REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76150

AT AUCKLAND

Before:	S L Murphy (Member)
Counsel for the Appellant:	D Mansouri-Rad
Appearing for the Department of Labour:	No Appearance
Dates of Hearing:	28, 29 & 30 November 2007
Date of Decision:	24 June 2008

DECISION

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[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 is a man in his early 40s. He arrived in New Zealand on 10 June 2007 and applied for refugee status on 13 June 2007. He was interviewed by the RSB on 12 July 2007 and a decision declining his claim was delivered on 10 October 2007. It is from that decision that he has appealed to this Authority.

THE APPELLANT'S CASE

[3] The following is a summary of the appellant's account. Its credibility is assessed later.

[4] The appellant's father worked in a government department as well as running a business while the appellant was growing up. He is now retired. After

completing high school the appellant undertook his compulsory military service. He was seriously injured in a chemical attack after five months and discharged. He recuperated at home for a few months then commenced a University course. Ill-health forced him to discontinue his studies after approximately a year.

[5] For the next seven years, the appellant was largely unemployed due to his ongoing ill-health. He did, however, help his father with his business on occasion. Over this period, he wrote articles for a sports newspaper approximately every two weeks. He would also periodically write articles for the sports section of general newspapers.

[6] The appellant became engaged in 1999. His fiancée's family, who were fundamentalist Muslims, disapproved of the appellant and convinced his fiancée to end the engagement after two years.

[7] In 2000 or 2001, the appellant's youngest sister married her paternal cousin. He was violent towards her. The appellant witnessed the violence on one occasion. She secured a divorce in 2004/2005.

[8] Another sister of the appellant was also subjected to violence at the hands of her husband. The appellant escorted her to hospital on one occasion after a particularly violent assault. The incident affected the appellant deeply, and he now has a poor relationship with his brother-in-law.

[9] In about 2003 or 2004, the appellant's doctor gave him permission to take up more formal employment. Following this, he started working in a book shop in front of Tehran University, which was owned by one of the appellant's father's friends. The shop sold text books and other books for university students. The job suited the appellant as he was very interested in books.

[10] About a year after he started working in the bookshop, the appellant started obtaining banned books for students. Among the books were *The Satanic Verses* by Salman Rushdie and a feminist poetry book. The appellant did not have time to read the banned books as they were only in his possession for 15 or 20 minutes before being picked up by the purchaser. The appellant did not fear being involved in obtaining banned books because he believed he was "stepping forward to freedom for women".

[11] On 12 June 2006, the appellant's niece, CD, came to visit the appellant at the shop, and asked him to accompany her on a shopping expedition. She was a

university student and they were very close. Her father was very controlling and did not like her to go anywhere alone, so the appellant often accompanied her when she was out of the house.

[12] The appellant agreed to go shopping with her and they travelled by taxi to Haaft-e-Teer square. While in the taxi, CD talked about a demonstration that had been attacked by the police on the previous day. When they arrived at the square, the appellant noticed a gathering of women and that men were standing with them holding pamphlets. A man approached the appellant with a petition on women's rights which the appellant signed. The appellant then started gathering signatures at the man's request.

[13] Thirty or forty minutes after the appellant had arrived at the protest, the police arrived and started attacking the protesters. The appellant was tackled to the ground, handcuffed, beaten and pushed into a black van, where he was blindfolded. He could sense two or three other people in the van.

[14] He was taken to an unknown location and held there for six days. There he was finger-printed and interrogated about where he was living, where he was working, and his other activities.

[15] After six days he was blindfolded, handcuffed and taken by car to Evin prison. Upon his arrival, he was again interrogated. He was then finger-printed, required to change into a prison uniform, and photographed with a number hung around his neck. After this, he was interrogated for a second time, during which time he was punched in the head.

[16] He was detained in Evin prison for four months in a very dark cell. He was regularly interrogated, during which time he was seriously mistreated; his face was burnt with cigarettes and he was hit with cables. At times, he would fall unconscious and wake up in his cell. During the interrogations, in addition to being questioned about his own activities, he was questioned about those of his NZ-based brother (see witness A below).

