. Both the photograph and the video were taken on 30 December 2009.

[29] The appellant attended two other demonstrations in Queen Street but she could not remember when they were, except that the last one was before the Iranian New Year which is on about 20 March.

[30] The appellant is frightened to return to Iran because upon arrival she believes she will be questioned by the authorities who will discover that her husband and son are in prison. It will be easy for them to trace her journey and to discover that she has been in New Zealand with her brother who escaped from the Iranian authorities in 1999. The authorities will also learn that she fought with the two men in the demonstration on 19 June 2009. The appellant fears that she may be tortured or killed.

[31] Since her arrival in New Zealand, the appellant's maternal aunt in Iran has kept the appellant informed about her husband and son. She has told the appellant that the family had been denied official information about their

whereabouts but, by means of a bribe, it was established that they were being held in Evin Prison in Tehran.

[32] In February 2010, the aunt informed the appellant that her husband and son had been transferred for unknown reasons to Rajae Shahr Prison in Karaj, about 40 kilometres from Tehran. The authorities will not permit the family to visit the husband and son and are refusing to provide any information about their wellbeing. The aunt said the appellant's mother had argued with prison guards, was told to leave and, as she was leaving, she fell and broke her leg.

[33] The appellant expressed strong views about the oppression of women in Iran. She believes that women should be treated equally with men. She finds the many restrictions imposed upon women by the Islamic Republic of Iran fundamentally abhorrent. She said she has never felt safe or free in Iran.

Evidence of DD

[34] DD gave evidence on the second day of the hearing. He described his sister as a simple, unworldly woman who could get into trouble in the company of people smugglers *en route* to New Zealand. He was already planning a business trip to Malaysia and Australia when his mother telephoned him on 5 October 2009 to tell him the appellant was in Thailand. He decided to combine his planned travel with a stop-off in Thailand to check on his sister. The mother gave DD the agent's contact details and EE told DD where the appellant was staying. DD travelled with his sister to Fiji but, throughout, played no role in arranging the appellant's travel to New Zealand. That was all done by the Thai agent. The appellant was there only to ensure his sister's safety and wellbeing.

[35] DD also gave evidence that his sister was deeply affected by their father's death. He said that since his death the appellant has become more depressed and even more reclusive.

[36] He corroborated the appellant's account of her various confrontations with the authorities, including the incident when she and her baby were detained for two weeks before she was sentenced to death. He also corroborated the appellant's account of her husband and son being in gaol and he related the information provided to the appellant by their aunt.

Documents and submissions

[37] Before the hearing, Mr Mansouri-Rad filed submissions dated 7 May. Attached to these submissions was country information, a report dated 7 May 2010 by Consultant Psychiatrist Grant Galpin, and a statement written by DD.

[38] In his report, Dr Galpin observed (impliedly referring to a report he wrote on 25 November 2009 (on the Department of Labour file)) that he “continue[d] to believe that she has symptoms consistent with major depressive disorder and substantial anxiety, with panic symptoms being particularly disabling”. The appellant had, according to Dr Galpin, attributed these symptoms to her anxiety about her husband and son’s wellbeing, and her uncertainty about her immigration status in New Zealand. He described the various sleeping and anti-depressant medications that the appellant was taking.

[39] In his oral submissions at the close of the hearing, Mr Mansouri-Rad put the appellant’s case on three broad grounds; her familial connection to her husband and son who are in gaol in Iran, her own actions (attacking the authorities on the day her husband and son were arrested, and participating in demonstrations in New Zealand) and gender persecution. He submitted that the Authority should also take into account the appellant’s personality. He observed that on previous occasions when the authorities confronted the appellant, she inflamed the situation rather than minimising the conflict.

[40] After the hearing, Mr Mansouri-Rad filed:

- (a) A photocopy of the biographical page of DD’s replacement New Zealand passport, issued in Sydney on 22 October 2009. He explained that DD lost his passport in Australia, applied for this replacement and used it to return to New Zealand on 23 October 2009;
- (b) A waiver signed by DD authorising the governments of Malaysia, Thailand, Australia and Fiji to release to the Authority any relevant personal information they hold about him;
- (c) Further country information including two articles in *The Australian*;
 - (i) “Iranian students living in Australia held on trips back to Iran” *The Australian* (8 April 2010):
Iranian students living in Australia have been detained, interrogated and threatened with severe punishment

during visits to the homeland, because of their support for the Iranian pro-democracy movement in Australia.

- (ii) “Iranian Court targets Iranian expats” *The Australian* (9 April 2010):

Iranian community members in Australia have reacted with alarm to news that the government in Tehran plans to set up a special court to prosecute Iranians living abroad for taking part in pro-democracy protests against the regime.

[41] On 14 June 2010, Mr Mansouri-Rad filed another article Human Rights Watch “*Iranian Society more closed than ever*” (11 June 2010) which reported:

The Iranian government continues to harass civil society activists. Hundreds of protestors arrested during or in the months following the demonstrations languish in jail. At least six have been sentenced to death for their participation in the ‘green revolution’. Many of those still in jail have never been charged, tried or convicted, and are often denied access to attorneys or family members for weeks or months on end. Of those arrested, 250 have been tried and convicted, according to the Iranian judiciary. In addition to the six people slated to be executed, at least nine other dissidents have been hanged in the last year.

THE ISSUES

[42] 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.

[43] 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

Credibility

[44] Before assessing the appellant's case against the two issues posed, it is necessary to assess the credibility of the appellant and DD.

