

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76188

AT AUCKLAND

Before: A N Molloy (Member)

Counsel for the Appellant: E Griffin

Appearing for the Department of Labour: No Appearance

Date of Hearing: 22 April 2008

Date of Decision: 28 May 2008

DECISION

[1] The appellant is a national of Iran, aged in his early 40s. He appeals against the decision of a refugee status officer of the Department of Labour (DOL) declining his application for refugee status.

HISTORY OF THE APPELLANT'S CLAIM FOR REFUGEE STATUS

[2] The appellant first applied for refugee status upon his arrival in New Zealand in August 1998. He lodged a written application with the assistance of his solicitors in October 1998 and was interviewed by a refugee status officer in March 1999. Unfortunately the determination of the appellant's claim was subject to delay so great that he eventually withdrew his application for refugee status in June 2002, nearly four years after his arrival in New Zealand. By then the appellant had married a New Zealand citizen of Iranian ethnicity. He decided, on the advice of his lawyer, to withdraw his claim in order to apply for residence on the basis of his relationship.

[3] The appellant's application for residence was also the subject of regrettable delay. Immigration New Zealand (INZ) eventually formed the view that the appellant was not eligible for residence because he had been deported from Japan during the 1990s. The appellant says that that finding is based upon a fundamental misunderstanding; however, this is not relevant for the purposes of this appeal.

[4] Once the appellant's application for residence was eventually declined (in February 2005), the appellant was then no longer living in New Zealand lawfully. He was apprehended by INZ in early 2006 and was detained in at the Auckland Central Remand Prison until July 2007.

[5] The appellant submitted a fresh claim for refugee status in June 2007. It is based upon the same grounds as those set out in his original application. He was interviewed by another refugee status officer in September 2007 before his claim was declined in February 2008.

[6] This appeal turns upon whether the appellant's claim is well-founded, which is assessed following the summary of the appellant's account which appears below.

THE APPELLANT'S CASE

[7] The appellant was born in a town in the west of Iran, but moved to Tehran with his family when he was a child. He left Iran in 1998 as a result of circumstances which are elaborated upon below. At the time he left, the appellant was a single man with his own workshop, making and supplying equipment for a predominantly rural clientele in Tehran and elsewhere around Iran.

Family history

[8] None of the appellant's immediate family has participated in political affairs to any great degree. One of his brothers had supported the *Mujahedin* at the time of the Iranian Revolution in the late 1970s and early 1980s, but withdrew his support for that movement once it embraced violence. Two other members of the appellant's extended family were executed because of their membership of the

Mujahedin in the early 1980s. The appellant did not experience any particular difficulties as a result of the actions of his relatives, and did not place any emphasis upon their experiences for the purposes of his appeal.

Detention and mistreatment in 1987

[9] The appellant's first serious encounter with the Iranian authorities came about in 1987 after one of his brothers went missing while on active service in the war with Iraq. The appellant accompanied his mother to an office which had been established to provide information to relatives of members of the armed forces who had been injured or taken prisoner during the war. They were hoping to learn what had happened to the brother, whose fate was then unknown to them.

[10] When his mother was treated rudely by officials manning the office, to the point where she became distressed, the appellant lost his temper. He remonstrated with them, shouting abuse and insults about the nature of the Iranian regime which the officials represented.

[11] Two or three days later, the appellant was taken from his home by members of the authorities. He was detained for several days during which time he was interrogated and mistreated. He received injuries to his face and lower body which caused him to be hospitalised. During the interrogations, the appellant was accused of associating with the Kurdish independence movement because he had been born in an area where many Kurds lived.

[12] The appellant was eventually released without charge but was told that a file would be opened in his name.

Travel outside Iran

[13] The appellant paid a sum of money to acquire an exemption from military service. This enabled him to acquire an Iranian passport, which he did in around 1988. In 1989, he travelled to Japan where he lived and worked for five years. For most of that time he was in Japan unlawfully, having overstayed his original permit. The appellant was required to leave Japan in 1994 when his presence was discovered by the Japanese authorities. He returned to Iran and set up his workshop with the help of a brother.

Friendship with XX

[14] In about 1997, the appellant developed the friendship which was central to the predicament which eventually forced him to leave Iran.

[15] A friend of the appellant's father, YY, travelled to Tehran to undergo medical treatment. YY's wife and his son, XX, stayed with the appellant's family while their father was in hospital. XX and the appellant spent a lot of time together during that period and became close friends.

