

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76083

REFUGEE APPEAL NO 76084

REFUGEE APPEAL NO 76085

AT AUCKLAND

<u>Before:</u>	B A Dingle (Member)
<u>Counsel for the Appellants:</u>	D Mansouri-Rad
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	4 & 5 September 2007
<u>Date of Decision:</u>	27 June 2008

DECISION

[1] The appellants are a family consisting of the husband (*Refugee Appeal No 76083*), the wife (*Refugee Appeal No 76084*) and the son (*Refugee Appeal No 76085*). They are all nationals of Iran. This is their second appeal to this Authority.

[2] The son is aged ten and was represented by the husband, pursuant to s141B of the Immigration Act 1987. Notwithstanding this, the son also gave oral evidence at the hearing.

[3] The family originally arrived in New Zealand on 24 May 2003. The son was issued with a student permit and has since attended primary school here.

[4] On 26 May 2003, the appellants filed refugee claims and they were interviewed by the Refugee Status Branch (RSB) of the Department of Labour (DOL) on 2 September 2003. The claims were declined by the RSB in a decision

dated 14 November 2003. The appellants appealed to this Authority (differently constituted) and those appeals were dismissed on 20 December 2004 on the grounds that their account of events in Iran prior to their departure was not believed and that their subsequent attendance at a Christian church in Auckland did not support a finding of a well-founded fear of persecution in Iran. The Authority did accept that the family had been attending church while in New Zealand.

[5] As a result of the Authority's decline of their refugee appeals, the appellants' temporary permits, granted to them by the DOL on 10 September 2004 and valid until 10 March 2005, were revoked by the DOL with the revocation to become effective on 26 January 2005. On 9 March 2005, the Removal Review Authority (RRA) received appeals from the husband and wife against the requirement to leave New Zealand. In a joint decision dated 19 December 2005, the RRA dismissed the appeals.

[6] The appellants lodged subsequent claims for refugee status on 21 November 2006. The appellants were interviewed by the RSB on 31 January 2007 and a joint decision declining their subsequent claims was delivered on 25 June 2007. The appellants then appealed to this Authority for the second time.

[7] The appellants claim that they have a well-founded fear of being persecuted on return to Iran because of their Christian beliefs. They also claim that the son's total immersion in a western society and deep identification as a Christian since being in New Zealand mean that he is likely to expose himself and his family as Christian converts. They also claim that the risk they face is exacerbated by their families' opposition to their faith to such an extent that the risk of them being persecuted because of their faith now rises to the real chance level.

[8] The central issue to be determined in this case is whether or not the appellants' second claims to refugee status are well-founded.

JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL

[9] Because this is the second occasion on which the appellants have appealed to this Authority, the Authority must first determine whether it has jurisdiction to hear the appeal.

[10] Neither a refugee status officer nor the Authority has unlimited jurisdiction to

receive and determine a further refugee claim after a first claim has been finally determined. Section 129J(1) of the Immigration Act 1987 (“the Act”) is headed “Limitation on subsequent claims for refugee status” and sets out the circumstances in which a refugee status officer may receive and determine a second or subsequent claim for refugee status:

“A refugee status officer may not consider a claim for refugee status by a person who has already had a claim for refugee status finally determined in New Zealand unless the officer is satisfied that, since that determination, **circumstances in the claimant’s home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim.**”

[Emphasis added]

[11] Where the refugee status officer declines the subsequent claim, or finds that there is no jurisdiction to consider the claim on the basis that the statutory criteria are not met, the claimant has a right of appeal to the Authority. Section 129O(1) of the Act provides that:

“A person whose claim or subsequent claim has been declined by a refugee status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that circumstances in the claimant’s home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer’s decision.”

[12] The Authority therefore intends to consider the appellants’ original claims, together with their further claims as presented at the second hearing, with a view to determining whether it has jurisdiction to hear the second appeal. If so, it will then determine whether the appellants are refugees within the meaning of Article 1A(2) of the Refugee Convention.

THE APPELLANTS’ FIRST CLAIMS FOR REFUGEE STATUS

[13] In summary, the appellants’ first claims for refugee status were based on the fact that the Iranian authorities, having discovered that the husband had converted to Christianity, were pursuing him and would persecute him. They claimed that the wife’s conversion would be discovered and she too would be persecuted as a result. The wife also claimed that she would face persecution in Iran as a woman.

