

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75063

REFUGEE APPEAL NO 75064

AT AUCKLAND

<u>Before:</u>	D J Plunkett (Chairperson) B Burson (Member)
<u>Counsel for Appellant:</u>	C Curtis
<u>Appearing for NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	22 and 23 April 2004
<u>Date of Decision:</u>	10 June 2004

DECISION DELIVERED BY B BURSON

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellants both of whom are nationals of the Islamic Republic of Iran.

INTRODUCTION

[2] This is a combined appeal by a couple who married in 2000 and for the purposes of this decision will be hereinafter referred to as “the husband” and “the wife” respectively.

[3] The husband is 32 years of age, the wife 26. The husband was born in T, the wife in R. They do not have any children. They both arrived in New Zealand on 3 August 2003 and each lodged a claim for asylum on 7 August 2003. The husband was interviewed on 22 September 2003 and a decision declining his

claim for asylum was issued on 5 February 2004. The wife, owing to her medical condition was not interviewed, and a decision declining her claim for asylum was also issued on 5 February 2004. Each appellant separately appealed to this Authority against the respective dismissals of their claims. Whilst there is an additional element to the wife's claim namely a claim for asylum on the basis of gender related persecution, there is a substantial degree of overlap between the basis of claims of each and a combined decision will accordingly be issued.

THE APPELLANTS' CASE

[4] The following is a summary of each of the appellants' evidence as it relates to incidents particular to them followed by a summary of events common to both. Thereafter will follow an assessment.

Events particular to the husband

[5] The husband's early childhood was uneventful - completing his primary schooling and intermediate schooling in T without any particular trouble or difficulty. His problems began when he went to high school in 1986. Throughout the first year, the husband was repeatedly stopped at the entrance to the school and refused entry for breaching rules relating to both appearance and attire. As a result the high school refused to enrol him in the second year.

[6] The husband's family looked for an alternative high school. After searching for approximately one year, another agreed to enrol him, but only after his father had given an undertaking that he would obey their dress code and appearance rules. Not wishing to cause his family any further trouble, the husband complied, his continued opposition to these restrictions notwithstanding. The husband received his high school completion diploma in 1991.

[7] The husband thereafter sat university entrance exams for both the state funded and private universities. Due to his record of non-compliance, he was prevented from enrolling in the former. He therefore sat and obtained entrance to a psychology course in a private university in A. He began attending this university in 1991. At this university the appellant experienced similar difficulties to

that which he encountered at his first high school. Furthermore he and his friends were admonished for travelling in cars with female students to and from T where they all lived. Now older, the husband was even less inclined to agree with these restrictions. Fearing that continued rebellion would lead to his expulsion, he decided to leave this course after the first two terms.

[8] Thereafter the husband sat and passed the entrance exam for another private university and he duly enrolled. The husband devoted himself to his studies and encountered no particular problems until the third year. At this time the husband, along with two of his friends, decided that for a compulsory research paper they would investigate the apparent disparity between the amount of funds the university received from the students in tuition fees and the actual expenditure on students. It was clear to the husband from the number of students he observed in economic hardship, that there was a discrepancy and he wanted to explain it.

[9] Whilst he knew that investigating apparent financial mismanagement at the university may give rise to some trouble, the husband saw it as his duty to do so. He very much believes that the role of students in society is to investigate such matters and hold the government accountable where required. Before proceeding with their investigation, the appellant and his two friends discussed their idea with their professor who advised them in no uncertain terms to drop the subject. The appellant and his friends were undeterred. Being sufficiently concerned about this issue, and convinced of their duty as students, they proceeded with the research paper against this advice.

[10] After consulting various government departments and sources, the husband and his friends completed their research paper. Their paper made clear, based on the information that they had received, that there was in fact a growing and marked disparity between the amount of money received and the amount of money that was being spent on the students. The paper was highly critical of leading administrative figures in the university, and in particular Mr X who was the head of the university. The paper noted the existence of corruption in Iran generally. As to the university finances, it noted that large sums of money were unaccounted for. Their conclusion was that if Mr X was not himself acting in a corrupt way, he was either turning a blind eye to the corruption of his deputies, or was simply incompetent. A summary of their conclusions was posted to a student notice board and read by student. They sent a full copy sent to Mr X.