[16] XX was a teacher by profession, and claimed to be involved with an organisation in the Kurdistan region of Iran for children from low income families who were unable to attend school. The organisation was a government programme promoting literacy called *Nehzat Savad Amuzi* (Movement to Educate).

[17] Towards the end of 1997, after he had returned to his home in Kermanshah, XX asked the appellant for help. He said that many of the schoolbooks used for the literacy programme were sourced from Tehran, and asked if boxes of the books could be stored at the appellant's workshop from time to time until they could be collected for distribution. The appellant agreed. Every two or three weeks, unmarked boxes were delivered to the appellant's workshop. They were usually collected by someone else within a day or two.

[18] While the appellant had been led to believe that the boxes contained books, this turned out to be quite wrong.

[19] In June 1998, the appellant travelled to another town on business. When he telephoned his parents a day or two later, the appellant was told that members of the intelligence service (*Ettela'at*) had come to the family home looking for him. They searched his room and confiscated papers before forcing the appellant's father to accompany them to the appellant's workshop. There they discovered two or three boxes which had been delivered shortly before the appellant had undertaken his trip.

[20] When the officers opened the boxes, they found pamphlets containing anti-government political material attributed to the Kurdish independence movement. The officials demanded to know where the appellant was, but his father pleaded

ignorance and simply said that he was away on business.

[21] When told of the true content of the boxes, the appellant asked his parents to make contact with XX to find out what was going on. On attempting to do so, the appellant's parents learned that XX had been arrested the night before the officials had come to the appellant's family home. The authorities sought to locate the appellant and carried out searches at his home and his workplace. The appellant assumes that they did so as a result of obtaining information from XX.

[22] The appellant's father was eventually summoned to the prosecutor's office for questioning and the officials continued to press the appellant's family for news of the appellant's whereabouts. His parents were told that the appellant was to present himself for questioning without delay because he was wanted for helping the Kurdish resistance.

[23] The appellant's experience in 1987 gave him no confidence that the Iranian authorities would be receptive to any protestation of innocence. He went into hiding outside Tehran and began making arrangements to leave Iran.

[24] The appellant's brother made contact with an individual who worked within the security department at Mehrabad airport in Tehran. The appellant does not know exactly what happened, but in exchange for a significant amount of money, that person escorted the appellant through the various steps of his departure through the airport. He was able to leave Iran using his own passport. He made his way to an intermediate country where he was met by another agent who made arrangements for the appellant to travel onwards to New Zealand.

[25] The appellant received news from Iran sporadically after coming to New Zealand. He learned that the Iranian authorities searched his family home on three further occasions after his departure and that his father was questioned again in 1999. In 1999, he learned that an associate of XX (who was not known to the appellant) had been executed. The following year, in 2000, the appellant heard that XX and other associates were still in prison in Iran. Later, around 2004 or 2005, he heard that XX was still in prison.

Subsequent events

[26] During the period of more than a year spent on remand in prison (from 2006-2007), the appellant joined various groups to pass the time. These included a bible study group, which led to his attendance at Christian church services at the prison. The appellant has continued to attend church since being released in mid-2007. He is undergoing instruction at a particular church in Auckland and hopes to be baptised towards the end of this year.

[27] The appellant's father became ill in Iran towards the end of 2007, and has since died. His mother has also been ill. The appellant wanted to return to Iran to see his father before he died, but was warned not to do so by his family. They believed that it would still be dangerous for him to do so in the current political climate.

Material received by the Authority

[28] Counsel forwarded a written memorandum of submissions and a supplementary statement signed by the appellant under cover of a letter dated 26 March 2008. These were accompanied by items of country information. A further letter dated 21 April 2008 enclosed a letter from a doctor with respect to antidepressant medication prescribed for the appellant. Further submissions and items of country information were lodged under cover of a letter from counsel dated 8 May 2008.

THE ISSUES

[29] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[30] In terms of *Refugee Appeal No 70074/96* (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 Assessment

[31] Before assessing the appellant's claim, it is necessary to determine the credibility of the evidence presented to the Authority. The Authority finds that the appellant is a credible witness. His evidence was consistent with his previous accounts and any minor discrepancies can be attributed to the length of time which has elapsed since the events in question took place.