[14] The appellants claimed that their interest in Christianity began to develop in a significant way in early 2002 while they were still in Iran when they obtained a bible through a friend and began reading it on a regular basis. The appellants were then given the name of a pastor who, they were told, might be able to guide

them further in their Christian belief. After meeting with the pastor several times in early 2003, the pastor baptised the husband and the wife. The wife took two photographs of her husband's baptism which he kept in his office, along with his bible.

[15] In February 2003, the husband's office was searched by an Iranian official who found the bible, the photographs and some other Christian literature. The following evening, the husband was arrested, detained and interrogated repeatedly over a 48-hour period. His father then posted property deeds as a bail bond to secure the appellant's release and signed an undertaking that the husband would return for further questioning and appear in court when summonsed. The husband signed a similar undertaking. On release, however, the husband and wife decided that they should flee from Iran with their son and they did so, using false passports which they had arranged through an agent.

[16] The appellants subsequently learned that the husband's father had been detained and questioned by the authorities and that other people associated with the appellants had been questioned by the authorities in relation to the husband's whereabouts.

[17] As noted above, the Authority did not accept their credibility as to the events which they claimed had occurred in Iran prior to their departure. The Authority did accept that they had been attending church since their arrival in New Zealand but found that this factor alone did not give rise to a real chance of any of the appellants being persecuted if returned to Iran.

THE APPELLANTS' SECOND CLAIMS FOR REFUGEE STATUS

[18] The account which follows is a summary of the evidence given by the appellants and their witnesses in respect of their second refugee claims.

[19] The appellants' second claims for refugee status are based on their ongoing commitment to and practice of their Christianity which they state will expose them to a real chance of being persecuted should they return to Iran. They assert that, since the determination of their first claims, country conditions in Iran have deteriorated for practising Christians and that this heightens the risk that they will face on return.

[20] Further, they claim that the son's immersion into the Christian belief system

and way of life will expose both him and the husband and wife to a real chance of being persecuted. Specifically, this is because the son will talk about his Christian beliefs and the Christian God to family members, in the classroom and playground and to others in his community, just as he does here in New Zealand. The son's age means that he cannot reasonably be expected to be discreet about his Christian faith and the appellants claim that this lack of discretion will expose them to a risk of being persecuted because they will quickly be identified as Christian converts.

[21] The appellants also claim that they are at risk of being exposed as Christian converts by members of their families, who are strongly opposed to their conversion. Even if their families do not expose the appellants as converts, the appellants assert that they will not be able to rely on any further assistance from their families if they are arrested or detained.

Evidence of the husband

[22] The husband and wife both maintain the truth of their first claim to refugee status notwithstanding the decision of the Authority that the claim was not credible.

[23] The husband and wife both claim to have held Christian beliefs when they arrived in New Zealand in 2003. Within weeks of arrival, the family began attending the Faith Baptist Church in Northcote, Auckland, where they continue to worship on a weekly basis. In addition to attendance at the Sunday church service, the appellants attend a monthly communion service, weekly bible study class and a monthly shared lunch with other parishioners. During two successive summers, the appellants have also attended a Christian camp held outside Auckland. At home, the appellants pray together, read the bible and talk about their Christian faith in a way that has become a natural and integral part of everyday life. They also discuss their faith openly in other social gatherings including with those they know to be practising Muslims.

[24] The husband told the Authority about the strong sense of community and family they share with other church members. The appellants have received emotional support from the church members and small sums of money when they have needed it for living expenses. They both recognised that the Faith Baptist Church has provided a social network

[25] The husband identified prayer and "talking with God" as being the most important aspect of his Christian life. He stated that a relationship with God could

be conducted in the absence of church attendance but that, for him, church attendance and being part of a congregation is very important because it is in church that he feels closest to God and where he can find peace and comfort from the stress of his life. He also identifies the church as having provided a supportive social network of friends as they settled in to their new life and culture in New Zealand, which has greatly assisted their stability and sense of belonging.

Proselytising

[26] Proselytising is considered by the appellants to be a critical part of their Christian practise in the sense that they will talk to others about their belief and conversion in a range of social and formal settings. The husband and wife report having introduced an Iranian family and another friend to their church and this was confirmed in evidence by the Pastor. They also told the Authority that they talk to people they know, both Christian and non-Christian about their faith and beliefs. They stated that they did not approach complete strangers to talk about Christianity but that if the opportunity arose in conversation they would talk openly about their conversion and faith. The husband stated that it is his "heart's desire" to encourage other people to Christianity and they both asserted that they would also do this in Iran on return. While in New Zealand they have persisted in talking to the wife's parents about Christianity even in the face of resistance. When asked why she would persist in talking with them about her faith, the wife said because she wants them to be saved.