[17] The appellant was kept in solitary confinement. He did not come into contact with any other prisoners, even when let out of his cell for toileting purposes, but heard people being beaten around him. He was fed twice a day with a bowl of clear thin soup. When the guards were being particularly kind, they would give him a small amount of bread or some rice. The appellant lost his appetite but drank a lot of water. He lost a lot of weight and became very weak.

[18] After two months, the appellant's parents managed to arrange for his mother to visit the prison through contacts of his father. The appellant's mother was so shocked by the appellant's appearance that she cried, fainted and had to be taken away.

[19] Approximately one week after his mother's visit, the same contacts managed to organise for the appellant's release from prison for two days in return for his father lodging the title of his house as bail. One of the hospital's medical staff had suggested that he leave the prison and obtain a medical assessment from his own doctor due to his ongoing lung problems. The afternoon after he was released, he went to the family doctor who gave him a variety of medications.

[20] During his two days at home, his niece CD took photographs of the wounds on his face and back sustained during the imprisonment, with the intention of sending them to America for a television programme about mistreatment and torture in Iran. The photographs were never, in fact, sent. The appellant's parents would not let him have copies of the photographs. They were, however, subsequently sent to the appellant by CD after he came to New Zealand.

[21] The appellant returned to prison after his two days' leave had expired and remained there for a further two months. His family realised he was in a very bad situation, both physically and mentally, and because of this, the appellant's father organised a bribe for his permanent release from jail. They did not organise for his escape from the country during his two day's leave from jail because they believed that if he returned to jail, it would only be for one or two weeks and that the authorities would subsequently close the file and send him home.

[22] The appellant's release was subject to several conditions. He was not allowed to leave his home area in Tehran, be involved in a gathering of three or more people, or discuss his detention. In addition, he was required to report to Evin prison every 10 days.

[23] At the time of his release, his condition was extremely poor. A stutter that he has had since his childhood had been exacerbated by the stress of imprisonment, to the point that he had almost totally lost the power of speech. He was almost bedridden for one to two months and given various medications including cortisone, Ventolin, painkillers, sleeping tablets and vitamins. He had no appetite and was fed intravenously. During the period he was bedridden, he would only leave his bed occasionally to walk around the room, go to the toilet or shower,

and occasionally watch television. He would also leave the house to go to the doctor.

[24] The appellant was sent a summons every 10 days to attend Evin prison. He was interrogated during those attendances.

[25] In April 2007, his niece CD advised the appellant that there was to be another women's protest, and encouraged him to attend with her. The appellant agreed to attend. However, his parents learnt of his plans and vetoed them. He believed that he could avoid difficulties at the protest because he was now more experienced, and would pay more attention to what was happening around him. He encouraged CD to attend the protest if it was a peaceful and "normal" one.

[26] Two days after that protest, a summons came for the appellant to report to Evin prison. The summons was sent early, which caused the appellant and his parents to believe that the authorities suspected him of involvement in the protest.

[27] Fearful that the appellant would be re-imprisoned, his parents organised for him to go into hiding. Initially he stayed two nights at his maternal aunt's house in Tehran. After this, he moved to a different house every night until his departure. During this time, he had no contact with his parents, but was able to communicate with them via his maternal aunt. Over this time, his parents received two visits from the authorities. On the first the authorities warned that if the appellant did not report to prison as soon as possible, a warrant for his arrest would be sent and an order for him to be shot. On the second visit, his parents were advised that both documents had been issued.

[28] The appellant left Iran on 26 May 2007. Because of bribes paid by the appellant's father, he was able to leave the airport without difficulties.

[29] At the time of his departure, neither he nor the family had made any plans about his destination, other than that he was to travel initially to Thailand. His father advised him that there were a lot of Iranians in Thailand who would be able to help him secure passage to a third country. He had no plans to come to New Zealand; this destination was chosen by the smuggler because the cost of the journey fitted with the amount of money the appellant had.

[30] The appellant departed Thailand for Hong Kong on 9 June 2007 on his genuine Iranian passport. In Hong Kong he was given a false passport on which he flew to New Zealand, arriving on 10 June 2007.

[31] Since the appellant has been in New Zealand, he has learned that his parents have been questioned by the authorities about his departure.

