REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

AT AUCKLAND **REFUGEE APPEAL NO 75990**

Before:	C M Treadwell (Member)
Counsel for Appellant:	The appellant represented himself
Appearing for INZ:	V Wells
Date of Hearing:	19 and 20 November 2007
Date of Decision:	14 January 2008

DECISION

INTRODUCTION

[1] This is an appeal by an Iranian man in his late thirties, against a decision of a refugee status officer under s129L(1)(b)) of the Immigration Act 1987 (the Act), ceasing to recognise the grant of refugee status to him, following a finding that the recognition of him as a refugee may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information (hereafter referred to collectively as "fraud").

[2] The crux of the present proceedings is that, since being granted refugee status in September 2000, the appellant has been issued with an Iranian passport by the Iranian Embassy in Wellington and has made seven trips to Iran. Further, the passport suggests on its face that the appellant left Iran legally in 1999, not illegally as he had claimed in the course of his application for refugee status.

[3] These circumstances led the Refugee Status Branch to instigate what are colloquially termed 'cancellation' proceedings. After being served with a 'cancellation' notice setting out its concerns and inviting him to attend an interview, the appellant proffered a written statement by way of explanation, together with

submissions by his then-counsel. On the advice of his then-counsel, he did not attend the proffered interview.

[4] The Refugee Status Branch concluded that the appellant's refugee status may have been procured by fraud. Following that finding, it then held that it should cease to recognise the appellant as a refugee. Its decision to that effect was published on 30 November 2006.

[5] The appellant acknowledges that he has obtained an Iranian passport from the Embassy and that he has made seven trips to Iran since being granted refugee status in New Zealand. What he says in explanation is that both the reference to a 'legal departure' in his passport and his ability to return to Iran has been made possible by having Iranian immigration records falsified by bribery. He denies that his refugee status was procured by fraud.

THE STATUS OF THE APPELLANT'S WIFE AND CHILDREN

[6] Before turning to the substance of the appeal, it is necessary to refer briefly to the status of the appellant's wife and children. His wife and the couple's two children accompanied the appellant to New Zealand in 1999 and, in the informal manner of the time, were all recorded as "included" in the appellant's application for refugee status. No separate application was lodged for her or for either of the children (nor were they interviewed).

[7] When refugee status was granted to the appellant on 1 October 1999, the decision stated on its face that it included the wife and children. As it happened, that day saw the coming into force of the Immigration (Refugee Processing) Regulations 1999, which prescribed that a separate claim form should be filed for each member of a family seeking refugee status (see regulation 3(5)). Notwithstanding this, the whole of the family continued to be 'included' in the grant of refugee status and were, in due course, granted permanent residence.

[8] When the Department of Labour later served a 'cancellation' notice on the appellant, it also served similar notices of his wife and the children. In response, their then-counsel wrote a letter disputing the validity of the notices to the wife and children on the grounds that they were not, in fact, refugees. Counsel relied on

the fact that separate application forms had not been lodged for them, notwithstanding that, at the time of lodgement of the appellant's claim, there had been no requirement to do so.

[9] The Department duly acknowledged that, on reflection, it agreed with this view and the cancellation notices in respect of the wife and children were withdrawn.

[10] The hearing of the husband's appeal is not to be taken as an endorsement of the view that the wife and children were not (and are not) refugees in their own right or that the 1 October 1999 decision of the Refugee Status Branch did not lawfully recognise their refugee status, deficient though it was in not expressly addressing their own circumstances. That question remains unresolved.

[11] We return now to the cancellation proceedings against the appellant.

DECLINING THE OFFER OF A REFUGEE STATUS BRANCH INTERVIEW

[12] It is for the recipient of a 'cancellation' notice to decide whether or not to attend an interview with the Refugee Status Branch. There is no legal compulsion to do so. The appellant did not take up the invitation of an interview. His then-counsel wrote to the Refugee Status Branch on 4 September 2006, to that effect.

[13] It is, however, unfortunate that the decision was made not to attend. It is possible that, had the Refugee Status Branch been given the opportunity to speak directly with the appellant and his wife, the family would have avoided the year of uncertainty and stress which ensued, while they awaited a hearing on appeal.