Relationships with family in Iran

[27] Relationships with family in Iran have become increasingly strained in recent years. Within a short time of the appellants' baptisms, the husband's parents in Iran became aware of their conversion. He believes his sister who lives in the United States informed them after he had shared the news with her. From that time on, all direct contact with his parents has ceased because (his sister reports) they cannot accept his conversion from Islam to Christianity. He has been told by his sister and a brother that his parents wish to have no further contact with him.

[28] He is uncertain as to precisely what form his parent's resentment and anger would take were he and his family to return to Iran. Having not had contact with them since his conversion, he can only guess their likely reaction and he remains uncertain as to whether they would respond to the conversion by informing Iranian

authorities or otherwise acting in a way which might expose the appellants to risk. In any event, the husband feels certain that were he to be arrested or detained in Iran, the appellants would receive no assistance at all from his family.

[29] Contact between the appellants and the wife's parents has continued throughout their time in New Zealand although the frequency and nature of the contact has changed since the appellants' conversion became known. The wife's parents now make telephone contact much less often and continue to voice their negative view of the appellants' conversion. At one stage her parents threatened to tell a conservative Muslim relative about their conversion, knowing that he held the view that conversion from Islam to Christianity was a crime deserving of serious punishment or death. However, the relative has since died and no further threats have been made by family members.

The wife's evidence

[30] The wife's evidence corroborated that of her husband in regards to the family's Church related activities in New Zealand and the place of Christianity in their day to day lives.

[31] As to her own Christian practise, the wife told the Authority that she enjoys all of the Christian activities she participates in but that "most important for [her] is attending the Church" because going to the Church and listening to the Pastor brings her hope when problems and disappointments arise in the rest of her life. She talked about the importance of sharing her Christian belief with others in the church family. She also considers it an important part of her duty to God to attend church and therefore she would continue to attend Church in Iran notwithstanding the risks associated with it.

[32] The wife also expressed her belief that a fundamental part of her Christian practise is to share the "word of Christ" among others including those of the Muslim religion so that they may be "saved". She stated that it is her duty to talk to people who do not believe in Christianity because people who already believe do not need to hear further about it. Having said that however, she stated that she would only try and talk to someone about Christianity a few times and, if they made it clear they were not interested, she would not generally persist. The exception to this approach has been her attempt to persuade her own parents and family to convert which continue during every telephone conversation they have. She explains this by saying that she loves her family and believes that those who

do not believe in a Christian God will go to hell for eternity, and therefore she will do anything to try to get them to accept Christianity for themselves.

[33] When asked about her fear of returning to Iran, the wife's fears for her son were foremost in her mind. She related two main areas of concern. The first was that the son would suffer psychologically as a result of the transition from a free and democratic and largely Christian-based society where he is able to practise his faith and express his beliefs without restriction. She stated that while he is aware of other religions he does not understand the religious and social situation in Iran and has no idea that his Christian beliefs would not be wholly accepted and celebrated in Iran. For example, she said that he believes that his grandparents (her parents) believe in Christianity because he talks to them about his beliefs and they do not contradict them out of concern for their grandchild. However, she realised that were they to return to Iran, this pretence would not last and she believes her parents would try and persuade the son to abandon Christianity and adopt Muslim beliefs.

[34] Related to her first concern is her fear that the son's confident and outspoken nature will quickly expose him and the husband and wife as Christian converts. As noted above, she explained that the son does not understand the dynamics of religion in Iran or that there will be any restriction on the way he practises his faith there. Because of his age, and his absolute belief in the truth of Christianity she asserts that he will be unable to temper his statements about God or Christianity and will insist on expressing his views, even in the face of opposition.

[35] Finally, the wife also told the Authority that she dreaded returning to Iran because of the position of women in Iran, including strict enforcement of the Islamic dress code.

The son's evidence

[36] The son gave oral evidence on the third day of the hearing. Due to his inability to accurately recall events that occurred prior to the family's departure from Iran in 2003 the focus of his evidence was on his own religious beliefs and practices; the ways in which he expresses his religious beliefs in everyday life his understanding of the social, cultural and religious context of Iran and his relationship with family members in Iran.

[37] The Authority was mindful of the age of the son and the content and form of

some questions put to him was therefore modified accordingly. Within these limits however, the Authority is satisfied that sufficient evidence was given (both by his parents and the son himself) such that an assessment can be made of his likely predicament should he now return to Iran. While the Authority is appropriately cautious in its approach to hearing evidence from children, in this instance the evidence was of considerable assistance in assessing the nature of the appellants' claim.