[32] Following the hearing, on 28 April 2008, the appellant's counsel wrote to the Authority advising that:

> "the authorities have visited the appellant's family house in Tehran enquiring about the appellant's whereabouts. The authorities briefly detained and questioned the appellant's father during which he was assaulted resulting in injuries to him. This was about late January 2008. The appellant however was not told of the incident until late February."

Witness A

[33] Witness A is the appellant's older brother. He has been in New Zealand since December 2000 and was granted refugee status in 2001, on the basis that he had been detained and tortured in Evin prison for 20 months for suspected involvement with the Mujahadeen.

[34] For the first two years of his time in New Zealand, he only contacted his parents occasionally, believing he would be at risk if he contacted them more often. Since then he has been in contact with them approximately twice a month. In about April 2006, he learned through a conversation with his parents that the appellant had been arrested because of participating in a protest. His parents did not advise him that the appellant had been released from prison until the appellant's departure from Iran. He is aware that his brother was released on conditions.

[35] The appellant's brother has never discussed his own imprisonment with the appellant and has only talked to the appellant "a little bit" about the appellant's imprisonment.

[36] Witness A described himself as not being very close to any of his siblings. He keeps himself "aloof" from them.

[37] The appellant's brother was not aware that the appellant was coming to New Zealand until he arrived at the airport. He had no involvement in the plans for his escape from Iran and subsequent passage to New Zealand.

[38] Witness A understands from discussions with his parents that they are being questioned and mistreated by the authorities on account of the appellant's departure from Iran.

[39] Witness A has consulted a psychiatrist who has put him on "Quetiapine" medication. In addition to this medication he takes sleeping tablets some nights, and a lot of pain killers. He sees a counsellor weekly who is encouraging him to attend physiotherapy and anger management but he does not have the time to attend.

Documents

[40] The appellant submitted the following documents in support of his claim:

- Three photographs, two depicting the appellant's face with wounds to his eye and a plaster on his upper nose, and one depicting the appellant's upper back with a series of long horizontal wounds.
- Medical report from Dr Tony Wansbrough dated 29 June 2007 referring to "several horizontal scars across the middle of his back", and a "burn mark on each side of the bridge of his nose".
- Medical report from Dr Martin Reeve dated 4 July 2007 referring to six faint linear scars on his back.
- Medical report from consultant psychiatrist Dr Grant Galpin dated 19 September 2007 diagnosing the appellant with post traumatic stress disorder.
- Medical report from Dr Tony Wansbrough dated 18 March 2008 advising that the appellant had been started on antidepressants and had a muscle spasm in his left shoulder.

[41] On 28 April 2008 the appellant submitted a copy of a medical report from the Medical Science University and Healthcare Services of Iran in respect of his father together with a translation, and three sheets of X-rays. The translation of the report provided *inter alia* as follows:

> "The patient, a 77 years old male who has approached this centre with injury to his forehead (glabellas) and nose, had been attacked from behind *by Nirooy-e Entezami* [The Law Enforcement Force] officials in an attempt to force him into a vehicle while walking has suffered [illegible]. On arrival he did not have [illegible]

> noise bleeding. Signs of injury in the glabellas and nose area, which were [illegible], are visible. He has not had [illegible]."

[42] Counsel provided written submissions on 23 November 2007 on 26 November 2007, 9 January 2008, 14 April 2008 and 28 April 2008.

[43] All the submissions and documents have been taken into account in this decision.

THE ISSUES

[44] 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."

[45] 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

[46] The appellant's evidence was contradictory and implausible. The following are illustrative of the serious flaws in the account. Considered cumulatively, they seriously undermine the appellant's credibility.

[47] The appellant told the Authority that there were only traffic police at the protest when he arrived, and that the police did not arrive until an hour later, just as the formal protest was about to start. However according to an independent report obtained by the RSB about a women's rights protest at the same place, date and time as that described by the appellant, "a large number of police and security forces arrived at the scene hours before the scheduled event" ("Statement from Iranian women human rights defenders arrested, interrogated and stopped

from demonstrating" *Frontline* (14 June 2006)). When the appellant was advised of the discrepancy between his description of the protest and the report, he responded that "if [the police] were there I couldn't see them at all." This explanation is unpersuasive.

