

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

**REFUGEE APPEAL NO 75976**

**AT AUCKLAND**

<b><u>Before:</u></b>	A N Molloy (Member)
<b><u>Counsel for the Appellant:</u></b>	No representative
<b><u>Appearing for the Department of Labour:</u></b>	V Wells
<b><u>Date of Hearing:</u></b>	17 September 2007
<b><u>Date of Decision:</u></b>	18 October 2007

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**DECISION**

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[1] This appeal is brought by a national of the Islamic Republic of Iran, who obtained refugee status in New Zealand in 1998. He appeals against the decision of the Refugee Status Branch (RSB) of the Department of Labour (DOL), which has subsequently cancelled his refugee status under s129L(1)(b) of the Immigration Act 1987 (the Act).

[2] The RSB's decision to cancel was made on the basis that the grant of refugee status to the appellant may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information ("fraud").

**JURISDICTION**

[3] There are two stages to the Authority's enquiry on an appeal of this nature. It must first determine whether the appellant's refugee status "may" have been procured by fraud.

[4] If so, the Authority must then determine whether to “cease to recognise” the appellant as a refugee or, colloquially and for ease of reference, to cancel his refugee status. This will not automatically follow from a finding that refugee status may have been procured by fraud. Rather, it depends upon whether the appellant currently meets the criteria for refugee status. This second stage requires the Authority to undertake its orthodox enquiry into whether the respondent satisfies the definition of a refugee as set out in the Refugee Convention; *Refugee Appeal No 75392* (7 December 2005) paras [10]-[12].

[5] Because the hearing of an appeal of this nature is largely inquisitorial, it is not entirely appropriate to refer to a burden or onus of proof, terms which sit more comfortably within an adversarial context. However, the Authority’s view is that in cancellation proceedings, the DOL has the responsibility to present such evidence as it has in its possession by which it can be said that the grant of refugee status may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information. If so satisfied, the Authority will then move to the second stage of the enquiry; whether the appellant is currently a refugee.

[6] The Authority has previously found that the term “may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information” is deliberately imprecise. It signals a standard of proof lower than the balance of probabilities but higher than mere suspicion; *Refugee Appeal No 75563* (2 June 2006).

[7] In order to properly assess the issues which arise from this appeal it is necessary to set out the basis upon which the appellant obtained refugee status. This is summarised below.

### **THE APPELLANT’S ORIGINAL CLAIM FOR REFUGEE STATUS**

[8] The appellant claimed that he had a well-founded fear of being persecuted by the Iranian authorities because of his political opinion. His difficulties commenced around 1997, when he became romantically involved with a woman, FG, in Tehran. He later learned that she was a member of the anti-government group, the *Mojahedin e Khalq (Mojahedin)*. From about May 1997, FG began to supply the appellant with pamphlets which he distributed on behalf of the *Mojahedin* every week until the end of that year. The pamphlets invariably contained articles critical of the Iranian theocratic regime.

[9] On 13 December 1997, FG telephoned the appellant. She was upset. She confided in the appellant that she was married, a fact she had not previously disclosed. Worse still, her husband was a member of the Iranian security organisation, the *Sepah*. FG's husband had learned not only of the appellant's relationship with FG, but of their mutual involvement with the *Mojahedin*.

[10] The appellant was implicated in two apparent crimes, each of which were grave offences in their own right, and each of which attracted potentially severe recrimination. The first concerned his unwittingly adulterous relationship. The second concerned his involvement with a political movement opposed to the ruling regime.

[11] The appellant claimed that he went into hiding immediately. He then left Iran illicitly and unlawfully on 25 December 1997, by crossing the Turkish border on foot. He eventually made his way to Malaysia and then to Japan before coming to New Zealand in March 1998. The appellant sought refugee status upon arriving in Auckland.

[12] After interviewing the appellant in October 1998, a refugee status officer (the officer) issued a decision granting him refugee status on 9 March 1999. The appellant subsequently obtained permanent residence in New Zealand. A returning resident's visa was endorsed in his Iranian passport on 18 September 2000.