[32] The appellant's account is relatively simple and he spoke frankly and spontaneously without exaggerating aspects which might have lent themselves to such treatment.

[33] One example relates to the development of the appellant's Christian faith. After being interviewed by the RSB in September 2007, the appellant maintained that he had not converted to Christianity, and did not seek to rely upon his interest in that faith as a ground upon which he could seek refugee status. During the interview with the Authority, the appellant said that he is now intending to be baptised, at the end of 2008. In the context in which that information was elicited (rather than volunteered), the Authority is satisfied that the appellant is sincere in the pursuit of his new faith and is not seeking to portray himself in a favourable light for the purposes of his appeal.

[34] While aspects of the appellant's account created concern, these did not, on their own, render his account implausible.

[35] For example, the Authority is satisfied that no significance should be placed upon the appellant's decision to renew his passport in New Zealand. First, his recollection was that he did so upon the advice of Mr Laurent, the lawyer then acting for him. By then the appellant had already been in New Zealand for four years and relied heavily upon his lawyer for advice. In the face of inordinate delay

in publishing a decision with respect to his claim for refugee status, the appellant had been advised to withdraw his claim for refugee status and to apply for residence. He accepted that advice.

[36] In a recent exchange of correspondence with the appellant's current lawyer, Mr Laurent could not recall whether he gave advice of that nature, but did not rule it out. Given that six years have passed, that is unsurprising.

[37] Second, the Authority has acknowledged in recent decisions that the importance to be attached to an appellant's willingness and ability to obtain an Iranian passport while in New Zealand will depend upon all of the circumstances of the particular appeal. In *Refugee Application No 75974* (25 September 2007), for example, the Authority outlined country information to the effect that in 2002-03 the Iranian authorities were encouraging expatriates to return to Iran without fear of reprisals ([59] *et seq*).

[38] In all of the circumstances, the Authority cannot be satisfied that the appellant's account is untrue. Accordingly, to the extent that it is necessary to do so, the Authority extends the appellant the benefit of the doubt, and his account is therefore accepted in full.

Summary of credibility findings

[39] In summary, the Authority accepts that the appellant was detained and mistreated for a short period after an altercation with the Iranian authorities during the late 1980s. It finds that his difficulties on that occasion arose because of his volatility in the face of the treatment of his mother. There is some corroboration of the appellant's volatility within the RSB file which was provided to the Authority for the purposes of the appeal. That file contains a considerable amount of information about the appellant and includes reports relating to his marital difficulties in New Zealand. One account attributed to the appellant's wife (from whom he was then estranged) states that he was in general a kind and loving person who was capable at times of sudden outbursts of violent temper. This is referred to because it is relevant in the context of assessing the risk to the appellant, which is dealt with later in this decision.

[40] The Authority finds further that when the appellant left Iran in 1998 he was

being pursued because the Iranian authorities had discovered political material sympathetic to the Kurdish independence movement at his workplace. His home and workplace had been searched as a result of information obtained from the appellant's friend, XX, who had been arrested and interrogated. XX was subsequently imprisoned for many years, presumably for his connection with the Kurdish political movement. An associate of XX was executed within a year or so of XX's arrest.

[41] The Authority also finds that the Iranian security apparatus continued to show an interest in the appellant until such time as they learned that he had left the country, and for a short time beyond that, in an effort to find out where he had gone.

[42] Finally, the Authority accepts that the appellant has become part of a Christian community in New Zealand, and that he intends to formally join that community by being baptised if he is able to do so towards the end of this year.

[43] The appeal is assessed on this basis.

OBJECTIVELY, ON THE FACTS AS FOUND, IS THERE A REAL CHANCE OF THE APPELLANT BEING PERSECUTED IF RETURNED TO IRAN?

[44] The Authority has consistently adopted the decision in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), in which it was held that a well-founded fear of being persecuted is established when there is a real chance of such persecution occurring. A real chance may exist even where there is less than a 50 percent chance of persecution occurring, and the chance can be as low as 10 percent; *Refugee Appeal No 72668/01* [2002] NZAR 649 at [116-130]. The point is not that the assessment can be reduced to a mathematical equation; it is that even a low likelihood of harm can be significant enough to afford an appellant the benefit of the protection conferred by the Refugee Convention; provided that it is real or substantial rather than remote or merely speculative.

