

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76053**

**AT AUCKLAND**

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| <b><u>Before:</u></b>                                 | B Burson (Member) |
| <b><u>Counsel for the Appellant:</u></b>              | I Uca             |
| <b><u>Appearing for the Department of Labour:</u></b> | No Appearance     |
| <b><u>Dates of Hearing:</u></b>                       | 19 & 20 June 2007 |
| <b><u>Date of Decision:</u></b>                       | 20 August 2007    |

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**DECISION**

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

**INTRODUCTION**

[2] The appellant claims to have a well-founded fear of being persecuted if returned to Iran on the basis of his having assaulted the dean of his university who had wrongfully refused him permission to enrol in the final year of his course.

[3] What follows is a summary of the appellant's evidence. Assessment of the evidence follows thereafter.

**THE APPELLANT'S CASE**

[4] The appellant was born in Tehran in 1980. He is the third eldest of four siblings. His parents remain living in Tehran, in the family home they have occupied for the past 12 years, with the appellant's younger brother. His elder brother and sister are married and live with their families elsewhere in Tehran.

[5] The appellant undertook his primary and intermediate education in the same school. In 1994, when the appellant was due to commence high school, a policy was introduced whereby the parents of high school students had to pay part of the tuition fees for the year. At this time, the financial circumstances of the appellant's parents were such that they could not afford to pay this amount. The appellant did not, therefore, commence high school but instead worked for the next two years with his brother in his brother's business. By 1996, the appellant's family's financial situation had sufficiently improved to allow the appellant to resume his education and he therefore commenced high school in that year, completing in 2002.

[6] In 2002, the appellant sat for and passed his university entrance exams. The mark he obtained meant that he was given permission to enter a free university in Tehran. However, the appellant did not immediately commence his studies but worked for the next year in his brother-in-law's business. He wanted to save sufficient funds to sustain himself for his four year course of study. However, in the end, he did not manage to save sufficient funds to pay for all of his anticipated costs and therefore still spent some of the summer holidays during his studies undertaking various jobs.

[7] The appellant commenced his university studies in 2003. Initially, he did not know anybody at the university but he quickly became friends with four young men called AA, HH, MM and RR. Of these, RR was in the year above the appellant but he had failed two papers and had to repeat those classes. The others were all in the appellant's year. The group quickly became friends and saw each other on a regular basis at university. They also socialised together outside of university from time to time. The appellant's first year at university passed without particular incident.

[8] When, in 2004, it came time to enrol in the second academic year, the appellant noticed that RR was not present on campus. He asked HH, MM and AA as to RR's whereabouts but they each said they also had not seen RR. The appellant therefore rang RR's home on a number of occasions but was told by RR's mother each time that RR was not at home. However, approximately one and a half months after the start of the second academic year, the appellant was telephoned by RR's mother who told him that RR was sick and was in hospital. She did not disclose any further details to the appellant in this telephone conversation.

[9] That evening, the appellant and HH went to the hospital and saw RR. Although RR bore no sign of physical injury, he was unable to answer their questions about what had happened to him. Instead, all that RR said was that he was “being watched” and that they should draw the curtains. RR also said that he was to see the president the following morning. The appellant was worried about RR but assumed that he had suffered some form of mental illness, possibly of a genetic nature.

[10] A week after this visit, RR was released from hospital. After RR’s release from hospital, the appellant went to visit RR at RR’s house on approximately three occasions over the next month and a half. On the third of these occasions, RR’s mother told the appellant that it would be good if he and the others would talk to RR to persuade him to stop doing political activities. His mother mentioned at this time that RR had been writing political letters.

[11] The appellant did not, however, speak to RR about this. In fact he had no further dealings with RR and never saw him again. This was because throughout his childhood, the appellant’s father had stressed to the appellant that it was important that the family be held in high regard and that the appellant should not do anything against the rules of society which might bring disrespect and dishonour on the family. Sensing there was danger in a continued association with RR, the appellant decided to have no further contact with him.