THE 'CANCELLATION' JURISDICTION

[14] Section 129L(1)(b) of the Act provides that the functions of refugee status officers include:

> "…determining whether a decision to recognise a person as a refugee was properly made, in any case where it appears that the recognition given by a refugee status officer (but not by the Authority) may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information

> and determining to cease to recognise the person as a refugee in such a case if appropriate:"

[15] Thus, a refugee status officer has a duty to determine whether to cease to recognise a person as a refugee if it appears that the original grant of refugee status by the Refugee Status Branch may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information.

[16] Where a refugee status officer ceases to recognise a person's refugee status, that person may appeal to the Authority against that decision. See s129O(2) of the Act, which provides:

> "A person who is dissatisfied with a decision of a refugee status officer on any of the matters referred to in section 129L(1)(a) to (e) and (2) in relation to that person may appeal to the Refugee Status Appeals Authority against the officer's decision."

[17] There are thus two elements to the enquiry. The Authority must first determine whether the grant of refugee status may have been procured by fraud – recognised to be a low threshold (but not so low that it would be satisfied by mere speculation). If so, it must then determine whether the person should cease to be recognised as a refugee. That determination is, in effect, the Authority's usual forward-looking enquiry as to whether, on current circumstances, the appellant faces a real chance of being persecuted for a Convention reason on return. That second stage of the enquiry is engaged, however, only if the first element – that the grant of refugee status may have been procured by fraud – is established.

[18] To contextualise the present appeal, it is intended to record:

(a) A summary of the appellant's refugee claim;

(b) the granting of refugee status;

(c) the subsequent 'notice of intended determination concerning loss of refugee status'; and

(d) the cancellation jurisdiction of the Refugee Status Branch and the Authority.

THE APPELLANT'S REFUGEE CLAIM

[19] The account which follows is a summary of the evidence given by the appellant to the Refugee Status Branch in 1999, upon which refugee status was granted.

[20] The appellant comes from a well-to-do family in Tehran. He has a number of sisters, all of whom are married with families of their own. He had one brother, now deceased.

[21] In the 1990s, the appellant and his father jointly owned and operated a substantial factory making heavy machinery parts. They employed between thirty and fifty people (depending on workflow) and the business returned a healthy profit.

[22] [deleted]

[23] [deleted]

[24] [deleted]

[25] Shortly before the appointed day, the group of five relatives was summoned to an office where they were addressed by an intelligence officer. They were told [deleted]. When the group voiced objections, the intelligence officer threatened them that their lives could be made very difficult if they did not co-operate. The five were then required to sign a statement that they accepted [deleted] and an undertaking to abide by the Court's decision.

[26] While the families were initially furious at the decision when it was delivered, the five representatives persuaded them to accept it, in the knowledge that the authorities now held their undertakings.

[27] Following the disappointing end to the Court proceedings, the appellant had no further difficulties with the authorities until July 1999, the month in which massive student demonstrations occurred in Tehran.

[28] On the second day of the protests, the appellant left his office out of curiosity and went out into the street to watch the event. The preceding evening had seen the police and *basij* enter the student dormitories at Tehran University,

attacking, killing and arresting many students. It was the scale of the reaction in the streets the following day which motivated the appellant to watch. When the police and *basij* attacked the demonstrators with batons and sticks, there was panic as people fled. The appellant made his way back to his office unscathed.

[29] The following day, the appellant went to work by taxi, as usual. It dropped him off a short distance from his office and he set out to walk the balance of the way. He found a further, smaller, protest underway. From a short distance, he could see the police and protesters attacking each other in intermittent waves, with baton charges and rocks being thrown. As the students were forced back in his direction, the appellant found himself in the midst of a throng of commuters and students which became chaotic as they all tried to flee. He was knocked to the ground by a blow from a baton on his back but was able to get back to his feet and fled to his office. In the mêlée – possibly in the course of being knocked over – he lost his bag which contained, *inter alia*, his wallet.

[30] The following day, the appellant saw a third demonstration in the streets, again with violent clashes between the students and the police. This time, he kept far enough away to avoid being caught up in it.

[31] Nothing further happened for nine days. On 21 July 1999, however, the appellant was arrested at work by three police officers. He was blindfolded and taken by car to an unknown location, where he was put in a small cell for four days. On the fourth day, he was taken to an interrogation room where a number of people interviewed him. When he tried to deny being at the demonstrations, he was slapped and called a liar. He was shown a large board with many photographs of the demonstrators – including one in which he was clearly visible. He was slapped again.

[32] The appellant was interrogated for several hours and was further beaten. He admitted being present but his explanation that he had just been passing was disbelieved.