[38] The son presented as an intelligent, forthright and articulate child who was able to express his understanding of Christianity clearly albeit in the language and manner appropriate to his age. He gave a coherent and forceful account of his belief in the Christian God and his commitment to living a Christian life by obeying the words of God and Jesus Christ. He expressed his belief that there is only one "true God" and that those who did not believe in that God were destined for hell. When asked, he stated that he was aware that other people believed in other Gods but he refused to say what names the other Gods had because "they are bad words". He asserted that those other Gods are false and lead people into sin.

[39] When asked about Christians in Iran, the son stated his understanding that there are Christians in Iran who go to church and practise their religion freely. His evidence revealed his innocence as to the difficulties which Christian converts may encounter in Iran. He gave no hint of understanding that being a Christian would cause any difficulties in Iran at all and, in fact, he appeared to think that his extended family in Iran also believed in Jesus Christ and the Christian faith. As noted above, his mother explained that when her son talks with her parents on the phone he shares his knowledge of Christianity and because he is a child, her parents indulge him and do not suggest to him that his beliefs are wrong.

[40] He also demonstrated that he is outspoken about his religious beliefs and conviction that there is only one true God and that non-believers (in the Christian God) are destined for hell. When asked by the Authority about situations outside of the church context in which he might talk about his religious beliefs, the son was able to give several examples. He recalled often talking about Jesus Christ in the classroom, with friends at school and with others he met during social events in the weekends.

[41] The son recalled a particular incident when one of his schoolmates denied the existence of God. The son said he became angry and told him that he had to believe in Jesus Christ and God because they are the only true religious figures

and that if he did not believe, he would go to hell. Even in the retelling of this incident, the son became noticeably agitated at the idea that other people do not adhere to Christian beliefs and expressed his puzzlement that anyone would voluntarily choose not to believe in his “one true God”. This reaction indicated both an unwavering belief in God and an age-related ignorance that people have different, but equally strongly held religious beliefs (or lack thereof).

[42] The Authority was left with the clear impression that his perception of the world and society is so inherently shaped by his Christian beliefs that he naturally reverts to references to the bible or other Christian precepts in his daily interactions with others, no matter the context. For example, if he was having an argument with a school friend about sharing, the son would naturally revert to a story learned in Sunday School to explain how people should act towards each other.

WITNESS EVIDENCE

Evidence of Pastor MacKinnon

[43] Pastor MacKinnon (“the Pastor”) is the Pastor of the Faith Baptist Church which the appellants have attended since soon after their arrival in New Zealand. He appeared before the Authority to give evidence and also submitted a written statement in support of the appellants, dated 23 August 2007.

[44] Pastor MacKinnon stated that the appellants appeared to be sincere in their desire to develop their Christianity when they arrived in New Zealand. In the years since then, his observations of their commitment to the Church and Christianity lead him to conclude that they are genuine adherents to the Christian faith. He explained that while members of his church are encouraged to share Christianity in whatever way they think will be most effective, there is no requirement that people undertake public proselytising or talk about Christianity to those who have no wish to be engaged in such discussions. There is however, a fundamental obligation to proselytise in the sense of spreading the word of Christ with people who are open to it because of the belief that a person’s eternity hangs in the balance. In other words, the obligation to evangelise arises from a fundamental desire to “save lives” rather than any desire to simply gain merit by doing so. He told the Authority that the appellants have introduced at least one other Iranian person to the church.

[45] Although he had previously attempted to help the appellants contact a Pastor in Iran, he had no knowledge whether the appellants had succeeded in making contact. Neither was Pastor Mackinnon able to comment on the relationship between the appellants and their respective families who remain in Iran. He did comment that communication with the husband about such matters had been difficult, at least in part because of the husband's depression and possibly also because of a degree of cultural reserve and the language barrier.

[46] As to his fears for the family returning to Iran, Pastor Mackinnon focused his comments on the situation of the son who he feared would suffer by having to return to Iran and participate in an Islamic education system having spent so much of his childhood in the relative freedom of New Zealand and as an active member of the Church. He also observed that the son may put himself at risk in Iran because he speaks his mind freely and would comment on religious or spiritual matters if they arose in everyday life

Evidence of Mrs Hanson

[47] Mrs Hanson is also a member of the appellants' church and has been for approximately seven years. She has been a practising Christian for almost 30 years. She has a specific responsibility in the church for teaching the children once a week and she has developed a relationship with the son in that context. She observed that in the time he had attended the church he had developed from being an insular and suspicious child into someone who readily participates in group activities and takes pride in caring for others. Mrs Hanson stated that the son had developed a mature and detailed knowledge of the bible and talked about it and prayed with others. She recalled occasions when he has taken bible teachings and related them to his own life or circumstances showing that he had a real understanding of the concepts being taught.