[12] In early to mid-2005, towards the end of the appellant’s second academic year, the appellant and other students who ate at the university cafeteria noticed that over a two week period, the quality of food had deteriorated. Therefore, at other students’ request, he, along with HH, MM and AA, took part in a protest in which the students laid a trail of plates between the cafeteria and the floor above where the dean of the university’s office was situated. Upon learning of this protest, the dean emerged from his office and informed the appellant and other gathered students that this was not the proper way to make their point. The dean suggested that the students write and sign a letter to him. This was done. MM volunteered to write the letter. The appellant, along with 10 or 15 students, signed it and it was given to the dean. As a result of this protest, the quality of the food improved.

[13] At around this time, the appellant also began to receive from HH and MM copies of an underground pamphlet written by students at the university. The pamphlet, in the main, discussed issues affecting students at the university but

also contained discussions of a more political nature. The appellant formed the impression that his friends HH and MM were somehow involved in the production of this pamphlet because, when they gave him the pamphlet to read, they insisted that he return it to them instead of passing it on to other students, as was the usual practice. Also, HH and MM told him that other people from whom the appellant received the pamphlet were trustworthy. This made him also believe that HH and MM were somehow involved with these people in the production of the pamphlet. The appellant received copies of such pamphlets on approximately seven or eight occasions throughout his time at the university.

[14] To the appellant's surprise, in October 2005 when he returned to university for the commencement of his third academic year, he noticed that there had been substantial changes to the layout of the campus. Corridors were segregated along gender lines, as were the cafeteria and lecture halls. Also, the *basiji* stationed at the university were given a more prominent role. He learned that the previous dean had been replaced by a new dean who was very religious. The changes made by the new dean caused substantial disruption in the smooth operation the university. In particular, there were not enough classrooms to accommodate the now separate classes for male and female students. This led to problems for students attending the courses required to complete their degrees.

[15] A number of letters of complaint were written by the students to the dean regarding the new arrangements. Once again, MM wrote a letter of complaint which the appellant signed. Other students wrote letters but the appellant did not sign any other letters of protest. Despite these letters being written, nothing changed.

[16] Soon after signing the letter, the appellant began experiencing problems with the *basiji*. In particular, on one occasion as he was talking to a fellow student who happened to be a married woman, a *basiji* approached him and began making insulting comments, insinuating that he was having an affair with her. Taking affront at the disrespect shown to him, the appellant got into a verbal argument with the *basiji* officer.

[17] Some time later in the same academic year, the appellant's bag was searched by the same *basiji* officer as he was leaving a class. He had, immediately prior to the end of that class, been given a copy of the underground pamphlet by a female student whom he trusted. The *basiji* officer found the pamphlet and the appellant was required to accompany him to the *basiji* office on

the campus. He was made to sign an undertaking that he would not repeat the activity in the future and that if he did, this incident could be brought up. Although unsure, the appellant thinks that he may have been set up by the female student. As a result of this incident, he no longer accepted the pamphlet when offered it on future occasions.

[18] One day during the summer break between the end of the third academic year and commencement of the fourth academic year, the appellant was telephoned by AA who informed him of his plan to organise an outing for some university students. AA asked the appellant's opinion of where the group should go. The appellant suggested a particular area that he knew. This was agreed to and his friends set about organising the outing. HH organised the bus driver and insurance; MM and AA were involved in the production of the food. The appellant's role was simply to guide the driver to the place he had suggested. In total, some 32 students went on the outing. The group comprised both male and female students. They met at a designated spot and most students were dropped off there by their parents. The trip passed without incident.