[11] Both the contents of their paper and their publication actions were matters of great concern to the university authorities. Mr X had been directly appointed by the then President Rasfanjani. The criticisms the paper made stood in direct contrast to the propaganda of the government, which took great efforts to claim that it was spending funds on expanding university education and was generally committed to the education of youth.

[12] The appellant and his friends were summonsed before the university authorities who demanded that they sign a formal written apology to Mr X; retract their paper; and acknowledge that their sources were wrong. The husband and his friends stood firm and refused to do any of these things. As a result they were all expelled from university.

[13] Because of his expulsion the husband became liable to undertake compulsory military service and he did so between 1997 and 1999. His military service passed without any particular incident, although he was denied a rank that he would otherwise have been entitled to because of his failure to complete his university education. The husband thereafter obtained employment in Q. He left Q to return to T because of his wish to get married.

[14] The husband and wife married in T in late 2000. They only completed the formal ceremony and did not have their wedding party until the following year. It was at that time that they began living together at the home of the husband's parents. This occurred in August or September 2001. The couple lived with his parents until their departure from Iran.

The wife

[15] The wife is the middle of three female siblings. She was brought up in a household in which the relationships were characterised by mutual love and respect and by the absence of any insults or shouting. She described herself as a very sensitive and shy child.

[16] The wife began attending primary school in R in 1984 and thereafter went to intermediate school in 1990. She began high school in 1994. She did not experience any particular problems until she began attending high school, when

she began experiencing problems because of her non-compliance with the dress code. These problems occurred both inside the school grounds and outside.

[17] At school she was occasionally told off by the headmistress who would from time to time observe the wife from her office window in some way breaching the strict dress code. This would take the form of having some of her hair showing beneath her headscarf or because she was wearing jeans. More generally, the wife was quite often insulted and verbally abused by *Basiji* for similar infractions of the dress code or for wearing make-up.

[18] Although on no occasion was she physically assaulted or harmed by the school or *Basiji* authorities as a result of these infractions, nevertheless the insults and abuse she received caused a deterioration in her state of emotional health. The wife became increasingly more withdrawn and was reluctant to engage in society. Increasingly, she would spend her time at home, and only go out when necessary. Her condition caused her to consult a psychiatrist but, owing to the stigma attached to mental illness generally in Iran, she only went on one occasion.

[19] Following completion of her high school studies the wife graduated with the usual certificates. She applied for a job in a bank but as a report from neighbours showed that she had not been a regular attendee at prayers she was denied this position. She did however manage to obtain part-time employment as a typist from time to time in a company by which time the husband was managing.

Events common to both

[20] There are two significant events, each occurring in 2003 in the narrative of each appellant namely an incident occurring at a wedding they both attended and the husband's arrest and detention some time thereafter during a student demonstration.

(i) The wedding incident

[21] The husband and wife attended a wedding celebration of a distant relative of the husband. They were very much looking forward to this event – it was a

chance for the wife to get out of the house and enjoy life somewhat. At this wedding, alcohol was served and the women did not all wear headscarves. Music was played. A combined *Basiji* and *Sepah* patrol heard the music and without warning raided the party. The husband, who had drunk some alcohol, was arrested, as was the wife, who had not had sufficient time to don her headscarf. Of the 200 to 250 people who were at the wedding party, approximately 60 or 70 were arrested.

[22] The men and women were separated and taken to the foyer of a mosque which was attached to the local *Basiji/Sepah* offices. The wife was, along with all of the other women, released after a few hours. The husband was detained for a longer period of time. The penalty for the unlawful consumption of alcohol was receiving lashes. The husband managed to avoid this punishment by paying a bribe of 50,000 *tomans*. He was also made to sign an undertaking that he would not attend a function where there would be music and dancing and where men and woman would be together. He signed, was released and went home.

