

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76338

AT AUCKLAND

Before: B L Burson (Member)
Counsel for the Appellant: D Mansouri-Rad
Appearing for the Department of Labour: No Appearance
Date of Hearing: 14 & 15 May 2009
Date of Decision: 2 June 2009

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) declining the grant of refugee status to the appellant, a national of the Islamic Republic of Iran.

INTRODUCTION

[2] The appellant claims to have a well-founded fear of being persecuted by reason of his absconding from Iran while waiting for a summons to the court for insulting the Supreme Leader; because he objects to performing his compulsory military service and because his family are regarded as troublemakers by the local *Basiji* who frequently harass the appellant.

THE APPELLANT'S CASE

[3] The appellant is from X. He has one brother who is in New Zealand. The appellant was born in 1989.

[4] The appellant's early life was uneventful for present purposes. However, in

around 2001 the appellant's father and brother fled Iran for New Zealand. The appellant was approximately 12 years old at the time and was not told in any detail about the reasons why they had fled Iran. All his mother told him was that his father and brother had some problems which meant that they had to leave Iran and seek asylum in New Zealand.

[5] The appellant encountered no particular problems until his first year of high school. At the time, he did not have many friends. His life consisted of going to school, doing his homework and occasionally socialising with relatives. When he was aged approximately 15 years old he developed a friendship with another boy, AA. The two boys spent most of their time at school together and over a period of two months they became close friends. A further two months after forming this friendship the appellant invited AA to his house. While there, AA noticed photographs of the appellant's father and brother around the house and asked the appellant where they were. The appellant replied that his father and brother were out of the country and explained that they were asylum seekers. AA visited the appellant's house on a further two occasions. On one of these occasions AA again asked the appellant about his father and brother. The appellant told AA that he did not know anything about their problem but simply that they had to leave and go overseas.

[6] Approximately two or three days after AA had last been to his house the appellant was summonsed to the school principal's office. After exchanging pleasantries, the principal asked him about his father and brother and what he meant by saying they were out of the country and refugees. The appellant told the school principal that this was all that his mother had told him and he understood they had had some problems and had to leave the country.

[7] After this meeting the principal's attitude towards the appellant changed. He was constantly admonished for his style of clothing and hair. If he had to have a day off school because of an illness, the principal claimed that the medical certificate he produced was a forgery. On one occasion, the principal told the appellant that he was like his father and brother – "a betrayer of the country". The appellant's mother was summonsed to see the school principal on two further occasions. After these meetings his mother was anxious and admonished him and questioned why he had disclosed family secrets to outsiders who would cause more difficulties and trouble. The appellant became very mistrustful of people. He

had naively opened up to AA, believing him to be his friend.

[8] The appellant came to learn that AA was in fact a member of the Islamic association at the high school. This was a group of students who were charged with monitoring behaviour in the school environment including inspecting children's bags for prohibited items such as DVDs and CDs. This group now began to pick on the appellant. They began verbally abusing him on a regular basis, calling him insulting names and saying that he was distrustful and disloyal, just like his father and brother.

[9] The appellant left this school and went to another high school. At the end of his first year of high school the appellant left school, partly because of the harassment he was receiving and partly because his family could no longer afford to pay for him to continue to be at high school.

[10] Soon after the incident with AA, the appellant began being harassed by the local *Basiji* who were attached to a particular mosque in their area and patrolled the neighbourhood. The appellant lived on a street that was a main thoroughfare. His daily routine meant he had to walk along this street frequently. The appellant explained that as he is of large physique and in excess of two metres tall he was instantly recognisable when in public. He now found that when the local *Basiji* saw him on the street, they verbally abused him. They shouted out that he and his whole family were disobedient, disloyal, and that they were betrayers of their country.

[11] The appellant's father had returned from New Zealand to Iran in 2006 after his refugee claim was not accepted. He had been detained for two weeks upon his arrival but thereafter had been released. However, he could not find any work. He was forced to take a loan and purchase a taxi and commence working as a taxi driver. He lived in another part of X as he did not reconcile with the appellant's mother.

[12] Apart from this harassment the appellant was also stopped by other state organisations charged with enforcing the regime's strict social code. He was stopped and briefly detained at checkpoints while the authorities checked the car he was in to see if there were any prohibited goods such as DVDs, or if he was with females.