[19] Following the completion of the summer break, in October 2006, the appellant went to enrol in his fourth and final year of study. The administration officer attending to him told the appellant there was an order from the dean prohibiting him from enrolling. Surprised by this, the appellant went directly to see the dean to find out why. The dean's secretary told him that the dean was busy and could not see him on that day. The appellant decided to go home and come back the next day. He did so, but was told by the dean's secretary that the dean was not there. The appellant returned for a third time at the beginning of the following week. On this occasion, the dean's secretary informed him that the dean did not want to see him. The appellant explained that he wanted to see the dean simply to find out the reason why he had been refused permission to enrol, but the dean's secretary kept repeating that the dean did not want to see him. Frustrated by this, the appellant left and decided to return the next day. He knew that the dean was in his office between midday and 5pm or 6pm and decided to see him somehow.

[20] Arriving at the dean's office for the fourth time, the appellant asked if the dean was there and the secretary replied that he was. The secretary did not say anything more and the appellant went and waited outside in the hallway. After more than three hours, the dean's secretary left the office and walked passed him

without saying anything. The appellant therefore entered the main office of the dean. The appellant said "hello" and introduced himself. Although the appellant introduced himself, he formed the impression that the dean already knew all about him and that the dean was not surprised to see him there. The appellant asked the dean the reason why he could not enrol. The dean merely replied that this was the decision that he had made. When pressed further by the appellant, the dean replied that he had organised a trip for boys and girls and that he knew that it was against the rules of the university. The dean also brought up the letter the appellant had written regarding the quality of the food and the underground student pamphlet found in his bag.

[21] The appellant tried to explain to the dean his innocence but the dean would not let him explain. He simply repeated that this was his decision and told him to leave the office. At that point, the appellant thought that if he began to beg, the dean would reconsider. The appellant thought that when a person begged earnestly and from the heart, this ordinarily softened people's stance. Instead, to his dismay, each time the appellant said something, the dean's attitude appeared to harden.

[22] Finally, the appellant reached a point where he lost all hope of being allowed to enrol and decided to tell the dean exactly what he thought. The appellant said that the dean was abusing his position and that the honorary PhD that he had been given was paid for by his and other students' parents. At this point, the dean came toward the appellant and slapped him harshly on the face. Responding instinctively, the appellant pushed the dean back causing him to fall down. While on the floor, the dean said: "I will destroy your life like I have destroyed your education." He then got to his feet and came towards the appellant and began to beat him, while calling out for assistance. The appellant tried to stop the dean from hitting him further by pushing him away.

[23] After a brief struggle, the appellant ran out of the building and continued for approximately 500 to 600 metres where he caught a private taxi. He did not look back and was not aware if he had been followed. He instructed the driver of the car to take him to an intersection near to the home of his sister and brother-in-law. At this intersection, the appellant left the taxi and went to a public telephone box where he telephoned his brother-in-law at his home. He explained to the brother-in-law what had happened. The brother-in-law told the appellant to wait where he was and he would call shortly with instructions of what to do. Some 10 minutes

later, the appellant's brother-in-law telephoned the appellant at the same telephone box and gave him an address of a friend's house where the appellant should go. The brother-in-law indicated that his friend knew what had happened. The appellant hailed another taxi and went to the brother-in-law's friend's house where he stayed until he departed Iran three and a half weeks later.

[24] The morning after he arrived at his brother-in-law's friend's house, the appellant was told by his brother-in-law that the Iranian authorities had been to his family home looking for him and that it was safer for him to leave the country. Everything about his departure was taken care of by his brother-in-law. The appellant is unaware of what steps were taken and what monies were paid but approximately a week after being in his brother-in-law's friend's house, the appellant's brother-in-law arranged for the appellant's photograph to be taken. He only found out two or three days before his departure that he was to be leaving and that his destination was to be Thailand. His brother-in-law arranged a false Iranian passport for him that had his genuine photograph.

[25] On the day of his departure, he was informed by his brother-in-law that his father had been again questioned by the authorities as to his whereabouts and was required to sign an undertaking that he would inform the authorities once he knew of them. As far as the appellant is aware, these were the only two occasions that the authorities called upon his family. He is not aware if any of his other family members have been questioned by the authorities who were looking for him. The appellant left Imam Khomeini Airport using normal channels and did not experience any problems.