### **THE DECISION TO CANCEL REFUGEE STATUS**

[13] On 30 November 2005, the officer caused the appellant to be served with a Notice of Intended Determination Concerning Loss of Refugee Status (the notice). The notice recorded the officer's preliminary view that the grant of refugee status to the appellant may have been improperly made by virtue of having been procured by fraud.

[14] The officer reached that view after the Japanese Consulate in Tokyo confirmed that the appellant's Iranian passport had been renewed in Tokyo on 25 December 1997. This contradicted the appellant's claim that on that date he had come out of hiding in Tehran in order to travel to Turkey on foot. In short, he was not in hiding in December 1997.

[15] In addition, it is apparent that the appellant had returned to Iran in 2000

using his own Iranian passport. His willingness and ability to do so without apparent difficulty appeared to be incompatible with the claim in respect of which his refugee status had been granted the previous year.

Steps taken prior to the appeal interview with the Authority

[16] The appellant replied to the notice by letter dated 3 December 2005. He subsequently attended an interview with the officer on 14 February 2006. Following the interview, the officer prepared an interview report which was sent to the appellant on 16 May 2006. The report identified prejudicial information upon which the officer was relying and gave the appellant the opportunity to respond to the officer's concerns. Additional prejudicial information was forwarded to the appellant by the DOL on 28 July 2006. The appellant's written response was forwarded to the officer on 7 August 2006.

[17] After considering that response, the RSB published its decision on 31 October 2006, cancelling the appellant's refugee status pursuant to s129L(1)(b) of the Act. The appellant appeals against that decision.

[18] The DOL compiled a file for the purposes of the appeal which contained various documents. It included extracts from the appellant's Iranian passport, English translations of selected pages from that passport, a transcript of an interview conducted with the appellant by a representative of the Department of Internal Affairs (DIA) in June 2004, a letter from the Consular and Visa section of the Embassy of Japan in New Zealand dated 5 October 2005, various letters from the appellant's wife (a New Zealand citizen) on the appellant's behalf, a statutory declaration signed by the appellant on 5 August 2002, correspondence and documents related to the appellant's respective applications for residence in and citizenship of New Zealand, and various documents relating to the appellant's original claim for refugee status. A copy of the appeal file was forwarded to the appellant.

[19] After lodging his appeal, the appellant forwarded a memorandum to the Authority, dated 12 December 2006. He asserts that he returned to Iran in 2000 for two related reasons. The first was that he had been missing his family, and had not seen them for three years. The second was that he hoped to marry an Iranian woman whom his family had met and chosen for him, and hoped to bring her back to New Zealand to start a family.

[20] The appellant claimed that he experienced no difficulty when he returned to

Iran because he entered using the false passport provided for him by the agent. He took the precaution of staying with his intended fiancée and a member of her family. They also live in Tehran but in an area which is some distance from the appellant's family home.

### **THE DOL CASE ON APPEAL**

[21] The DOL's position was confirmed at the interview before the Authority by Greig Young, a refugee status officer who appeared as a witness. He confirmed the content of his written statement which was dated 18 April 2007.

[22] The DOL asserts that the appellant's claim that he was forced to go into hiding and flee from Iran is untrue. They rely upon the fact that the Japanese Consulate confirmed that an Iranian male bearing the same name and date of birth as the appellant entered Japan on 25 September 1991. There is no record of him having left Japan. The DOL state that this is to be considered in conjunction with the fact that the appellant's passport was renewed in Tokyo in 1997.

[23] The DOL submits that this is evidence that the appellant was living illegally in Japan throughout the period he claimed to have been politically active in Iran, and to have been forced to flee over the border into Turkey. It follows, they submit, that his claim to have been politically active is untrue.