[48] The appellant claims to have been given extremely inadequate nutrition while at Evin prison, ie. two meals a day consisting of a clear thin soup, occasionally supplemented by a small amount of bread or some rice. He says that as a result of the poor food, and a concurrent loss of appetite he lost "a lot" of weight. While he did not weigh himself, he could see in his body that he had lost weight and he felt very weak. However in photographs he submitted of wounds allegedly sustained in prison, supposedly taken after over two months of such serious malnourishment, (which showed his face and unclothed back) there was no sign of malnourishment. Indeed he looked to be the same healthy weight that he was at the appeal hearing. When the Authority advised that his weight in the photographs looked to be similar to that at the hearing, his response was that the photographs were "nothing similar to which I am now" but that he would respect the Authority's opinion if the Authority thought they were different.

[49] The appellant told the RSB that doctors in prison had facilitated both his temporary and permanent release from prison. However his evidence before the Authority on whether or not he saw a doctor in prison was very erratic. At first he said that he had been given painkillers by someone and he was not sure if it was a doctor or nurse. He then said that he did not think the person was a medical professional at all, and stated categorically that he had "never" had contact with a doctor in prison. When this discrepancy was drawn to his attention, his response was to wrongly assert that he had said that the person who had given him painkillers was a medical professional, and to state that they were wearing a white coat, and that "in Iran whoever wears a white uniform we call them doctor". This did not resolve the discrepancy.

[50] The appellant told the Authority that for the first one to two months after his imprisonment he only left the house to go to the doctor. However this contrasted with his other evidence that he was required to report to Evin prison every 10 days after his release. When this discrepancy was drawn to his attention, he said that he was confused and that he thought the Authority was referring only to voluntary departures from the home. However he had clearly stated that he had not left the house for any purpose other than going to the doctor.

[51] The Authority finds it implausible that the appellant would plan to attend a protest with CD in April 2007, given that his release from jail was conditional on his avoiding gatherings of more than three people. When the Authority questioned him about his decision to attend, he said that he felt that he could attend the protest as he was "experienced" and he would "pay more attention to what was happening". That explanation is specious. His appearance at a public protest would clearly have put him in grave danger of re-arrest.

[52] The appellant told the Authority that he left the family home on 5 April to go into hiding, that he stayed 1-2 nights at his aunt's house, and then spent each night at a different house until his departure from Iran on 26 May 2007. This means he would have stayed at approximately 50 different houses during this period of hiding. However he told the RSB that over this period he moved house every three to four days, and that he stayed between 10 and 15 different houses over this period. He was unable to explain the difference in his evidence.

[53] The appellant told the Authority that during the time he was in hiding, his parents received two verbal warnings, but that no documents were delivered to them. This contrasted with his evidence before the RSB, which was that a summons was delivered to his parents over this period. When the Authority advised him of his evidence to the RSB, his response was that "when I said summons, not a normal summons, just a verbal warrant". However his description to the RSB of a summons having been "delivered" plainly referred to a document.

[54] The appellant told the RSB that when the authorities came to his parents house and summonsed him for the second time while he was in hiding, they stated that they had they had a ruling from a judge to shoot him if he failed to report to the prison. However he told the Authority that no judicial officer was involved in the summons, as the file was not completed. When the Authority alerted him to this discrepancy, he said "Everyone they can call themselves a judge".

[55] The appellant told the Authority that he had at no stage discussed coming to New Zealand with his family and that his destination was chosen by the smuggler. It is implausible that the family would not, when planning the appellant's departure, discuss the option of him moving to New Zealand, given that the appellant has a brother resident here. The Authority rejects the appellant's explanation that he is not close to his brother, noting that his brother was sufficiently close to him to attend his appeal hearing and give false evidence on his

behalf (see below). It is surreal to suppose that the two men have ended up in New Zealand by sheer coincidence.

[56] The appellant said that since coming to New Zealand his parents have told him that they have received visits from the authorities, but that he had not discussed this with his brother. The Authority finds this evidence most implausible, and his explanations for his failure to discuss this information with his brother, namely it related to his "own personal problems" and that he is unwell singularly unconvincing. The information was important family information relevant to the safety of both brothers' parents, and would undoubtedly have been discussed by the brothers had the visits in fact occurred.