[26] The appellant travelled to Thailand where he remained for two and a half months staying with the agent organised by his brother-in-law. He does not know why he had to wait for so long in Thailand. When he asked, the agent gave no explanation but reassured him that he would go and should let the agent do what the agent was supposed to do.

[27] Some two and a half months after arriving in Thailand, the appellant left with the agent for Indonesia. On the way to Indonesia, the agent took back the false Iranian passport and handed the appellant an Italian passport with a false name. After staying in Indonesia for six days, the appellant was accompanied by the agent to Singapore. In Singapore, the agent left the company of the appellant and the appellant thereafter travelled on his own to New Zealand, claiming refugee status on arrival.

[28] Since being in New Zealand, the appellant has not had any contact with his parents or any other family member. He is too afraid to get in touch with them.

[29] The appellant fears that if he is returned to Iran he will suffer a similar fate to his friend RR. He fears he may be imprisoned, tortured and killed.

[30] At the conclusion of the hearing, counsel made oral submissions. Counsel also provided written submissions before and after the hearing, together with country information. All of this material has been taken into account in reaching this decision.

## **THE ISSUES**

[31] 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."

[32] 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**

[33] The Authority has doubts about the veracity of the appellant's claim. In particular, it appears to rest on his undertaking a series of actions of a political nature while simultaneously expressing a desire to comply with his father's instructions to not do anything to break the rules of society. It does strike the Authority as surprising that the appellant would take the risks that he did,



particularly taking possession of an underground student pamphlet thereby jeopardising the education he claims was so important to him. Nevertheless, after careful reflection, and noting counsel's oral and written submission as to the appellant's background and character, the Authority finds that it cannot say his actions are inherently implausible. Nor were there any significant discrepancies in his evidence. The Authority is accordingly left in some doubt about the truthfulness of this appellant's claim. In accordance with usual principles, the benefit of that doubt must be given to the appellant. The Authority accordingly does so and, therefore, (with some reservation) accepts the appellant's evidence as to the circumstances that have caused him to flee Iran.

### **A Well-Founded Fear of Being Persecuted**

[34] Having accepted the appellant's credibility, the Authority finds that, on the facts as found, he possesses a well-founded fear of being persecuted. Iran's human rights record remains generally poor. Human Rights Watch *World Report 2007: Iran* notes in this regard:

"Respect for basic human rights in Iran, especially freedom of expression and assembly, deteriorated in 2006. The government routinely tortures and mistreats detained dissidents, including through prolonged solitary confinement. The Judiciary, which is accountable to Supreme Leader Ali Khamenei, is responsible for many serious human rights violations.

President Mahmoud Ahmadinejad's cabinet is dominated by former intelligence and security officials, some of whom have been implicated in serious human rights violations, such as the assassination of dissident intellectuals. Under his administration, the Ministry of Information, which essentially performs intelligence functions, has substantially increased its surveillance of dissidents, civil society activists, and journalists."

[35] As to the use of torture and other forms of ill-treatment against detainees, the same report notes:

"Since President Ahmadinejad came to power, treatment of detainees has worsened in Evin prison as well as in detention centers operated clandestinely by the Judiciary, the Ministry of Information, and the Islamic Revolutionary Guard Corps. The authorities have subjected those imprisoned for peaceful expression of political views to torture and ill-treatment, including beatings, sleep deprivation, and mock executions. Judges often accept coerced confessions. The authorities use prolonged solitary confinement, often in small basement cells, to coerce confessions (which are videotaped) and gain information regarding associates.

In 2006 two prisoners held for their political beliefs, Akbar Mohammadi and Valiollah Feyz Mahdavi, died in suspicious circumstances in prison. The authorities prevented their families from conducting independent autopsies. The government has taken no action to investigate the cause of the deaths." (*sic*)

[36] Similar observations can be found in Amnesty International *World Report 2007: Iran* and the United States Department of State *Country Report on Human Rights Practises 2007: Iran*.