[23] The wife was very badly affected by this incident. As a result she was too afraid to go out on her own or participate in ceremonies as they would bring back bad memories. They agreed that the wife should return to her parents in R. She went for a short period initially and then returned to T. However it was clear that she had not fully recovered, and in the middle of 2003 she returned to R for a further period of time.

(ii) The student incident

[24] Throughout June and July 2003, the husband carried on with his normal routine travelling to his place of work. He went his usual route which took him through an intersection which had in the past been a site of demonstrations following the protest at the University of Tehran in 1999.

[25] However on one particular day, the taxi in which the husband was travelling became stuck in a traffic jam. While noticing an increased security presence on the streets around his house and at this particular intersection, when travelling to work in the days preceding this journey, the husband was not expecting any problems. He was leaving early in the morning and had encountered no

interruptions to his journey. Fearing he would be late for work, the husband got out of the taxi and began the remainder of his journey on foot.

[26] As he approached the intersection on this day, he noticed a crowd. As he got closer he saw some people running. Without warning plain clothed officials began to attack from all sides. The husband found himself in a part of the intersection that had become surrounded by the officials and could not escape. He was hit with batons by the officials and bundled towards a waiting bus. The husband protested that he was simply on his way to work but his protests were to no avail, he was slapped and placed on the bus along with many others.

[27] The husband was taken to Evin Prison where he was held for a period of 10 days. On the first day he was briefly interrogated during which his details were taken. On the second day he was interrogated at length about his involvement in the demonstration and which political party he belonged to. He was accused of wanting to topple the regime. He was questioned about his background. They did not believe his protestations of non-involvement and he was insulted and kicked with boots in the back. He was placed under psychological pressure – being threatened with execution.

[28] The husband was only released on a temporary basis by the intervention of a Mr Y who had been an old customer of his father, the latter having been a bank manager prior to his retirement. Mr Y was very well connected. However he could only secure for him a temporary release and he was required to return to Evin Prison for further interrogation in 10 days' time.

[29] Upon reaching his house, the husband learned that the authorities had raided the family home and discovered books written by the former Shah which had belonged to his grandfather who had been a staunch supporter of the former regime and held an important official post. He also learned that some audio cassettes of banned music, and video cassettes of programmes critical of the political and financial situation in Iran, had been seized. In all approximately 10 or 15 tapes were taken.

[30] Shortly after his release, the wife returned from R with her parents. She could sense that something had happened as some of their possessions were missing. Because of her fragile emotional state not everything was explained to

her, although she did understand that the husband had been in prison. Her parents who had brought her to T, discussed the matter over with the husband's parents, and it was agreed that it was best for all concerned if they were to flee Iran. Mr Y had told the husband's father that he would not be able to use influence to suppress the matter further but would be able to help them leave.

[31] The husband and wife therefore gave Mr Y the couple's legal passports and a payment of 21 million *tomans* was made. Both families assisted with the moneys necessary. Shortly thereafter, the husband and wife left Iran. Mr Y went to the airport with them and pointed them in the direction of a particular channel they should go through. They followed his instructions and managed to leave Tehran. They then went to Malaysia where they obtained false French passports which they used to travel to New Zealand via China.

[32] The husband fears that if he returns to Iran he will be arrested. He has learned in telephone conversations with his family that there have been visits to the family home on two occasions since his departure, the last one being approximately one month ago. On this occasion his father was detained for three or four hours and made to sign an undertaking to ensure the husband returned to captivity when his whereabouts became known. As a result the husband fears that he will be arrested, detained and imprisoned upon arrival or shortly thereafter. He has a background of anti-government activity.

[33] The wife feels she too will be arrested because of her husband's activities. Further the wife also claims that the requirement to wear the dress code in Iran amounts to persecution because her state of mental health is such that serious harm will befall her if she is verbally abused on the street.

[34] In support of the appeal the Authority has received counsel's memorandum dated 19 April 2004 together with:

- (a) The husband's driver's licence with translation.
- (b) The wife's driver's licence with translation.
- (c) Certificate of Completion of Military Service in relation to the husband.