[45] This assessment is complicated by the fact that the events which caused the appellant to leave Iran occurred 10 years ago. The passage of time will have had some impact upon the risk to him, which may now be at the low end of the scale. However, for reasons set out, the Authority finds it is not so low as to be

remote or merely speculative.

Current country information

[46] With respect to human rights in Iran generally, the United States Department of State *Country Reports on Human Rights Practices for 2007: Iran* (March 11 2008) asserts that during that year the government's poor human rights record worsened; there was a lack of judicial independence and of fair public trials and there were reports of unjust executions after unfair trials; security forces arbitrarily arrested and detained individuals, held political prisoners and committed acts of politically motivated abduction and torture; and severe officially-sanctioned punishments included death by stoning, amputation and flogging. It also states that prison conditions remained poor; there was a high incidence of violence and legal and societal discrimination against minorities, including ethnic minorities, and stated that:

“On December 18, for the fifth consecutive year, the UN General Assembly adopted a resolution expressing “deep concern at ongoing systematic violations of human rights.” (Introduction)

[47] It continues:

“Despite 2004 legislation banning torture, there were numerous credible reports that security forces and prison personnel tortured detainees and prisoners.

Common methods of 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 if individuals refused to confess, 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. [Human Rights Watch] reported that security forces physically tortured student activists more than dissident critics from within the system.” (Section 1 c)

“arbitrary arrest and detention ... remained common.” (Section 1 d)

[48] The Authority considered the predicament of the Iranian Kurdish community in detail in *Refugee Appeal No 1222/93* (5 August 1994). It granted the appeal of a Kurdish man who had in the past been imprisoned and tortured because of his involvement with military actions against the Iranian government on behalf of a Kurdish political movement.

[49] The risk to Iranian Kurds was examined again more recently in *Refugee Appeal No 73738* (3 February 2004) and in *Refugee Appeal No 75999* (26 March

2007). In *Refugee Appeal No 73738* (3 February 2004) the Authority granted the appeal of an appellant who in 1998 had been found in possession of literature supporting the pro Kurdish Democratic Party of Iran (KDPI). The Authority referred to a “long standing campaign of repression” against the Kurdish population in Iran ([47]) and found that:

“Given both the historical repression of the Kurdish population by the Iranian authorities and the current political climate, it is likely that the appellant's activities (copying and distributing literature for a banned Kurdish political organisation) will be viewed seriously by the Iranian authorities.” (Para 48).

[50] The Kurdish population in Iran is still vulnerable, notwithstanding that it has some representation within the Iranian socio-political system. According to the United Kingdom Home Office *Country Report: Iran* (January 2008) (the Home Office Report) the Iranian regime deals harshly with the leaders and militant supporters of Kurdish opposition groups such as the KDPI and Komala. The Home Office Report outlines arbitrary detentions and extra-judicial killings of Kurds from 1998 until the present:

“[16.23] ... According to [Amnesty International], in November 1998 Karim Tuzhali a former member of the KDPI was sentenced to death following his forcible return to Iran from Turkey, and, again according to [Amnesty International], was reportedly executed on 24 January 2002 at Mahabad prison. Karim Tuzhali was a former asylum seeker and recognised as a refugee by the United Nations High Commission for Refugees (UNHCR).”

“[16.28] ... It was reported by AI in 2003 that it appeared that there had been a noticeable use of death sentences and executions by the authorities against Komala recently, an apparent attempt to intimidate the inhabitants of Khordestan. ... two political activists associated with the outlawed Komala party ... were executed in February and March 2003.”

[51] It is relevant to note that some of these executions have been carried out many years after sentences were imposed, which indicates that there is no guarantee that the attitude of the government agencies will soften with the passage of time. For example:

“[16.23] ... According to the [United States Department of State] report 2003 it was alleged by the KDPI that the Government executed party member Jalil Zewal in December 2003, after **nine years in prison during which he was reportedly subjected to torture**. KDPI member Ramin Sharifi was also executed in December 2003 after his arrest in July 2003.”

[52] Relevant information from other sources is also collated within the Home Office Report:

“[20.11] ... according to Amnesty International in a statement dated 5 August 2005:

“The unrest began in the town of Mahabad, in early July, following the shooting of Shivan Qaderi, a Kurdish opposition activist, also known as Sayed Kamal Astam, or Astom, and two other Kurdish men, by Iranian forces in the town of Mahabad on 9 July, in circumstances where they may not have posed an immediate threat. The security forces then reportedly tied Shivan Qaderi’s body to a Toyota jeep and dragged him in the streets. The local Iranian authorities are reported to have confirmed that a person of this name, ‘who was on the run and wanted by the judiciary’, was indeed shot and killed by security forces at this time, allegedly while trying to evade arrest.

