

AT AUCKLAND

Appellant:	AT (Iran)
Before:	B L Burson (Member)
Counsel for the appellant:	D Mansouri-Rad
Counsel for the respondent:	No Appearance
Date of hearing:	3 October 2011
Date of decision:	17 November 2011

DECISION

INTRODUCTION

[1] This is an appeal 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 protection to the appellant, a citizen of Iran.

[2] The appellant claims to have a well-founded fear of being persecuted in Iran on account of his involvement in anti-government protests. The central issue to be determined by the Tribunal is whether the appellant’s fears are in fact well-founded.

[3] The appellant’s appeal is related to the appeals in *AR (Iran)* [2011] NZIPT 800209 (17 November 2011) (AA) and *AS (Iran)* [2011] NZIPT 800208 (17 November 2011) (CC). The appellants in those cases are related to him. The appeals were heard jointly and, by consent of counsel, the evidence of each appellant was evidence not only in their own case but also evidence in support of the other appeals.

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

THE APPELLANT'S CASE

The Appellant's Evidence

[5] The appellant was born into a Kurdish family living in Tehran. Following his father's death in 2003, his brothers began running the family shop which was located in a street in which other family members' businesses, including CC's father's business, were located.

[6] The appellant began having problems with the authorities in his teenage years. He encountered minor harassment from the local *Basij* and during the Chahandeh Sourî Festival, was briefly detained for a few hours. These experiences motivated him to enrol in law school. He believed that the imposition of strict Islamic codes and social regulations was placing the Iranian population under great pressure and it was his intention to defend persons against charges of this nature.

[7] The appellant encountered a number of difficulties at university. During one particular lecture he, and a number of other students, objected when the lecturer showed a video clip of an execution. His lecturer took offence and failed him in that paper, which he had to retake. In another class, the lecturer relied on a text book which had an anti-Kurdish perspective. The appellant and a number of other Kurdish students objected to the inclusion of this book in the curriculum. They were referred to the university disciplinary committee who told them that the lecturer was able to use this book and they had no choice but to study it. The appellant was also referred to the disciplinary committee on another occasion when a school *Basij* objected to him talking to a female student, even though the appellant was simply comparing study notes with her. The appellant was told that if he did not obey the laws and rules of the university he would be suspended from the university for a period. Concerned about the impact this would have on his education, the appellant complied and in 2008 completed his degree.

[8] The appellant spent the next few months preparing for entry into the workforce. To obtain employment, he first had to obtain a military service exemption certificate that he was entitled to and which he obtained in due course.

[9] During this time, the June 2009 presidential election was looming. The appellant became enthused by the candidacy of Mir Hossein Mousavi. When President Ahmadinejad was declared the victor, the appellant began attending the demonstrations protesting this result. He attended the large-scale 15 June 2009 demonstration with CC. They encountered no difficulties.

[10] The appellant attended further demonstrations throughout the remainder of 2009, some with CC and some on his own. He did not encounter any problems.

[11] The appellant was arrested however when he attended a large demonstration held on *Ashura* (a Shiite religious festival) in December 2009. On this occasion, he was taken to a van where he was handcuffed and blindfolded and taken to an unknown detention centre. At the detention facility, he was searched and his cellphone removed. He was placed in a small cell and his handcuffs and blindfold removed. After approximately one day, the appellant was taken for interrogation. He was made to write down all his biographical and family details. The officer went through his contact list in his cellphone asking for details about people there. He seemed particularly interested in the appellant's relationship with a friend who was an Armenian Christian. During this interrogation, the appellant was questioned as to why he had been on the protest. When he denied having done so, he was slapped about his head.

[12] The appellant was detained for 10 days, during the first few days of which he heard the screams of other detainees being beaten. Also, throughout this detention, a recording of unknown persons shouting that Mir Hossein Mousavi must be executed was intermittently played at loud volume.