- (d) Student ID card belonging to the husband.

[35] In addition, the Authority has noted a number of medical reports on the file relating to each appellant. It has also received on 1 June 2004, a further medical report from the wife's consultant psychiatrist dated 31 May 2004. All of this documentation has been taken into account in reaching this decision.

THE ISSUES

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

"... owing to a 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."

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

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

ASSESSMENT OF THE APPELLANTS' CASE

Credibility

[38] The Authority accepts both the husband and the wife as being credible witnesses. The husband's evidence was given clearly, consistently and compellingly. The ability of the Authority to examine the wife was to a certain extent constrained by her mental condition. She has been diagnosed as suffering a severe depressive illness. The Authority accepts this. Her demeanour was

consistent with this clinical opinion. While her evidence was vague in certain respects, the wife was able to answer the Authority's questions sufficiently well to enable firm conclusions to be drawn.

[39] Having accepted the accounts of each of the appellants in their totality, the Authority will now turn to separately consider the principal issues in respect of each.

The husband

[40] The husband has experienced a number of problems with the regime from an early age. He had trouble at school for non-compliance with dress codes to the point he was refused re-enrolment and was only readmitted to the education system on signing an undertaking to conform. As a result of his non-compliance, he was unable to enrol at a state university. He suffered further harassment for dress code infractions at his first private university and left. At his second, he was critical of the university management against the advice of his professor and expelled. He has suffered a minor detention of short duration for drinking alcohol at a wedding. He has been caught up in a demonstration and suffered a 10 day detention during which he suffered minor mistreatment. He was released on a temporary basis through payment of a bribe but was required to report back. His house has been raided and pro-Shah and other anti-regime material seized. There are reports of visits to his house by the authorities.

[41] The next issue for the Authority is whether, in light of the above, the husband possesses a well founded fear of being persecuted if returned. Viewing the evidence objectively, the Authority answers the question in the affirmative based on the cumulative effect of the following matters:

His past history

[42] His personal background shows a pattern of non-compliance with the regime's social requirements and a degree of rebellion against its control and way of running the country. He has a history of "un-Islamic" behaviour in not conforming to dress codes and other social restrictions.

[43] More crucially in terms of the assessment of future risk to him, not only has the husband been gravely critical of the regime's financial mismanagement of the economy, he has also acted on his opinion in a public way. He has by his past action challenged the regime's propaganda and refused to back down when this was demanded of him.

The arrest at the student demonstration

[44] The regime now suspects him of being involved in the student demonstrations in June/July 2003. The Authority observes that the June/July 2003 demonstrations were significant in that the June protests were a reaction to the then recently contested elections in which the conservative Council of Guardians disqualified 2,500 reformist candidates standing. That there continues to exist, despite the resulting conservative election success, an ongoing internal conflict between the conservative clerical hierarchy and the more reform-minded youth of Iran is made clear in country information – see "Iran elections Its Not Over Yet" *The Middle East* (April 2004) at pp14-15.

[45] Country information makes clear the Iranian regimes sensitivity to the protests in June 2003, – see for example *BBC Protests Spread Beyond Tehran* (17 June 2003) http://www.bbc.co.uk/1/hi/world/middle_east/2996958.stm where it is noted that protests involving several thousand people took place in the Tehran University area as well as in several other provincial cities. This report confirms that the protest in Iran was subjected to attack by militia acting on behalf of the government and that many people were arrested.

[46] The timing of these demonstrations also coincides with the anniversary of the student demonstrations known as the "18 Tir" protests of 1999, a significant upheaval in the recent history of the Islamic Republic. The protests which followed the closure in June 1999, of one of the most popular pro-reform newspapers saw widespread demonstrations across Iran.

[47] The regime now believes, even if wrongly, that the appellant was somehow involved in this demonstration. This coupled with his past history of social non-compliance and direct criticism of the clerical establishment for economic mismanagement and corruption, leads the Authority to conclude that there is much

force in counsel's submission that he is the sort of person whom the Iranian government would see as a troublemaker.