[13] The appellant suffered four detentions of a more lengthy nature. The first took place around the end of 2006/early 2007. He was with the sister of his aunt at a particular shopping mall. Members of the *Entezami* (the law enforcement forces) approached them and questioned them about their relationship. One of the *Entezami* officers also admonished the appellant about his hair style and the clothes he was wearing, claiming they were “westernised fashion” and that this was an Islamic society. The appellant got into an argument with this official. Both the appellant and his companion were arrested and taken to a local police station. The appellant was separated from his relative and taken to a room. A police officer questioned him about why he had spoken to the *Entezami* officer in that manner. The appellant replied that the *Entezami* officer had been rude and disrespectful. The police officer asked to speak to the appellant’s father. The appellant replied that his father was overseas. The officer then asked for the contact details of the appellant’s mother and the appellant supplied him with his mother’s telephone numbers. However, she was not home and could not be contacted on her mobile phone at which point the officer made a derogatory comment about the appellant’s mother and began swearing at him. The appellant swore back. Without warning the police officer began beating him. He was then taken to another room where he was stripped down to his underpants.

[14] Approximately two and a half to three hours later he was informed that his grandmother was there with some “appropriate” clothes for him to wear, namely a shirt with a collar. A short while later his mother arrived. The police officer informed his mother that he had spoken in an improper fashion to the authorities and implied that this was because his mother was neglecting the upbringing of her children. The appellant was then taken before a duty judge and sentenced to 70 lashes. His mother was informed that she could pay money in lieu of the lashes. She paid 210,000 *tomans* to ensure the appellant was not lashed. The appellant was also made to sign a document undertaking that he would not speak in a disrespectful fashion to the *Entezami* officials again.

[15] The appellant next suffered a further detention in mid-2007. On this occasion, he and his mother were intending to travel from X to another part of Iran for a shopping trip. While at the airport in X an official began criticising his mother for the fact that she was wearing makeup, nail polish, and that some of her hair was showing beneath her head scarf. The official spoke in a rude manner to his mother which made the appellant angry. He challenged the official asking why he

was speaking to a woman in such a manner. An argument ensued between the appellant and the official. Without warning this officer slapped the appellant across the face and arrested both the appellant and his mother. They were taken to a room and questioned about their intended travel. They were then separated and the appellant was taken to a detention centre attached to the airport where he was held for three to four days. Apart from the slap he received from the airport official the appellant was not otherwise beaten during this detention. The appellant and his mother were released because one of his mother's friends had agreed to act as their guarantor. Approximately 10 days later the appellant's mother received a summons to attend court. She was sentenced to 71 lashes for breaching the dress code. However, his mother lodged an appeal against the sentence and a fine was imposed in place of the lashes.

[16] The appellant's third arrest and detention took place towards the end of 2007 or the beginning of 2008. On this occasion he was with a male cousin in a shopping area in their neighbourhood. They both had their hair styled in a "western" fashion. They were detained by a member of the *Entezami* who insisted that they go and wash their hair and wear it in a more acceptable style. The appellant then began arguing with the official, protesting that he had no intention of washing his hair. At this point he was arrested by the official and taken to a nearby minibus where the officials forcibly washed his hair and shaved his head. They then took a photograph of him and began demanding that he sign another undertaking not to go out in public with his hair like that again. The appellant did not sign the paper and the officials began to take him to a nearby car to transport him back to the police station. At this point, local passers-by from the neighbourhood, who recognised the appellant and his cousin, began intervening and insisted that the officials let them go. In the end, the officials relented and told the appellant and his cousin that if they came out with their hair like that again they would be arrested.

[17] The appellant's fourth detention took place in August 2008. He had turned 18 the previous year and, shortly thereafter, it had been announced on television and other media outlets that males born in that year were required to report for their military service. He was required to report to the local recruiting office to undertake his compulsory military service but, not wanting to serve the regime, did not do so. From this point on the abuse by the *Basiji* became more intense and more vociferous. In addition to harassing him about his family being disloyal and

betrayers as they had for the past year, they began verbally abusing him about the fact that he had not reported to undertake his military service. His detention in August 2008 occurred against this background. While he ordinarily tried not to antagonize the *Basiji* he was by now fed up with his treatment and on this occasion he argued back. He told the *Basiji* that the reason he did not want to do his military service was because he did not want to end up like them, making trouble and harassing people on the street for no reason. At this point one of the *Basiji* placed his hand on the appellant and began pulling at his jacket. The appellant forcefully slapped his hand away. As a result he was arrested by the *Basiji* and taken to a nearby police station.