[13] Shortly prior to his release, the appellant was given a questionnaire to complete which recorded his biographical and family details. It also required the appellant to admit to his attendance at the demonstration and to give an undertaking that he would not take part in any such activities in the future. When the appellant again protested that he had not been at the demonstration he was told that he had to sign the document to be released. He did so. The appellant was then blindfolded, driven away and released on to the street.

[14] As a result of these experiences the appellant ceased protest activity for a while. The appellant decided to concentrate on finding employment. In 2010, he finally received his graduation certificate and set about trying to find employment as a lawyer. He approached an employment agency but was told that because of his poor disciplinary record at the university and his recent detention he would not

be employed as a lawyer. It was suggested that he undertake a two-year stint in the *Basij* to have his record wiped clean.

[15] In early 2011, the leaders of the Green Movement called on people to demonstrate in support of the revolutions that were taking place in Egypt and Tunisia. At a regular family gathering attended by CC and AA, the issue of this demonstration was discussed. The feeling of the family was that they should attend this demonstration. Although the appellant, AA and CC had all experienced detentions for taking part in post-election protests it was felt that the risk would be minimal on this occasion. The protest was timed to coincide with a visit to Tehran by the Turkish President and the opinion at the gathering was that the Iranian government would not dare to suppress the protest when large numbers of foreign media were present in Iran to cover the visit of the Turkish President.

[16] The appellant explained that he had planned to go to this event with CC but at the last minute attended with a former university classmate who was in Tehran visiting relatives. Consequently, CC attended separately. Contrary to the appellant's expectations, the security forces forcibly dispersed the crowd and the appellant's friend was captured and detained as they were running away.

[17] The appellant managed to escape and went directly to a relative's house located outside Tehran. The following day, the appellant was advised by his relative that he had been told by the appellant's family that the security forces had come to his house looking for him. They searched his room but nothing was taken. The appellant's situation was discussed amongst the family and it was decided that he should leave Iran. It was decided that another relative who had formerly been employed in a senior role in an airport-related business would make all the necessary arrangements. Upon being advised this was done, the appellant went to the airport.

[18] The appellant is not sure what steps were taken by the relative who arranged their departure. He simply followed the instructions he was given and departed Iran without difficulty. He transited through a number of south-east Asian countries before arriving in New Zealand.

[19] While en route he was telephoned by his parents who told him that there had been a telephone call to the family home asking that he report to the authorities. The caller informed the family that his friend had told the authorities that he had been encouraged to attend the demonstration by the appellant. Since

that time, the appellant has received no further news from his family as to further visits to the family home.

[20] The appellant is concerned about returning to Iran. The authorities are looking for him. Although he is only a low-level supporter of the Green Movement, should he be detained then his previous detention would come to light, as would his problems at the university. This would increase their negative view of him and cause him to suffer more severe or harsh punishment.

Evidence of AA

[21] AA told the Tribunal that he often saw the other appellants at monthly family gatherings. At these meetings, many issues were discussed and often the discussion would turn to political matters. It was at one such gathering that they all discussed attending the demonstration in February 2011.

[22] AA confirmed that his departure had been arranged by a relative who worked in a senior capacity for an airport-related business and that this same relative had arranged the departures of the appellant and CC.

Evidence of CC

[23] CC confirmed that he had attended a number of demonstrations with the appellant, who was a close friend as well as a relative, following the disputed 2009 presidential election. He stated he did not go with the appellant on the February 2011 demonstration as they had planned because the appellant had advised him that he had a friend visiting who he was going to attend with. CC told the Tribunal that although both he and the appellant had been detained previously, they thought that attending this demonstration would be safe because it coincided with a state visit by the Turkish President. He stated that his departure was arranged by a relative who had worked in a senior role in an airport-related business.

Documents and Submissions

[24] On 29 September 2011, the Tribunal received written submissions from counsel. Counsel made opening and closing submission. On 2 November 2011 the 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

[25] 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

[26] The Tribunal accepts the appellant as a credible witness. His evidence was consistent with what he had said previously. His evidence was spontaneous and presented with a positive demeanour. Country information confirms that this demonstration, organised by the opposition 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). It was materially corroborated by credible evidence given by AA and CC. The Tribunal accepts the appellant’s account in its entirety.