The circumstances of his escape

[48] It is significant that the husband was not released unconditionally from prison but rather was secured only through payment of a bribe and was only temporary. He was obliged to report back within 10 days. He did not. His failure to report back will have been exacerbated by his departure from the country on his own passport. The Authority considers the husband will be at risk at the border on return, due to his failure to report.

Evidence of continuing interest

[49] The present risk to the husband is demonstrated by the fact that since his escape, the authorities have been to his family home enquiring after him with the last occasion being recently. His father has been detained in his absence and made to sign an undertaking that he will, as his father, effectively to ensure the husband reports to the authorities on return. This shows continuing interest in the husband.

His personal characteristics

[50] The husband struck the Authority as being a highly intelligent man, with a keen social and political awareness who does not accept the restrictions that the clerical regime places on life in Iran. He clearly and compellingly articulated to the Authority a sense of duty to his country and it accepts he is unlikely to keep silent in the future. It is accepted that the husband is sufficiently concerned about the plight of his compatriots to draw attention to himself in the future.

The poor human rights record In Iran

[51] The Authority notes that country information continues to show the willingness of agents of the theocratic regime to commit human rights abuses to maintain domestic political control. The abuses are manifold see - United States Department of State *Country Reports on Human Rights Practices 2003: Iran* (25 February 2004) at section 1. The recorded human rights abuses included

summary executions, disappearances, torture and other degrading treatment reportedly including beheading and flogging. Prison conditions were poor. Arbitrary arrest and detention remained common. In Human Rights Watch *World Report 2003: Iran*, the lack of judicial independence is generally emphasised along with gross violation of freedom of expression. The harsh treatment of prisoners in unregulated detention centres is also noted (see pp2-3). State sanctioned vigilante groups perpetrate assaults against political protesters and dissidents – see Human Rights Watch *Iran: End Vigilante Attacks Now* (20 June 2003).

[52] The Authority's conclusion as to the risks to the husband is buttressed by country information suggesting conservative hardliners are relying heavily on improved economic conditions to quell widespread demands for fundamental reform of the political structure – see The Guardian *Banking on Prosperity* (5 April 2004) <http://www.guardian.co.uk/elsewhere/journalist/story/0,7792,1186098,00.html>; International Crisis Group reports *Iran: The Struggle For The Revolutions Soul* (5 August 2002) at pp20-26 and *Iran: Discontent and Disarray* (10 October 2003) at pp3-4. Against such a background, it can be readily observed why the husband's opinions and actions, cut to the core of the regime's strategy for continued domestic political power and provides objective explanation for the continuing interest in him. Given the regime's (false) belief he was in some way involved in the 2003 protests, the husband's past actions serve to give him an enhanced negative profile in their eyes, as a person who has continued to and will continue to challenge the position of the regime.

Conclusion as to well foundedness of risk to the husband

[53] Whilst it is the case that he has in no way engaged in any political activity of a nationally high-profile nature, nevertheless the combination of his past activities has clearly vested the Iranian regime with a current interest in him as evidenced by the visits to the family home. Contrary to counsel's submission in her letter of 1 June 2004, the wife's illness does not add to the husband's risk profile, bearing in mind its essential private nature and the fact it has not brought him to the authorities' attention in the past .

[54] That said, the Authority concludes that in light of the above factors there is a real chance that he will to be arrested either on arrival in Iran or shortly thereafter. There is a risk of prolonged detention and mistreatment. The first principal issue

therefore is answered in the affirmative. The husband does have a well founded fear of being persecuted.

[55] As regards the second principal issue, the predicament of the husband is plainly contributed to by both his actual political opinions and the political opinions imputed to him by the regime.

The wife

[56] Dealing first with the claim that the wife is at risk due to the husband's problems, there is no evidence to suggest that there is any interest in anyone other than the husband, or that any other close family member has suffered serious harm in his absence because of him. Neither at the time the husband was arrested, nor at any time subsequently, have the authorities been remotely interested in the wife because of the actions of the husband. This leads the Authority to conclude that the wife would not suffer any real chance of being persecuted by reason of her husband's problems.