[18] At the police station, a police officer questioned him as to why he had spoken in that manner to the *Basiji*. The appellant again replied that he did not like the way they spoke and did not want to be like them. When the officer asked whether “them” meant the *Basiji* who had arrested him and who were standing in the room, the appellant replied “yes”. The officer replied that these people were the true servants of the *imam* – meaning the Supreme Leader of Iran, Ali Khomeini – to which the appellant replied that whoever they were following had nothing to do with him. The appellant was questioned about why he had not gone to perform his military service. He again mentioned that he did not want to perform his military service because he did not want to be like them. At this point the officer questioning him made highly derogatory remarks about the appellant’s mother. The appellant responded in kind and made insulting remarks against the Supreme Leader. At this point, another officer who had been standing behind the appellant punched him. He was then kicked and punched for a further 10 minutes by the police officers.

[19] He was then taken to a detention centre. Either the next day or the following day an official in clerical clothing and with a beard came into the room. This *imam* said that while they were already aware that he had been saying bad things about the *Entezami* and had been rude to the *Basiji*, he had now been saying bad things against the Supreme Leader. Again, the appellant replied that “whoever their leader was, it wasn’t his leader”. At this point the appellant was repeatedly punched and kicked by this person.

[20] The appellant was held in this detention centre for somewhere between three and a half to four weeks. For the first two weeks of his detention he was

questioned two or three times per week about why he had not enlisted for his military service and why he had insulted the *Basiji* and the Supreme Leader. The appellant was beaten during these detentions.

[21] The appellant was released following the intervention of his father and grandmother. His grandmother was required to deposit the title deeds to her house as security. The appellant was released upon condition that he report back to the police station every Saturday. He was told that a letter would be sent from the court as to when he was to appear and that the court would decide what would be done to him.

[22] The appellant was released at the end of August. He reported on the first Saturday without incident. Before he reported for the second occasion his father told him that it would be better if he went into hiding and left Iran. The appellant reported for a second occasion and then after this went into hiding. His father's friend, who lived on an orchard outside X, came to X and took him back there. The appellant remained there for a little over a month. During this time he encountered no difficulties. He was then driven to X where he met his father and another of his father's friends in the airport car park. His father handed him his carry-on luggage and a passport. The appellant was surprised to see that the passport was issued in his own name and he was worried about this. However, his father's friend told him that he should not worry about this and that things had been arranged. This person told him that he was to go to an immigration booth with a particular number. The appellant was nervous but did as instructed and approached the nominated counter where his passport was stamped. He encountered no difficulties leaving Iran.

[23] The appellant flew to Thailand where he stayed for two weeks. While in Thailand he had contact with his father. His father informed him that following his failure to report, there had been visits to the family home asking after the appellant. The appellant then telephoned his mother who was at the time in New Zealand visiting her other son, the appellant's brother. The appellant then travelled on a false Argentinean passport to New Zealand.

[24] The appellant is concerned about his safety upon return to Iran. He has insulted the Supreme Leader which is a serious matter in Iran. He has fled the country while waiting to be summonsed to attend court in relation to this matter. If returned, he will be arrested and detained and harshly treated.

[25] The appellant told the Authority that while he was in Thailand he had contact with his father who told him that the police had been to the house looking for him. Since being in New Zealand he has had contact with his father who has informed him that there have been further visits to the family home by people looking for him. After his mother went to New Zealand the appellant lived with his father at his grandmother's house. He explained that pressure is being placed on his father and they are making threats against him that there will be trouble if he does not disclose where the appellant is. Threats are being made to take the house away from the grandmother.

[26] As far as his not wanting to do his military service is concerned, the appellant told the Authority that if it was simply a matter of being conscripted into the military forces then he would gladly serve his country. The problem for him is that, in Iran, ordinary conscripts are used to serve in the *Entezami* who are charged with enforcing the strict social codes. From a very young age he had realised that although people were telling him he was a Muslim he did not feel any particular affinity with this religion. His distaste for it grew as he grew older, when he saw how the state agencies such as the *Basiji* and *herasat* – all part of the law enforcement forces – beat people to enforce the social codes of the *Mullahs*.