Findings of Fact

[27] The Tribunal finds the appellant is an ethnic Kurd who had difficulties during his university years for protesting against some of the texts and learning materials shown by his lecturers. He was referred to the disciplinary committee on a number of occasions.

[28] He has been arrested on one occasion and held for 10 days for his involvement in post-election activities during which time he was subjected to minor physical assaults as well as psychological abuse. He attended a number of other demonstrations and, in early 2011, a friend with whom he was attending a demonstration organised by the Green Movement in support of the popular revolutions in Egypt and Tunisia, was detained. Under interrogation, this friend has told the authorities that he was encouraged to attend that demonstration by the appellant. The appellant's family has been visited by the authorities enquiring as to his whereabouts.

THE REFUGEE CONVENTION

[29] 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.”

[30] 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

[31] For the purposes of refugee status determination, the correct approach to interpreting “being persecuted” has been determined by the Refugee Status Appeals Authority (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).

[32] 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, 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?

[33] In the joined appeal of *AR (Iran)* [2011] NZIPT 800209 (17 November 2011), the Tribunal has examined country information relating to the post-election protest activity inside Iran and the treatment of those detained by the authorities for taking part in such activities. It noted:

- (a) Iran remains a country with a generally poor human rights record. See: [32]-[33].
- (b) Credible sources indicate that some persons who have been arrested and detained for taking part in post-election protest activity have been subjected to serious mistreatment including torture, rape and cruel, inhuman, or degrading treatment or punishment. See: [34]-[36].
- (c) Recent prisoner releases and partial relaxation of media restrictions may relate more to the power struggle between Supreme Leader Ali Khamanei and President Ahmadinejad than signal any genuine opening up of the political space. See: [37]-[39].
- (d) While both the regime and the opposition seek to exploit the popular uprisings in Egypt, Tunisia and elsewhere in the wider region to shore up their positions in Iran, the regime is sensitive to protest organised by the Green Movement to show support for these uprisings. See: [40]-[43].

- (e) There has been a sharp rise in the use of capital punishment including persons executed for undertaking banned political activities. See: [44]-[46].

Application to the facts

[34] As with the appellant in the related appeals, it is difficult to know with certainty the extent to which the authorities will punish the appellant given his low level of involvement. He too has only had a minor part to play in the current protest movement doing no more than attending demonstrations. However, the Tribunal considers it significant that he has been identified as taking part in a demonstration in support of popular revolutions which have toppled repressive regimes elsewhere in the region and that he is wanted by the authorities for so doing. His friend has informed the authorities that the appellant encouraged him to attend this particular demonstration, which will add to their negative perception of him, as will his poor disciplinary record at the university.

[35] The observations made by the Tribunal in *AR (Iran)* [2011] NZIPT 800209 at [46] regarding the deliberate use of disproportionate punishment against low-level members of opposition movements apply just as equally to this appellant's predicament. Given the country information referred to in *AR Iran* referred to above and in *Refugee Appeal No 76454* (8 March 2010) at [41]-[50], the Tribunal finds that the appellant 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.

[36] Accordingly, the Tribunal finds the appellant has a well-founded fear of being persecuted in Iran. The first principal issue is answered in the affirmative.

Nexus to a Convention reason

[37] 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."

[38] The appellant's predicament is clearly linked to his political opinions. The second principal issue is also answered in the affirmative.

Conclusion on Claim to Refugee Status

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

THE CONVENTION AGAINST TORTURE

The Issues

[40] 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."

[41] 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."

Assessment of the Claim under the Convention Against Torture

[42] 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

The Issues

[43] 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.”

[44] 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.

Assessment of the claim under the ICCPR

[45] 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

[46] 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.

[47] The appeal is allowed.

"B. L. Burson"

B L Burson

Member

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