[57] As to the gender related claim, it is important at this stage to recall that in order to qualify as persecution, the anticipated harm must result from the sustained or systemic violation of core human rights demonstrative of a failure of state protection – see *Refugee Appeal No 71427/99* [2000] INLR 608, [2000] NZAR 545 at [43]-[70], and *Refugee Appeal Nos 72558/01 and 72559/01* (19 December 2002) at [85].

[58] The Authority notes that the imposition of the dress code in Iran is plainly discriminatory against women (it does not agree with the RSB contention this is a law of general application) and this, and the other gender based discrimination identified in *Refugee Appeal 71427/99 (ibid)* at [3]-[11] can in some cases amount to persecution for a Convention reason.

[59] In this case however, there are two reasons why the wife's claim cannot be so considered. Firstly, on the evidence before the Authority, at no stage has the wife ever been physically assaulted in any way because of her non-compliance with the dress code or other gender related issue. Her home life was characterised by equal respect and love both before and after her marriage. She

has not been refused employment because of her gender. Her case can thus be materially distinguished from the position of other female appellants from Iran before the Authority, where the discriminatory dress code practices occurred alongside other, more serious gender related abuses.

[60] Thus in *Refugee Appeal 73822/02* (20 March 2003) in addition to insults this appellant was subjected to violence, made direct public criticism of the Islamic restrictions on women resulting in employment difficulties and was summoned before the revolutionary courts which subjected her to re-education. In *Refugee Appeal 71427/99 (ibid)*, the appellant was effectively imprisoned in her own home for one year, suffered domestic psychological and physical violence, had her son illegally removed from her, and had a vindictive prosecution brought against her in the revolutionary courts by her violent ex husband. These are all things the wife in this appeal has simply not had to endure. She has not been subjected to anywhere near the serious levels of harm the asylum-seekers in those cases suffered.

[61] Thus, although the wife has, by her own account, been deeply affected psychologically by the insults she received, the actual discriminatory action which she has suffered and may well encounter on return, do not amount to a sustained or systemic violation of her core human rights demonstrative of a failure of state protection. The anticipated human rights breaches associated with being publicly insulted, do not reach the threshold level of persecution, discriminatory and unjustified the insults undoubtedly are.

[62] Secondly, having observed and heard from the wife, the Authority finds that whilst she disagrees with wearing the head scarf, this issue was not one central to her human self identification. She did not herself see it in terms of discrimination. When asked about her objection, she referred simply to its impracticalities and did not express any deeper objection. She found it too hot. Even making all due allowance for her medical condition, had the imposition of the dress code and insults received, represented for her, a direct assault on her dignity, the Authority would have expected the wife to make at least *some* reference to an objection based on deeper grounds, even if unable to articulate it in any detail or with intellectual rigour or coherence. That she did not even try to do so, when asked directly to even a very simple level, is instructive.

[63] Counsel submits that the wife's deteriorating mental health and behaviour puts her at risk because her resulting unstable behaviour and responses will draw attention to her. This is rejected. Her state of mental health has not caused her any difficulties with the authorities in the past, and the Authority cannot see how her apparently severe depression and post-traumatic stress disorder will cause her Convention related harm.

[64] For the above reasons, the Authority, in respect of the wife, answers the first principal issue in the negative. The need to address the second does not therefore arise.

CONCLUSION

[65] For the reasons set out above, the Authority finds that the husband is a refugee within the meaning of Article 1A(2) of the United Nations Convention relating to the status of refugees. His appeal is allowed. Refugee status is granted. The appeal of the wife is dismissed. Refugee status is declined.

[66] However, having regard to the medical evidence received in relation to the wife, the Authority records its concern for her state of mental health. It records its concerns not because it raises any matter within its jurisdiction, but rather in the expectation that, having regard to the fact that her husband's appeal has been allowed, the NZIS will resolve her immigration status in line with the husband's as a matter of some expedition, in accordance with the principle of family unity.

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B Burson
Member