[24] Mr Young also refers to the fact that the appellant was able to return to Iran using his own passport in September 2000, and to remain there for two months without experiencing any difficulties or attracting the attention of the Iranian authorities. The DOL submit that this is also inconsistent with the appellant's claim for the purposes of his application for refugee status (advanced little more than a year before his return), that that he could not return to Iran because he would be seriously harmed by the Iranian authorities.

[25] The DOL lodged closing submissions in writing under cover of a letter dated 24 September 2007.

### **THE APPELLANT'S CASE ON APPEAL**

[26] The appellant asserts that his original claim for refugee status was in all respects true. He denies renewing his passport in Tokyo in December 1997, and

says that he has no idea why his passport contained a stamp to that effect. He denies leaving Iran in 1991 and denies entering Japan on 25 September 1991. He claims further that while he had used his genuine Iranian passport to leave New Zealand in September 2000 and to re-enter New Zealand two months later, he had used it only for the first and last legs of his journey. He claimed that for the second and third legs of his journey, namely from Malaysia to Tehran and from Tehran to Malaysia, again in September and November 2000, he had used a false Iranian passport. That false passport had been obtained for him by an Iranian agent who met him in Malaysia, *en route* to Iran.

[27] The appellant claims that stamps in his passport which appear to confirm that he used the passport to enter and to depart from Mehrabad airport in Tehran lawfully, using his own passport, had been placed in the passport by his Iranian agent. He claims that he does not know why the agent did this, and did not question the agent about it at the time.

[28] According to the appellant, he returned to Iran because he was missing his family. He also claimed that he was lonely, and that his family had explored for him the possibility of a relationship and marriage with an acquaintance of the family in Iran.

[29] The appellant says that his relationship with his intended fiancée ended after she learned of the true nature of his problems with the Iranian authorities. The appellant therefore returned to New Zealand alone in 2000. He has not returned to Iran since. He has been unable to do so because of the investigation into the grant of his refugee status by the New Zealand immigration authorities.

## **THE AUTHORITY'S FINDINGS**

### **STAGE 1: REFUGEE STATUS MAY HAVE BEEN PROCURED BY FRAUD AND THE LIKE**

[30] In all the circumstances of this appeal, the Authority is satisfied that the appellant dishonestly advanced his claim for refugee status on a basis which he knew to be untrue.

[31] As already noted, the Authority has previously found that the term "may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information" is deliberately imprecise. It signals a

standard of proof lower than the balance of probabilities but higher than mere suspicion; *Refugee Appeal No 75563* (2 June 2006).

[32] In respect of this appeal, the Authority is satisfied that it is immaterial whether the phrase “may have been procured by fraud...” in s129L(1)(b) imposes a standard lower than or equal to the balance of probabilities or, alternatively, a standard beyond reasonable doubt. Whichever standard is used, the statutory test has been satisfied in respect of this appeal.

[33] For reasons which follow, the Authority finds that the recognition of the appellant as a refugee may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information.

#### Credibility

[34] The appellant is not a credible witness. Having heard his testimony and having considered all of the evidence available, the Authority is satisfied that the appellant did not leave Iran in the manner which he claimed. He did not flee in December 1997, fearing for his safety as a result of his political activities and an adulterous relationship. On the contrary, the appellant was in Japan in December 1997. He had probably been living there unlawfully for some time.

[35] The Authority also finds that the appellant was able to return to Iran without any difficulty in September 2000 and that he did so using his own genuine Iranian passport. The Authority finds further that the Iranian entry and departure stamps which appear in his passport are genuine. They demonstrate that he used his own passport to enter Tehran in September 2000 and to leave from Mehrabad airport in Tehran two months later in November 2000. The Authority finds that his claim to have entered and departed from Iran using a false Iranian passport in order to hide his true identity is a fabrication.

[36] There is no evidence that the appellant was entitled to refugee status for any reason at the time that it was granted him.