[20.12] According to a Human Rights Watch report of 11 August 2005:

“On August 2 [2005], ... security forces detained other prominent journalists and human rights defenders at their homes and offices including Azad Zamani, a member of the Association for the Defense of Children’s Rights; Mohammad Sadeq Kabudvand, journalist and co-founder of Kurdistan Human Rights Organization; Jalal Qavami, editor of the journal Payam-e Mardom; and Mahmoud Salehi, the spokesman for the Organizational Committee to Establish Trade Unions.

[20.14] AI reported on 26 February 2007 that;

“In recent months, several Kurdish journalists and human rights defenders have been detained and some are facing trial. In addition, on 16 February 2007, three Kurds, including one woman, were reportedly killed in the course of a demonstration in Mahabad.”

Assessment of risk to this appellant

[53] The Authority bears in mind the decision of the High Court in *A v RSAA* (CIV 2004-4-4-6314 19 October 2005) (Winkelmann J). Her Honour found that when conducting its forward looking assessment of whether an appellant faces a real chance of being persecuted, the Authority must consider “whether an individual having all of [the appellant’s] characteristics” would face a real chance of serious harm for a Convention reason (para 38).

[54] While this appellant is not Kurdish, his predicament is directly linked to that of the Kurdish people in Iran as the Iranian authorities have imputed to him an adverse political opinion in connection with perceived involvement with pro-Kurdish opposition groups. His possession of the pamphlets and political material would have been perceived as anti-government. It does not matter that he may never have held such views. What is important is the fact that the Iranian authorities would impute to him such a view.

[55] It is true that the appellant’s difficulties arose some time ago. However, in *Refugee Appeal No 73738* (3 February 2004), the Authority did not consider that

the effluxion of time would have significantly reduced the risk to an appellant implicated in the dissemination of pro-Kurdish material after six years. In all the circumstances of this appeal, and taking into account all of this appellant's characteristics, the Authority comes to the same conclusion. It is clear that the Iranian authorities regarded the appellant's perceived involvement in pro-Kurdish activities as serious. His friend, XX, was imprisoned for many years, and may even still be detained, and XX's associate was executed.

[56] This appellant holds an expired Iranian passport which he would have to renew in order to be able to return to Iran. It is possible that he would be able to do so without undue difficulty. However, it is also possible that any such application would bring his past difficulties to light.

[57] Even if it did not, the appellant is a somewhat world-weary and frank man. He has now lived out of Iran for 10 years, and has begun the process of converting to Christianity. The Authority has repeatedly found that conversion to Christianity alone will not usually be enough to grant refugee status. Nor would it be relevant to this appellant if that were the only characteristic to which he could point. However it is one characteristic of the appellant which in combination with his other characteristics, contributes to the risk which he faces.

[58] In this context it is relevant that the Authority found the appellant to be a man whose volatility may make him prone to divulge capable of volatile outbursts of honesty which may not be temper if provoked. In combination with his frankness and his capacity for losing his temper (sometimes to his detriment), there is a real chance that the harassment which he might experience as a Christian convert would lead to closer examination of the appellant's past, thus bringing to light his apparent association with the Kurdish independence movement.

[59] It is evident from the country information cited that there is an endemic lack of recognition of basic human rights by Iranian state agencies including the police, the intelligence services, the judiciary and the prison system. This extends to the widespread use of torture, arbitrary arrest and detention. If the appellant were to come to the attention of the Iranian authorities there is a real chance that he would be arbitrarily detained and subjected to serious mistreatment. Harm of that nature would be serious and would constitute sustained or systemic violation of the

appellant's basic human rights demonstrative of a failure of state protection.

CONCLUSION

[60] Turning to the first principal issue, the Authority finds that objectively, on the facts as found, there is a real chance of the appellant being persecuted if returned to Iran. This would be for reason of his imputed political opinion, and is accordingly for a Convention reason.

[61] For these reasons, the Authority finds that the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted and the appeal is allowed.

"A N Molloy"
A N Molloy
Member