[33] Over several days, the appellant was subjected to a number of similar interrogations. Eventually, he was given permission to telephone his wife, to arrange security for his release. His wife brought their house papers to the premises and the appellant was released pending his appearance in Court.

[34] When he received a summons to attend a hearing at the Special Judiciary Division of the courts some weeks later, the appellant complied. The Judge, a *Mullah*, reviewed the matter and told the appellant that he had a past history of troublemaking. He showed the appellant a copy of the undertaking he had signed for the Intelligence Service some years before.

[35] The appellant tried to explain the circumstances of the undertaking but the Judge was uninterested. He directed that the appellant be detained until further notice and intimated that a further hearing into the appellant's guilt would take place later. Two guards were called, to take him into custody.

[36] As the guards took him by taxi to a remand centre, the appellant pleaded with them to release him. He told them that he was only facing a minor problem following a fight with his wife and he offered them his ring, gold chain and all the cash on him (he had taken some 8,000 – 10,000 tomans to the Court, in case he had to pay a fine), if they would let him 'escape'. After talking it over, the men agreed and the appellant was dropped off at the roadside.

[37] After telephoning his wife, the appellant hid at a friend's house. His wife took the children to her parents' house, where they stayed. Neighbours kept them informed of police visits to the family home. The appellant's father was also questioned.

[38] Deciding to flee the country, the appellant arranged for an 'agent' to be paid 15 million tomans (about US$17,000) to smuggle the family abroad. They then travelled by road to Bandar Abbas, where they were taken by cargo ship across the strait to Dubai.

[39] In Dubai, the family waited a week while further arrangements and documents were arranged. They were then put aboard a flight to New Zealand via Hong Kong. They were given Dutch names to recite, though they did not see the passports the agent was using.

[40] The family arrived in New Zealand on 21 September 1999 and sought refugee status at the airport.

THE GRANT OF REFUGEE STATUS

[41] The appellant was interviewed by the Refugee Status Branch on 30 September 1999 in respect of his application and a decision granting him refugee status (and, as stated, including the wife and children) was issued the following day, on 1 October 1999.

[42] The family lodged an application for permanent residence on 17 December 1999. Residence was granted on 13 March 2000. Subsequently, in 2003, the family was each granted New Zealand citizenship.

NOTICE OF INTENDED DETERMINATION CONCERNING LOSS OF REFUGEE STATUS

[43] On 24 July 2006, nearly seven years after the family arrived in New Zealand, a refugee status officer issued a 'notice of intended determination concerning loss of refugee status' to the appellant, commencing 'cancellation' proceedings.

[44] In brief, the notice advised the appellant that the refugee status officer intended making a determination which might result in the loss of his refugee status. The grounds relied on were, in summary, that:

(a) the appellant had departed Iran lawfully through Tehran's Mehrabad airport in 1999, in contradiction to his claim to have left illegally by sea, to Dubai.

(b) on [deleted] 2001 and [deleted] 2004, the appellant had obtained, from the Iranian Embassy in New Zealand, Iranian 'multiple departure permits';

(c) the appellant has returned to Iran on multiple occasions, as follows: [deleted]

[45] Viewed against his claimed fear of being persecuted by the Iranian authorities, the refugee status officer advised that he intended to determine

whether or not these concerns justified a finding that refugee status may have been obtained by fraud and, if so, whether it should be cancelled.

LOSS OF REFUGEE STATUS

[46] Following the advice from the appellant's then-counsel that he would not be attending the proffered 'cancellation' interview, the refugee status officer issued a decision on 30 November 2006, concluding that:

(a) the appellant's refugee status may have been procured by fraud; and

(b) he ought to cease to recognise the appellant's refugee status.

[47] A decision was duly delivered to that effect, against which the appellant now appeals.

APPELLANT'S CASE ON APPEAL

[48] The account which follows is a summary of the evidence given by the appellant and his wife, at the appeal hearing. It is assessed later.

[49] The appellant maintains that the account he gave in respect of his original claim to refugee status was truthful. He rejects the suggestion that his claim was in any way procured by fraud. He does, however, acknowledge that:

(a) he was issued multiple departure permits by the Iranian embassy in Wellington in 2001 and 2004;

(b) he returned to Iran on six occasions, as alleged (and has since returned a further time, making seven trips in all).

[50] The appellant says, however, that these facts do not establish, singly or cumulatively, that his refugee status "may have been procured" by fraud because there is a satisfactory explanation for each concern.