[48] As to his possible return to Iran, Mrs Hanson considered that his upbringing in a society where he is free to express his religious and spiritual ideas will cause him problems on return. She believes that when the son is confronted with religious ideas inconsistent with his own Christian beliefs he will be outspoken in his defence of Christian ideals and his rejection of the Islamic faith. She has also observed him talking about Christian beliefs and principles in play and fears that such spontaneous discussions and expressions may also expose him to negative reactions.

Other material submitted in support of the appeals

[49] On 3 September 2007 Mr Mansouri-Rad provided written submissions in support of the appeals and enclosed several pieces of country information in relation to Christians in Iran. A statement from Pastor Paul Mackinnon (dated 23 August 2007) and two letters from Mrs J. Hanson were also received prior to the hearing (dated 26 January and 2 September 2007).

[50] During the hearing, on 4 September 2007, counsel submitted an article entitled "Intimidation in Tehran" *Time Magazine* (30 August 2007) p19, which addressed the issue of the Iranian regime's enforcement of the dress code and other social mores. It was submitted in particular support of the wife's claim to fear returning to Iran because of the situation of women there.

[51] Under cover of a letter of 21 September 2007, the Authority received:

- (a) an affidavit from Mr Mansouri-Rad relating to the manner in which the appellants' second claim for refugee status was commenced;
- (b) a letter from Paul MacKinnon dated 12 September 2007 relating to the fact that concern for the son was one of the main reasons for the second claim for refugee status being made;
- (c) a medical report dated 10 June 2005 by Dr Greig McCormick a consultant psychiatrist of Bexley Clinic, , providing a summary and medical opinion on the medical and psychiatric state of the husband after interviewing him and reviewing his medical files. The report was written for the purpose of supporting his appeal to the Removal Review Authority and concluded that the husband was suffering from a "major depressive episode" which would deteriorate further were he to be returned to Iran.

[52] Under cover of a letter of 5 October 2007, a further medical report was received from Dr Greig McCormick (dated 3 October 2007) updating his medical opinion of the husband as a result of a further interview with him and his wife on 1 October 2007. In short, the updated medical opinion said that the husband continues to present as "significantly clinically depressed" and that his appearance before the Authority would have been impaired as a result, particularly because of a lack of ability to concentrate, poor memory and recall and poor information processing.

[53] Further country information has been submitted under cover of letters dated 29 February 2008, 16 June 2008 and 24 June 2008. The Authority has also received correspondence from one Mr Paul Duncan to the Hon Shane Jones MP requesting that attached country information be forwarded to the Authority, namely: "Iran: Death penalty proposed for 'apostates'" *Compass Direct News*, 8 February 2008 (accessed at www.compassdirect.org).

[54] All of the above material has been considered in the determination of these appeals.

WHETHER THE AUTHORITY HAS JURISDICTION TO CONSIDER THE APPELLANTS' SECOND CLAIMS

[55] The Authority considered its statutory jurisdiction to hear and determine second and subsequent refugee claims in *Refugee Appeal No 75139* (18 November 2004). In that decision it was held that, under ss129J(1) and 129O(1), jurisdiction is determined by comparing the previous claim for refugee status asserted by the appellant/s with the subsequent claim.

[56] In the present case, the appellants' first claims for refugee status were based upon events in Iran relating to the identification of husband as a Christian convert and his subsequent breach of bail and non-appearance at court. The appellants' second claims are based upon their ongoing practice of Christianity and the apparent deterioration of country conditions for practising Christians in Iran (which are discussed below). Further, the son's immersion in and total adherence to Christian beliefs, his increased age (from five years when he arrived in New Zealand to ten) and his personal characteristics (devout, forthright and strident in his defence of Christianity) are significant features of the second claims.

[57] Comparing the two claims, it is apparent that they are based upon different grounds. The change of circumstance relied upon, namely the deterioration of country conditions for Christians and the development of a strong and coherently expressed belief of the son in Christian values, has occurred since the determination of the first claim. The Authority therefore finds that it has jurisdiction to consider the appellants' second claim.

[58] This decision now turns to consider whether the appellants are refugees within the meaning of Article 1A(2) of the Refugee Convention.

THE ISSUES

[59] 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 events, is unable or, owing to such fear, is unwilling to return to it."