[37] Within this context, in December 2006, some 700 students at Amir Kabir University in Tehran protested against developments in the university during a speech by President Ahmadinejad in which the President was heckled as a dictator and his picture burnt. The report “Students Protest Against Ahmadinejad” *The Guardian* (12 December 2006) gives some understanding of the background to this event. It notes:

“... ”

The outburst came as Iranians prepare to go to the polls on Friday for elections to local councils and the powerful assembly of experts. It will be Mr Ahmadinejad’s first electoral test since taking office and comes as his government is under pressure over rising prices and a perceived failure to deliver on economic promises.

The protest was also the latest in a series of recent signs of unrest on Iran’s campuses, which have been largely quiet since the brutal suppression of a wave of pro-democracy demonstrations under Mr Ahmadinejad’s reformist predecessor, Mohammed Khatami.

On Sunday, an estimated 700 Amir Kabir university students protested against a clampdown that has included the closure of the Islamic students’ committee and the exclusion of former activists from courses. They were also demonstrating against the demolition of the students’ committee building and the imposition of the university chancellor without elections. Police restricted access to the campus as demonstrators shouted anti-government slogans. Last week, hundreds of students at Tehran university – a traditional hotbed of political protest – were confronted by police as they chanted: “We only want freedom of expression.”

Vahid Abedini, a member of the university’s democracy seekers’ committee, told the pro-reformist Etemad newspaper that the gatherings had been organised to defend the independence and freedom of universities.

Hundreds of students with a record of political activism have been barred from academic courses while many lecturers have been forced to retire.

This year, Mr Ahmadinejad demanded a purge of “secular and liberal” lecturers, whom he accused of having been a fifth column for western values and colonialism in Iran for the past 150 years. Under his presidency, a hardline cleric was appointed chancellor of Tehran university for the first time.

The remains of “martyrs” from the 1980-88 Iran-Iraq war have been given burial ceremonies in several universities in what has been seen as a pretext for allowing pro-government vigilantes entry to keep watch on student activities.”

[38] This impression of a broad attempt at closing of the political space inside universities is further confirmed in a report “All Universities Undergo Changes” *Rooz Magazine* (3 December 2006) helpfully provided by counsel. The report charts developments in a number of universities around Iran in which the appointment of administrators and professors with hard line attitudes towards

freedom of expression and the segregation of male and female students has featured. The report gives examples of *basiji* being given great licence and the disciplining and suspension of students for political activity in the universities it names. See also in this context “Iranian regime penalises university activists” *The Guardian* (24 April 2007) which notes, in the context of masters students, the operation of a “starring system” in which the accumulation of three stars for disciplinary breaches ends in expulsion from the masters’ programme.

[39] The report “Iranian students hide in fear of their lives after venting fury at Ahmadinejad” *The Guardian* (18 December 2006) is notable as it confirms that despite the President’s public assurances that the group of students from Amir Kabir university who publicly criticised him should not be punished, hard line vigilantes from the state-linked paramilitary group *Ansar-e-Hezbollah* are looking for them. Importantly, the report goes on to note that it was, in part, the universities contentious use of disciplinary codes that has seen around 70 students from this university alone either expelled or threatened with expulsion for various political activities.

[40] When the appellant’s situation is considered against this background, the Authority is satisfied that should he return to Iran, there is a real chance that he might be detained by *basiji* or members of *Ansar-e-Hezbollah* for having assaulted the hardliner who had been appointed dean of his university. His detention would be part of a wider process by which hard line elements within the Iranian state are seeking to exert some greater degree of control over universities. Having regard to the country information, there is a real chance that if detained, the appellant may be subjected to torture or other forms of ill-treatment amounting to his being persecuted.

[41] The first principal issue is answered in the affirmative.

### **Convention Ground and Nexus**

[42] The appellant’s actions will have resulted in a negative political opinion being imputed to him. His future predicament will arise because of this. The second principal issue is, therefore, also answered in the affirmative.

### **CONCLUSION**

[43] For the above reasons, 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 Burson"  
B Burson  
Member