[45] The Authority does not accept the evidence given by the appellant and DD about DD's involvement in arranging the appellant's travel to New Zealand. They claimed that their mother made all the arrangements with the agent, that DD arrived unannounced at his sister's accommodation in Thailand, that he merely observed the appellant's journey from afar (sitting in a different part of the aircraft, staying in separate accommodation in Fiji), and that, once the appellant had left Fiji, he casually resumed his diverted business trip, leaving Fiji to go to Australia. Both of them claimed to be unaware of basic facts such as the agent's name, and the cost and details of his involvement. The fact that DD lost his passport just before eventually leaving Australia to return to New Zealand and had obtained a replacement (preventing examination of his previous travel) was too convenient to be believable. The Authority finds that the appellant and DD disguised and minimised DD's involvement in order to protect him from liability for potential breach of New Zealand's immigration laws.

[46] The Authority had some initial doubts about the plausibility of the husband and son (two "casual protestors" as opposed to two "more prominent dissidents") remaining in incommunicado detention one year after their arrests.

[47] In this regard, the Authority considered country information (in addition to that submitted by Mr Mansouri-Rad) which indicates a widespread and continuing practice of arbitrary arrest and detention in Iran since the elections in June 2009. For example, in its report "*From Protest to Prison*", Amnesty International states that thousands of people were arrested during and after the June 2009 elections and that mass arrests have since occurred on days of national importance when public demonstrations were permitted. The report states that most of those arrested have been released but some have been detained again. The report confirms as commonplace the experience described by the appellant – arbitrary arrest by plain clothes security personnel, pre-trial incommunicado detention for months and denial of information to detainees' families as to the prisoners' whereabouts and wellbeing. Amnesty International *From Protest to Prison: Iran* (8 June 2010).

[48] Human Rights Watch and a number of other international and Iranian groups issued a statement in October 2010 seeking action by the United Nations

General Assembly to address what they termed the “human rights crisis that continues to unfold in Iran”. The statement asserts that the Iranian authorities, both during and since the June 2009 election, have arbitrarily arrested and detained protestors, that detainees have been held for long periods of time, often in solitary confinement or incommunicado, and that prison conditions are poor. Human Rights Watch, *Iran: Human Rights Crisis Requires International Scrutiny* (28 October 2010).

[49] The Authority, having considered the country information, is satisfied that this aspect of the appellant’s claim (the continued detention of her husband and son) is consistent with the country information.

[50] Aside from the Authority’s negative finding about the witnesses’ credibility on the issue of DD’s involvement in the appellant’s journey to New Zealand, the Authority otherwise found that both the appellant and DD gave their evidence in a forthright and candid manner with no appearance of embellishment. The appellant appeared to be exactly as her account suggested – a woman with a strong personal view of right and wrong who would be inclined, in the face of confrontation by authority, to “meet fire with fire”. DD’s evidence about the news the appellant has received in New Zealand from their mother and aunt was spontaneous, apparently unrehearsed and entirely consistent with that of the appellant.

[51] The Authority finds that the untruthfulness of the appellant and DD on the single issue of DD’s involvement in the appellant’s journey to New Zealand tarnishes their credibility but does not, ultimately, damage it to the degree necessary for the Authority to reject their credibility overall. It is natural for a brother to want to help and protect his sister. It is logical that they would both want to protect DD from potential problems with the New Zealand immigration authorities.

[52] Accordingly, the Authority accepts that the appellant’s husband and son remain in incommunicado detention following their arrests in June 2009. It accepts the appellant’s account of her involvement in the protests in Tehran and her involvement here in New Zealand. It accepts that after the appellant’s departure from Tehran, the Iranian authorities asked her mother for the appellant’s whereabouts. It accepts that the authorities have refused to give the family information about the husband and son and that the appellant’s mother broke her

leg as she left the prison after unsuccessfully seeking access to or information about them.

[53] The Authority turns now to the first issue posed.

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

[54] The appellant's participation in New Zealand protests was minimal and is unlikely to be known to the Iranian authorities.

[55] If the appellant is returned to Iran, there is a real chance that she will be questioned on arrival at the border, particularly if she does not have an Iranian passport. That questioning will reveal her identity, the fact that her husband and son are in gaol after being arrested in an incident (protest) in which the appellant was also involved, that she has been in New Zealand, that her brother escaped Iran after the student protests ten years ago, that she has had numerous confrontations with the Iranian authorities, has served time in custody and received a (subsequently commuted) death sentence.

[56] The appellant is likely to react aggressively under this pressure, particularly given her symptoms of substantial anxiety and panic attacks. This will increase the risk she faces.

[57] The Authority finds, on the basis of these cumulative facts, that the appellant is at real risk of being arrested and, like her husband and son, being detained for an indeterminate time. Arbitrary arrest and imprisonment is prohibited by Article 9(1) of the International Covenant on Civil and Political Rights. The country information referred to above makes it clear that if the appellant is arrested and imprisoned, there is a real chance that she will be subject to serious physical mistreatment while in custody. Such detention and mistreatment clearly reaches the threshold of "being persecuted".

[58] Accordingly, the first issue is answered in the affirmative. The Authority now turns to the second issue.

Is there a Convention reason for that persecution?

[59] The Convention reason is the appellant's political opinion and possibly also her religion and gender.

CONCLUSION

[60] Both issues having been answered in the affirmative, the Authority finds that the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted.

"M L Robins"

M L Robins
Member