[60] 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 APPELLANTS' CASE

Credibility

[61] Pursuant to s 129P(9) of the Immigration Act, the Authority has exercised its discretion to rely on the findings of credibility and fact made by the Authority in its determination of the first appeal. Particularly relevant to this determination, the Authority relies on the finding that the appellants did not have a profile with the Iranian authorities when they departed but that they appeared to have embraced Christianity and have been attending church since their arrival in New Zealand.

[62] Having seen and heard the appellants and the witnesses over three days of hearing, the Authority accepts that they are genuine Christian converts strongly committed to their faith and that they will seek to continue their Christian worship and practise should they return to Iran. The Authority has had the advantage of being able to assess the behaviour of the appellants since their arrival in New Zealand in 2003, some five years ago. Since that time the appellants have continued to attend church, bible study and Farsi language religious instruction on a weekly basis. The son has attended weekly Sunday school and participated in other children's activities within the church. They have also been involved in the more social aspects of Church life such as shared lunches, Christmas activities and week long summer camps spent north of Auckland. This commitment to Christianity and the Faith Baptist Church has been unwavering, even when it may

have appeared to the appellants that they had no real prospect of being able to remain in New Zealand.

[63] Both the husband and wife gave evidence about their beliefs and Christian practise which appeared understated and spontaneous and gave the impression of a genuinely held faith which has developed over time and with the encouragement of their Church. The Authority was also impressed with the evidence of the son which was forceful, unrehearsed and candid. He clearly did not understand the true nature of proceedings and spoke in an open and compelling way in response to the Authority's questions. His evidence was particularly helpful in satisfying the Authority that Christianity is deeply entrenched in almost every aspect of his life and that, as a family unit, the appellants have adopted Christian beliefs without reservation.

[64] In making this finding the Authority has also carefully considered the evidence (written and oral) of Pastor Mckinnon and Mrs Hanson who were able to provide observations of the appellants' spiritual, emotional and social changes since their arrival in New Zealand. In cases such as this, the Authority is mindful that the behaviour of refugee claimants in attending Church and adopting other Christian practises can be a disingenuous attempt to bolster their claim. In some cases, it may even be that Church Pastors provide support for the individual in the belief that they are genuinely committed Christians. But the Authority must consider the totality of the evidence before it (not just the evidence about Christian belief) and must make a considered determination as to whether claimed conversion to Christianity is genuine and, if so, the likely nature of the appellants Christian practise should they return to their country of origin – *F v Refugee Status Appeals Authority* (HC, Auckland, CIV 2006 - 404-007714, 2 April 2008, Harrison J) refer [30].

[65] Pastor Mackinnon conceded to the Authority that while he could never be absolutely certain that any particular individual was a genuinely committed Christian "in their heart", his experience with the appellants over five years left him in no doubt as to the genuineness of their conversion. He is aware of asylum seekers using Christianity as a means to apply for refugee status and would not support these appellants were he in doubt of their true intentions. His observations were echoed by Mrs Hanson. The evidence of the Pastor and Mrs Hanson is consistent with the Authority's own observations and strengthens the view that the appellants are genuine Christians who will maintain their faith even on return to Iran.

[66] The Authority accepts that as practising Christians the appellants will continue to attend Church and seek fellowship with other Christians, talk openly about their beliefs and encourage people of other faiths to adopt Christianity. The Authority also accepts that the son will talk openly about his beliefs and will be a staunch defender of the Christian faith even in the face of opposition by his peers, teachers or others in the community. If asked to recant their faith and adopt Islam, the Authority accepts that none of the appellants would do so notwithstanding the possible consequences to themselves and each other.

Whether the appellants have a well-founded fear of being persecuted

Country Information

[67] In recent years the Authority has frequently considered the position of Iranian Christian converts and reaffirmed that the mere fact that an appellant has converted to Christianity does not of itself necessitate a grant of refugee status. See, for example, *Refugee Appeal No 74911* (1 September 2004) and *Refugee Appeal No 75368-71* (12 July 2005).

[68] More recently, in *Refugee Appeal No 75376* (11 September 2006), the Authority examined the position of Christian converts in the changed political climate which followed the election of President Ahmadinejad in July 2005. In that decision the Authority noted evidence of increased intolerance of political dissent and religious minorities but concluded that there was no evidence of a significant deterioration in the treatment of ordinary Christian converts such that they would face a real chance of being persecuted.

[69] Country information for the 2007-2008 period indicates that there has been a further deterioration in the treatment of Christians including the arrest, detention and mistreatment of ordinary converts.