The settlement of the appellant and his family in New Zealand

[51] The appellant and his wife describe their integration into New Zealand as extremely difficult. They have struggled financially and socially. The appellant has not been able to find employment here, in particular because his English skills are modest. The wife has done some voluntary work as a teacher's aide but has only recently completed a beauty therapy diploma which she hopes will enable her to find work. The couple have no close friends, in spite of being here since 1999, and the strain on their relationship has been such that it caused them to live apart for a time, in 2001-2002. The appellant's wife describes their time here as very lonely, though the children have adapted well to the new culture and are well-integrated into their schools.

[52] As to income, the couple have been forced to live modestly, receiving a benefit and supplementing it by selling assets in Iran.

The decision to return to Iran for the first time

[53] According to the appellant, the initial suggestion that they return to Iran for a visit came from his father. Being in poor health, the appellant's father wanted to see them one last time and, in mid-2001, raised the idea that they might return for a short visit.

[54] The appellant initially rejected the idea but his father persisted, stating that he would make arrangements to ensure that the family could return safely.

[55] At this time, the appellant and his wife were at a low point. They were living apart and the wife had applied to the Family Court for various orders, including custody and protection.

[56] When the appellant's father contacted the appellant to advise him that he could make arrangements for their safe return, the couple felt confident that he would not say so unless it was true and resolved to return.

Obtaining the appellant's passport

[57] The couple both had Iranian passports (having holidayed in Europe in the past) but had left them in Iran when they departed. On enquiry with the family, the

wife's passport could be located (and was sent to her) but the appellant's passport could not be found.

[58] As a result, the appellant telephoned the Iranian Embassy in Wellington (he was not a New Zealand citizen at that time), and had an application form for a new passport posted to him. On getting it, he saw that it required him to state the date and place of lawful departure from Iran.

[59] When the appellant advised his father of this, his father told him he would make the necessary arrangements. Later, he contacted the appellant and gave him a date of departure via Mehrabad airport. He told the appellant that the official records had been altered to reflect this.

[60] When the appellant lodged the application form with the Embassy, he encountered no difficulty in having a passport issued. That passport duly recorded the false exit date via Mehrabad airport. At the same time, the appellant obtained (being a New Zealand permanent resident) the standard Iranian multiple departure permit which enabled him to return to Iran for visits of up to four months at a time.

[61] As to the wife's passport, it did not record any departure from Iran at all. The couple were concerned about this and the appellant wet the passport, in the hope of making it appear less obvious. The wife was still concerned and rang the Embassy (without giving her name) to enquire whether the absence of an exit stamp would cause her problems. She was told that the worst which might happen would be a fine at the airport.

[62] After obtaining a returning resident's visa from Immigration New Zealand, the wife used the passport to return to Iran, without encountering any difficulty.

The first return

[63] The wife and children first returned to Iran in late 2001. The couple say that this was deliberate, so that the wife and children could 'test the waters' for any interest in the appellant by the authorities. There was none and the appellant followed a month later, in January 2002.

[64] Back in Iran, the couple stayed indoors as much as they could and avoided any public situations which might draw them to the attention of the police.

[65] The appellant's father's health continued to fail and he died in March 2002, some six weeks after the appellant had returned. With the appellant being unable to resume management of the business, its doors were shut and the employees laid off. The building and plant were left idle, to be sold on the winding up of the father's estate.

[66] Before he died, the appellant talked with his father about the means by which he had secured their safe return. His father was, however, reluctant to provide much detail, saying only that he had paid a bribe to a 'friend' in the appropriate government office, to ensure that there was no record at the airport and that a 'legal departure' record was created. He would not name the man and the appellant, who knew his father's circle of friends, doubts that the man was really a friend in that sense.

The loss of the wife's passport

[67] The appellant returned to New Zealand in May 2002, some three months before his wife and children. After his departure, his wife could not find her passport. The couple's relationship was still in difficulties and, wrongly, she feared the appellant had taken it. In reporting the loss to the Iranian police (a pre-requisite to obtaining another), she told them that she suspected he had taken it. She gave the same explanation to the New Zealand authorities in seeking a replacement returning resident's visa.

[68] It was only after returning to New Zealand in September 2002 and being reconciled with the appellant, that she realised that he had not, in fact, had anything to do with the disappearance of the passport.

The second and subsequent returns

[69] The winding-up of his father's estate has been the cause of most of the subsequent trips the appellant has made to Iran. He has needed to be present for a number of reasons during the process. Sometimes, his wife and children have also returned – on other occasions he has gone alone. On other occasions, he has needed to return in order to sell assets to free up capital.