[57] The appellant's brother stated that, while his parents informed him in their twice monthly calls that the appellant had been imprisoned, they neglected to mention that he had been released from prison until his departure from Iran. Hence, for the seven months following the appellant's release, he remained under the needless misapprehension that his brother was suffering in prison. This evidence is highly implausible. His explanation for his parents' failure to tell him this important information; that his mother cried most of the time when talking to him, and that security reasons may have prevented his parents from telling him are unpersuasive. Security reasons did not preclude his parents from telling him about the imprisonment and therefore it seems unlikely that they would prevent his parents from telling him about his brother's official release from prison. Moreover, the communication difficulties with his mother do not explain his father's failure to advise him of his brother's release.

[58] Counsel submitted that because the appellant's brother was aware of the appellant's reporting conditions he must have been aware that the appellant had been released from prison while he was in Iran, and said that it is possible he might have forgotten that he knew the appellant was released from jail prior to his leaving Iran. This explanation is not accepted. The appellant's brother was clear that he did not know about his brother's release from jail until his departure from Iran, indeed going so far as to say that his parents "should have told me" and to provide two explanations as to why they had not. In addition to his clear evidence on this point, this is not information a person in the brother's position as an Evin prison survivor would likely forget – for a person who had been jailed and tortured in Evin prison to be left for seven months under the misapprehension that his brother was suffering the same fate would have a profound impact. Counsel also submitted that the brother's medical condition needs to be taken into account in

assessing this evidence. We have taken this into account but find that it cannot explain this implausible evidence.

[59] In his 26 November 2007 letter counsel submits that the 19 September 2007 psychiatric report on the appellant diagnosing him with post traumatic stress disorder is relevant to the credibility assessment. At the hearing he elaborated on this and stated that the diagnosis may well relate to the time the appellant spent in prison being tortured and placed in solitary confinement. However he also acknowledged that such a diagnosis could arise from a number of reasons including personal reasons. Put simply, the psychiatric report does not seek to corroborate the appellant's claimed reasons for his symptoms, simply to record that he has those symptoms, which must have arisen from other reasons.

[60] Counsel also submitted that the appellant's inconsistencies need to be considered in the context of his medical condition. The Authority acknowledges that a person's psychiatric condition may impact on their ability to give evidence. However, we have considered his medical condition in the context of his evidence and find that this alone cannot explain the raft of inconsistencies and implausibilities in his account. In making this finding, we note that the appellant appeared entirely lucid at the hearing.

Documents

[61] The Authority places no weight on the medical document regarding the supposed post-flight attack on the father. Not only was the report submitted to the Authority some four months after the supposed attack, but it has no file number and much of it is either illegible or blank. The X-rays in themselves do not evidence that the father was attacked in the claimed circumstances.

[62] The Authority accepts that there are photographs of wounds to the appellant's face and back and medical evidence of linear scars on the appellant's back and cigarette burns on his nose. However the flaws in the appellant's evidence make it clear that the wounds were not sustained in the manner claimed by him. In the absence of any credible evidence as to the reasons these wounds were sustained the Authority has no basis on which to find that they corroborate his account. The wounds, in themselves, are not indicative of any future risk to the appellant within the meaning of the Convention. In this regard it is noted that it is the appellant's responsibility to establish his or her claim (see s129P(1) of the

Immigration Act, and *Jiao v Refugee Status Appeals Authority and Attorney-General* (CA) [2003] NZAR 647).

Conclusion on credibility

[63] Taken together, the above inconsistencies and implausibilities in the appellant's account lead the Authority to reject his evidence as to the reasons precipitating his departure from Iran. The Authority finds the evidence of both the appellant and Witness A to be unreliable.

CONCLUSION

[64] The Authority rejects the appellant's account as to his difficulties in Iran. It finds that the appellant has presented no credible evidence to explain the injuries he has sustained or his psychiatric condition. It is not accepted that he has previously had any profile with the Iranian authorities, nor that he faces a risk of serious harm should he return to Iran.

[65] Accordingly, the first framed issue is answered in the negative and the second does not arise for consideration.

[66] For the above reasons, the appellant is not a refugee within Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

"S L Murphy"

S L Murphy
Member