[70] The United States Department of State *International Religious Freedom Report: Iran* (2007) records that:

“[t]here was continued deterioration of the extremely poor status of respect for religious freedom during the reporting period. Government rhetoric and actions created a threatening atmosphere for nearly all non-Shi’a religious groups ... [including] evangelical Christians.

Reports of Government imprisonment, harassment, intimidation and discrimination based on religious beliefs continued during the reporting period.”

[71] Even with regards to the constitutionally recognised religious minorities in

Iran (that is, traditional ethnic Christian populations), the report states that they “have reported government imprisonment, harassment, intimidation, and discrimination based on their religious beliefs”.

[72] There are also reports of increased monitoring and harassment of Christian converts, house church members and evangelical Christians.

[73] In late 2006 and early 2007 a series of arrests of house church leaders were reported by various news agencies. For example, the organisation, International Christian Concern (ICC), reported on a string of arrests in four cities in December 2006. (See for example : “Iran Still Holding House Church Leader” *International Christian Concern* (4 January 2007) accessed at www.persecution.org).

[74] In the year that has followed, the ICC reports detail what appear to be increased attempts by the Iranian authorities to arrest and detain those they believe are involved in house churches. The reported cases usually involve the arrest of individuals for a period of days, weeks or months during which time they are interrogated and often physically mistreated in order to pressure them to provide information about other Christian converts and house churches. In some case, those arrested are held incommunicado. The reports also indicate that detainees are ordinarily released only after considerable sums of money and/or property titles are posted as security for bail. Those who are unable to post bail or who are held incommunicado appear to remain in detention indefinitely.

[75] In August 2007, the Farsi Christian News Network (FCNN) reported on the arrest, detention and torture of a Christian convert who was identified as such after a car accident with a security escort in May 2007. (“Torturing an Iranian Christian for his confession of faith in Christ” *Farsi Christian News Network* (1 August 2007) accessed at www.fcnn.tv). The report states that after the accident the convert’s car was searched and, when Christian material was found in it, he admitted to being a Christian. As a result he was beaten up and then transported to an Islamic Military Station where he was subjected to whipping and lashing. He was not charged and did not appear in court. After two days of detention and torture he was released when his family provided financial security to the authorities.

[76] The most recent reports describe ongoing arrests in May and June 2008. A Christian Post article reported the arrest of twelve Christian converts in a southern city as part of a crackdown on the country’s house church movement. (See: “Iran Arrests 12 Christian Converts” *Christian Post* (27 May 2008) accessed

at www.christianpost.com). Those arrested were detained and interrogated and most were released within hours or days. However, at the time the article was published, some two weeks after the arrests, four of the individuals arrested were still in custody, including two with whom there had been no communication.

[77] In early June 2008, a house church leader was arrested and had personal property confiscated from his home in Tehran and had not been located more than a week later. The same individual had previously been arrested and tortured for baptizing Muslim converts to Christianity. (“Eight policemen take house church leader from Tehran home” *Compass Direct News* 9 June 2008 accessed at www.compassdirect.org).

The prohibition of apostasy in Iran

[78] According to Islamic law, Iranian Muslim citizens who convert to Christianity are considered to be apostates and can face harsh treatment, including detention and execution, on that basis. Although Iranian criminal legislation does not specifically adopt the Islamic law, Iranian courts do pronounce judgements for apostasy and blasphemy and sentence individuals to long periods of detention on the basis of Islamic law. (Amnesty International Iran: Fear of torture and other ill-treatment/ Possible prisoners of conscience (AI Index: MDE 13/076/2008, 30 May 2008)) There have been no reported sentences of the death penalty handed down specifically for apostasy since 1994. There are, however, a significant number of reports of Christians being charged with and convicted of other offences such as drug trafficking or “breaching the security of Iran”.

[79] However, in early 2008, the Iranian cabinet approved a new draft penal code which would, if adopted by the parliament, impose a mandatory death penalty on male Iranians who reject Islam. A translation of the relevant sections of the draft, and comment thereon, has been reported in “Draft Iranian Penal Code Legislates Death Penalty for Apostasy” *The Institute on Religion and Public Policy – The Grieboski Report* (4 February, 2008). Briefly, the draft code provides that, *inter alia*, an individual who is born Muslim and then, after the age of maturity, leaves Islam is an “Innate Apostate”. Punishment for an Innate Apostate is death and the draft code uses the word “Hadd” which reportedly means that the death penalty cannot be changed, reduced or annulled by the court. For female apostates, the draft code provides a mandatory sentence of life imprisonment during which “hardship will be exercised on her” and if she recants her rejection of Islam she will be freed. The Authority has no country information to indicate that

the draft penal code has been adopted by the Iranian parliament or the expected timeframe for such adoption.