[27] The appellant explained that he had no difficulty with law enforcement as such. Laws need to be enforced to protect society such as in relation to people who drink alcohol and then drive a car. However, he fundamentally disagrees with law enforcement agencies being used to enforce views as to hair styles and clothes, to prevent men and women simply talking to each other or to force women to wear a scarf and not wear makeup. These are nothing to do with social protection but interfere with peoples' rights. When asked what gave people these rights, the appellant said that, as human beings, all people should be free to choose how they want to be. The appellant explained that, if forced to serve, he would refuse any such order that was given to him to enforce these rules.

Statement of the appellant's mother

[28] On 13 May 2009, the Authority received from Mr Mansouri-Rad a written memorandum of submissions dated 12 May 2009. Attached to this document was a faxed statement in Farsi from the appellant's mother, together with two pages of her passport and a certified translation of her statement.

[29] In this statement the appellant's mother confirms that she had been in New Zealand but had become unwell. She visited a doctor who recommended further medical tests but as she had insufficient money to pay for the tests, she decided to return to Iran where she had medical insurance.

[30] The appellant's mother says in her statement that, as soon as she presented her passport after she arrived at the airport in Iran, the officer asked her to follow him and took her to the *herasat* (security section) where they questioned her about the appellant. They said that the appellant was supposed to report to them and asked what he had been doing. They also wanted to know why and how the appellant had left. The appellant's mother states she became nervous and agitated and, suffering from a migraine, went to the bathroom where she fainted. The officials searched her bag and found a camera and some photographs that she had taken of the appellant and his brother. The officials then put the photographs on the table and asked her why she had been telling them she did not know anything about her sons.

[31] The appellant's sister and her husband had arranged to meet her at the airport and realised when she had not emerged that officials must have taken her for questioning. She says her brother-in-law spoke to the officials and as a result of her illness she was allowed to leave.

[32] The appellant's mother says that the appellant's uncle (the brother of his father) has been threatening towards her. The ownership papers of his mother's house were used to secure the appellant's release and the authorities are threatening to take the house away from her.

Submissions

[33] In addition to the submissions received from Mr Mansouri-Rad on 13 May 2009, Mr Mansouri-Rad made closing submissions at the conclusion of the oral evidence. He submitted that the appellant's story was consistent and credible. Mr Mansouri-Rad pointed to the fact that at the time of his RSB interview, the appellant's mother was still in New Zealand and that he had tendered her as a witness but that the RSB did not wish to interview the mother. Mr Mansouri-Rad submits evidence that the appellant had nothing to hide and was intending to make full disclosure which further supports his credibility.

[34] In terms of a well-founded fear of being persecuted, Mr Mansouri-Rad submits that the appellant's account of his difficulties with the *Basiji* and the police following his fourth arrest, of itself, gives rise to a well-founded fear of being persecuted. He has insulted the Supreme Leader and has now fled the country while on bail pending summons to the court. This is liable to result in his being persecuted on the grounds of a negative political opinion being imputed to him.

[35] Furthermore and alternatively, the appellant genuinely objects to performing military service. It is not, Mr Mansouri-Rad submits, so much that he objects to military service *per se*, but rather military service in the context of Iran which exposes him to a real chance of being forced to serve in the law enforcement forces, units of which enforce the strict moral codes to which the appellant so fundamentally objects. Mr Mansouri-Rad submits that whilst the Authority's jurisprudence on conscientious objection protects people exposed to a real risk of committing war crimes, it should also extend to protecting persons who face a real chance of being forced to serve in other units of the state who also commit gross human rights abuses. In other words, the military unit and the existence of a conflict was not what was important, but rather the exposure of the claimant to aiding and abetting the committing of human rights abuses against their conscience.

[36] Finally, Mr Mansouri-Rad submitted that the appellant's personality was such that he was liable to have further conflict with the authorities and at the time this would expose him to a well-founded fear of being persecuted.

THE ISSUES

[37] 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."