[70] After the first return trip had been undertaken without repercussions, the appellant knew that he could return safely to Iran – inasmuch as he would not be stopped or detained at the airport. That has proved to be the case and his return trips have been without incident. On one occasion, he and his wife even made a side trip from Iran to the Netherlands, to visit a friend.

DOCUMENTS AND SUBMISSIONS

[71] Mr Wells has tendered opening and closing submissions in writing. In addition to the copy of the appellant's file, the following documents have also been tendered:

(a) Copy of extracts from the current passport of the appellant's wife, together with a copy of an arrival card completed by her;

(b) Two extracts from the 'AMS' computer records of Immigration New Zealand, in relation to the application by the appellant's wife for a replacement returning resident's visa in 2002.

ASSESSMENT

[72] It is a convenient juncture at which to record, that, having seen and heard the appellant and his wife (an advantage not given to the Refugee Status Branch), their evidence is accepted. In particular, they spoke frankly, without dissembling and gave consistent evidence in areas which they would not have anticipated.

Whether recognition as a refugee may have been procured by fraud

[73] The first issue to be addressed is whether the refugee status of the respondent may have been procured by fraud. In doing so, it is important to reiterate that "may have been" does not require the Authority to find that refugee status *was* procured by fraud. As noted in *Refugee Appeal No 75563* (2 June 2006), at [20]:

> "…the term 'may have been' signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion. Beyond that it is not realistic to define an expression that is deliberately imprecise."

[74] It will be recalled that the circumstances which gave rise to the issue of a 'notice of intended determination concerning loss of refugee status' and the subsequent cancellation of the appellant's refugee status were, in summary that:

(a) the appellant had departed Iran lawfully through Tehran's Mehrabad airport in 1999, in contradiction to his claim to have left illegally by sea, to Dubai;

(b) on 19 December 2001 and 10 June 2004, the appellant had obtained, from the Iranian Embassy in New Zealand, Iranian 'multiple departure permits';

(c) the appellant has returned to Iran on multiple occasions.

[75] One concern – the 'legal departure' date in the appellant's passport – was seen by the Department as directly inconsistent with his original refugee claim which included the family having left Iran illegally by sea to Dubai. The other concerns raised by the refugee status officer – the Iranian multiple departure permits and the multiple returns – have all occurred since the date on which refugee status was granted but, it is submitted by the Department, are nevertheless still inconsistent with the claimed risk of being persecuted by the Iranian authorities.

The passport

[76] The Authority has considered a number of 'cancellation' cases in recent years which have had, at their core, the obtaining of a passport from the Iranian Embassy, usually (but not always) recording a legal departure through Mehrabad airport, in contradiction to the original refugee claim.

[77] On occasion, it has held that the totality of the circumstances is sufficient to reach the 'may have been' threshold. On other occasions, generally after having heard from the refugee, it has been satisfied that that the threshold has not been reached. What emerges is - truism though it may be - that each case depends very much on its own facts and the credibility of a particular individual has often proved to be the turning point.

[78] The accounts given by the appellant and his wife of their abandonment of a substantial business and secure future in Iran, their initial reluctance to return, notwithstanding their marital difficulties at the time and their lonely isolation and economic struggle in New Zealand, are consistent with a genuinely-held apprehension of harm. Similarly, the guarded steps taken to get passports – including retrieval of the wife's from Iran, the unsuccessful search for the husband's, the cautious approaches to the Embassy, the obstacle of the 'lawful departure' issue and the father's intervention – are consistent with the appellant holding the view, at that time, that there was still risk in him returning openly to Iran.

[79] As to the explanation that the appellant's father had paid a bribe to have the official records altered to reflect a legal departure and no 'black list' entry, the appellant's general credibility goes a considerable way to persuading the Authority of its truth. Such a claim must also be seen in the context of Iran's known levels of corruption. See, for instance, the United Kingdom Home Office *Country Of Origin Information Report: Iran* (4 May 2007) at 18.01 *et seq*, where, citing the Canadian Immigration and Refugee Board report *IRN101052.E* (3 April 2006), it noted:

> "Based on consultations with UNHCR's office in Tehran, a UNHCR official provided the following information in 31 March 2006 correspondence:
>
> It may happen in practice that individuals who have fraudulent travel documents, or outstanding financial, military or legal obligations, or who are sought or under suspicion by the government for political reasons resort to pay[ing] bribes to the Iranian border officials to pass through the control system unharmed. The higher the risk, the more they pay."