[80] Notwithstanding uncertainty about if and when the code will be formally adopted by parliament, its introduction in draft form by the government of President Ahmadinejad suggests a heightened intolerance by the regime towards those who adopt non-Islamic religious beliefs. Media reports suggest that the draft code is in response to the significant numbers of Iranians who have abandoned Islam in recent years in favour of predominantly Christian or “western” religions. One article suggests that, in the past five years, up to one million Iranians have joined Evangelical churches (see “Iran: Parliament to discuss death penalty for converts who leave Islam” (19 March 2008) accessed at www.adnkronos.com).

[81] Accompanying this heightened sensitivity and negativity to Christian converts is the Iranian regime’s apparent move to impose harsher criminal penalties generally, including a perceived increase in the use of the death penalty since 2006. (Amnesty International Iran: New government fails to address dire human rights situation (AI Index: MDE 13/010/2006)). In early 2008, the BBC News cited Amnesty International reports that there were 200 executions in 2006 which increased to 300 in 2007. Reportedly, in the first month of 2008 alone, there were more than 30 executions. (“Iranian hangings ‘hit new record’” *BBC News* (11 February 2008) accessed online at www.bbc.co.uk). According to the BBC article, the Iranian government is turning to a strict interpretation of Islam as a way of controlling the population and to deter “criminal behaviour”.

Do the appellants have a well-founded fear of being persecuted?

[82] While the pressure on known Christian converts by the Iranian authorities appears to be intensifying, the Authority agrees with the assessment in *Refugee Appeal No 75376* that an ordinary convert who is neither a church leader nor a proselytiser and does not possess any other characteristics that may exacerbate the risk of them coming to the attention of the Iranian authorities will not be at risk of being persecuted to the real chance level.

[83] However, the Authority has repeatedly emphasised the need for a careful assessment of the background and personal characteristics of individual claimants so that any additional risk factors are identified and taken into account. Every case falls to be determined on its own facts.

[84] In the present case, the Authority considers that the particular

characteristics of the appellants (in particular the son), coupled with the apparent increase in arrest, detention and mistreatment of Christian converts by the Iranian authorities do present additional risk factors that are relevant to the assessment of whether these appellants have a well-founded fear of being persecuted in Iran.

[85] As noted above, the Authority observed the son to be a devout and forceful advocate of the Christian faith. Probably as a result of his age, he expresses his belief in absolute terms and is unable to accept that other people may have equally strong but divergent religious beliefs and practises. His assertions that the only true God is the Christian one and that those who believe in other Gods are sinners and will go to hell are deeply held and willingly expressed. He is not a person who will shrink back from persuading others to listen to his beliefs and adopt them, even in the face of conflict, resistance or in a context where they are not widely held. He assumes that because his religion is the “right” one, eventually all people will be persuaded to adopt the same religious beliefs.

[86] The Authority is satisfied that the son will express his beliefs just as forcefully in Iran as he does in New Zealand. The Authority is also of the view that this expression of strident belief and intolerance of other religions will inevitably lead him into conflict, be it with teachers in school or with neighbours, friends, local religious leaders or family. It is likely that this conflict will arise very soon after his arrival back in Iran.

[87] The Authority is also of the view that as a result of the son’s exposure as a Christian convert, the husband and wife will also come to the attention of the Iranian authorities as Christian converts and will be asked to renounce their faith. When they refuse to do so and instead continue to practise and maintain it at Church and at school, they face a real chance of being arrested by the authorities, detained and interrogated. There is also a real chance that they will be subjected to physical mistreatment in an effort to get them to re-embrace the Muslim faith.

[88] The situation of the appellants is exacerbated by the opposition of their families to their conversion. In the event that the husband and wife are arrested and detained, they will not be able to seek the financial or other assistance of their families in order to secure bail and/or release. The country information noted above indicates that in the absence of such assistance, the appellants are likely to be detained indefinitely, resulting in prolonged exposure to detention and physical harm.

[89] The Authority concludes that because of the particular characteristics of these appellants and the circumstances they will face on return, there is a real chance that they will be persecuted if they were now to return to Iran.

Convention ground

[90] The relevant Convention ground is religion.

[91] Because refugee status is granted to all three appellants on the ground of religion, the Authority need not address the further claim advanced by the wife relating to her situation as a woman in Iran.

CONCLUSION

[92] For the reasons given above the Authority finds that the appellants are refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted to each of the three appellants. The appeals are allowed.

"B A Dingle"

B A Dingle
Member