[38] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

Credibility

[39] The appellant's account, given over the course of one and a half days, was generally consistent with what he had said previously. Whilst the Authority has some concern that the appellant was able to depart from Iran using a passport issued in his own name, the Authority notes country information as to the high levels of corruption in Iran. Indeed it was the appellant's claim that his father paid US\$12,000 to secure his safe passage from Iran. Having regard to his otherwise credible demeanour and the consistency of his account, the Authority affords him the benefit of the doubt on this point. His claim is therefore accepted in its entirety. Specifically, and although it is unnecessary to go into this point in any great detail, the Authority does accept that the appellant has a genuine objection to performing military service in Iran for the reasons he has given and that this goes beyond a mere point of view and actually forms part of his beliefs.

A well-founded fear of being persecuted

[40] Having accepted the appellant's credibility, the Authority finds the appellant does have a well-founded fear of being persecuted. His account shows a history of steadily increasing problems with the authorities at a 'street level'. His family has acquired the reputation of trouble-makers or disloyal citizens on the basis of his father and brother having come to New Zealand and claimed asylum. This reputation has tarnished the view of the authorities in his area. This, combined with the harassment he has received by the law enforcement agencies charged with enforcing the strict social codes, has caused him to engage in verbal arguments with the low-level officials charged with enforcing these rules. These minor spats have however escalated into a more serious conflict culminating with his making derogatory comments about the Supreme Leader of Iran and

expressing his disinclination to accept him as his leader to police officers. He fled Iran while waiting for a summons to appear in court in relation to this incident.

[41] Country information makes it clear that freedom of speech is heavily circumscribed in Iran – see United States Department of State *Country Report on Human Rights Practices 2008: Iran* (25 February 2009) (“the 2008 DOS report”) which, at section 2a notes:

“The constitution provides for freedom of expression and of the press, except when it is deemed “detrimental to the fundamental principles of Islam or the rights of the public”. In practice the government severely restricted freedom of speech and of the press. HRW reported that authorities “systematically suppressed freedom of expression and opinion” during the year. Basic legal safeguards for freedom of expression did not exist, and the independent press was subjected to arbitrary enforcement measures by the government, notably the judiciary. Censorship, particularly self-censorship, limited dissemination of information during the year. Journalists were frequently threatened as a consequence of their work.”

[42] Similarly, Amnesty International *AI Report: Iran (2008)* states:

“Vaguely worded laws and harsh practices resulted in widespread repression of peaceful dissent. Demonstrations frequently led to mass arrests and unfair trials. The authorities maintained tight restrictions on internet access. Journalists, academics and webloggers, including some dual nationals, were detained and sentenced to prison or flogging and several publications were closed down.”

[43] Country information also establishes that ill-treatment amounting to being persecuted remains all too common – see the 2008 DOS report (*op cit*) at section 1c, which states:

“The constitution and law prohibit torture; however, there were numerous credible reports that security forces and prison personnel tortured detainees and prisoners.

Common methods of torture and abuse in prisons included prolonged solitary confinement with sensory deprivation, beatings, long confinement in contorted positions, kicking detainees with military boots, hanging detainees by the arms and legs, threats of execution, burning with cigarettes, sleep deprivation, and severe and repeated beatings with cables or other instruments on the back and on the soles of the feet. Prisoners also reported beatings on the ears, inducing partial or complete deafness; punching the area around the eyes, leading to partial or complete blindness; and the use of poison to induce illness. According to HRW, student activists were particularly likely to be subjected to torture and abuse.”

[44] The appellant has expressed his dissenting view as to the leadership of Iran before police officers and has fled before he could be summonsed to appear before a court in respect of his conduct. The Authority accepts that the authorities in Iran are presently interested in his whereabouts and that his mother has been questioned about the appellant on her recent return to Iran. Against this

background, should the appellant be returned to Iran there is a real chance that he will be arrested on his arrival and detained.

[45] The appellant's previous arrests, the perception of his family as disloyal citizens and his refusal to enrol for his compulsory military service will accumulate to paint a picture of a young man who has little time for the regime, its basic institutional framework, agents or rules. This generally negative profile will increase the likelihood that while detained, he would be subjected to serious harm amounting to him being persecuted. The real chance threshold is, on the facts as found, crossed.

[46] Accordingly, the first principal issue is answered in the affirmative.

Convention ground and nexus

[47] The Authority finds that the appellant's predicament is plainly contributed to by a negative political opinion being imputed to him. The second principal issue is also answered in the affirmative.

CONCLUSION

[48] For the reasons mentioned above, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"B L Burson"

B L Burson
Member