[80] While it is said to be difficult to arrange such bribes, it is clearly possible to do so and does, in fact, happen. Whether or not such steps were in reality taken will depend on the facts accepted in any particular case.

The return trips to Iran

[81] Returning to a country from which one has sought refuge raises obvious questions as to whether, at the time of return, a risk of being persecuted exists. That, in turn, can incorporate the question whether such a risk in fact existed at the time refugee status was granted.

[82] But such concerns are not, without more, evidence of fraud. As was noted by the Authority in *Refugee Appeal No 76014* (30 May 2007):

> "[79] The permutations are, however, manifold. It cannot be assumed from the mere fact of return that refugee status was incorrectly recognised, let alone that fraud was an ingredient. It might be, for example:
>
> (a) that the risk of being persecuted existed at the time refugee status was granted but has diminished, or been extinguished;
>
> (b) that the risk did not exist at the time refugee status was granted but the grant was not procured by fraud; or
>
> (c) that the risk existed and continues to exist, yet the refugee elects to return in spite of it. In that regard, it must be remembered that the 'real chance' threshold for refugee status is a low one, appropriately categorised as being, on occasion, as low as a one in ten chance. Refugee status is simply not predicated upon a *certainty* of being persecuted. Nor is the harm assumed to occur immediately upon return. Given these parameters, a refugee with strong reasons to return for a short period may well adjudge the risk to be one which he or she should take. Every case will turn on its own facts."

[83] On the evidence, the appellant's first return to Iran was not merely an act of preference or convenience on his part. Beyond question, his father was seriously ill at the time and his death shortly after the appellant's arrival is confirmed by the death certificate.

[84] It is plausible that the appellant would be content to return to Iran on that first occasion, on the strength of his father's assurance that any danger had been resolved. That is particularly so, given the ease with which he had obtained a passport and the lack of difficulty experienced by his wife and children who, it will be recalled, returned to Iran ahead of him.

[85] It is not overlooked that the appellant has made numerous further trips to Iran since he first returned. Mr Wells, in his helpful and careful closing submissions, invites the Authority to view these further trips with even greater suspicion, stating:

> "12. The respondent accepts the reality that it is understandable that an individual may want to take the risk to return to Iran to visit a sick/dying parent, as the Appellant did in January 2002. However, the Appellant has returned on numerous occasions to both visit his mother and be involved in the division of his father's estate…. [H]e could have instructed someone in Iran to act for him regarding his father's estate or had the documents couriered to him in New Zealand. The fact the Appellant returned on so many occasions demonstrates that he did not fear persecution in Iran.

> 13. The Respondent further submits that the numerous returns without incident strongly indicate that the Appellant was never of interest to the Iranian authorities."

[86] The final sentence quoted here is not, however, the only conclusion which can be drawn from the assertion in the penultimate sentence. It overlooks the effect upon the appellant of his first, successful, return. The reality is that, after his first return trip had passed without incident, he knew that he could return without being stopped at the airport. Each subsequent return without incident would only have reinforced that assurance.

[87] Accepting, as the Authority does, that the appellant's father paid a bribe to clear any entry on a 'black list' and to create a false date of lawful departure, after his first return had produced no excitement among officials it is difficult to see why the appellant should have continued to have concern about further returns under the ongoing protection of the altered records. He may indeed now be at no risk of being persecuted (or, at least, of being stopped at the airport) but it is not evidence that his refugee status was procured by fraud.

Conclusion on whether 'may have been' is established

[88] At the time the 'cancellation' notice was issued against the appellant, the concerns raised by the refugee status officer clearly justified its issue.

[89] The evidence now before the Authority, however, most of which was not before the refugee status officer because of the appellant's failure to attend an interview, provides plausible explanations for the concerns raised. It must be remembered that "may have been" signals a standard of proof that is, while lower than the balance of probabilities, nevertheless a standard higher than mere suspicion. The Authority is satisfied that that threshold is not met on the particular facts here.

CONCLUSION

[90] In view of the foregoing, the following determinations are made:

(a) the evidence does not establish that the grant of refugee status to the appellant may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information;

(b) the appellant is to continue to be recognised as a refugee.

[91] The Authority continues to recognise the appellant as a refugee. The appeal is allowed.

"C M Treadwell"

C M Treadwell
Member