#### The appellant was not in hiding in Iran in December 1997

[37] The appellant’s passport bears a stamp indicating that it was renewed in Japan in December 1997. It contains a stamp which indicates that the appellant’s last date of departure from Iran prior to the renewal of the passport was on 21 September 1991.

[38] These stamps must be read in conjunction with the content of letter from the Japanese Consulate in New Zealand dated 5 October 2005. In that letter the Japanese Consulate confirmed that an Iranian man bearing the appellant's name, and with the same date of birth, was recorded as having entered Japan through Tokyo airport on 25 September 1991, four days after the last date of departure recorded in the appellant's passport.

[39] The fact that the appellant's legitimate Iranian passport should contain an entry which was chronologically consistent with the entry into Japan of a man bearing the same name and personal details indicates irresistibly that it was the appellant. He denies that he entered Japan. He could offer no explanation as to how or why his legitimate passport should contain that statement.

[40] The Authority finds that there is no explanation other than that the content of the passport is simply true. On that basis, it appears that the appellant left Iran in September 1991, and that he entered Japan four days later on 25 September 1991. His denial is not credible.

[41] These facts lead to the equally irresistible conclusion that the reason why his passport indicates that it was renewed in Tokyo on 25 December 1997 is because the appellant was living in Japan at that time, and that he applied to have his passport renewed from there.

[42] The significance of this is that at a time when the appellant claims that he was in hiding in Tehran as a result of his political and sexual activities, he was in fact living safely, if unlawfully, in Japan.

#### Entry and department stamps are legitimate

[43] The appellant's genuine Iranian passport bears stamps from Mehrabad airport in Tehran. The appellant explained that these must have been inserted by his Iranian agent, Majid. He claimed that when he travelled to Malaysia *en route* to Iran in September 2000, Majid handed him a false Iranian passport which he was to use in order to enter Iran undetected, under a false name. Majid also asked the appellant to hand over his legitimate passport at that time, then took the passport into the toilets at the airport before handing them back to the appellant. The appellant did not know why Majid had done this and now surmises that the false stamps must have been inserted at that time.

[44] The appellant's claim is clearly false. His passport bears a departure stamp



from Mehrabad airport dated 28 November 2000. That is chronologically consistent with the legitimate departure stamp which discloses that the appellant then left Malaysia by air on 29 November 2000. It is also consistent with a permit entered into the appellant's passport by the New Zealand immigration authorities upon his return to New Zealand on 30 November 2000.

[45] For the appellant's claim to be credible, the Authority would have to accept that when Majid inserted a false departure stamp in September 2000, he was able to predict precisely when the appellant was going to leave Tehran, two months later.

[46] However, the appellant's initial evidence to the Authority was that at the time he travelled to Iran from Malaysia, he had purchased an open return ticket from Malaysia to Iran, to afford some flexibility in his return. He said he had intended to remain there for four to six weeks. While he was there he made the decision to extend his stay and to remain for two months. He was adamant that his decision was made in Iran, and that he arranged his departure date from Iran. Majid could not have known that the appellant would depart when he did.

[47] The entry and departure stamps from Tehran airport are clearly legitimate. There is no apparent reason why the agent would have taken it upon himself to insert false entry and departure stamps into the appellant's passport. The appellant could think of no reason why he would do so, and said that he simply relied upon the agent and did not second guess his actions or his motives. That is a convenient and self-serving explanation. It is no more than a belated attempt to explain the inexplicable.

[48] The corollary to that finding is therefore that little over a year after being granted refugee status, the appellant was able to return to Iran using his own Iranian passport. He entered and departed without difficulty, and encountered no problems while he was there.

Conclusion as to whether the original grant of refugee may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information

[49] In all of the circumstances of this appeal it is clear that the appellant was granted refugee status on the basis of a fraudulent and false refugee claim. There is no evidence that the appellant was at risk of being persecuted in Iran for any reason at the time that he obtained refugee status in New Zealand in 1999.

[50] The Authority therefore finds that the grant of refugee status to the appellant may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information.

## **STAGE 2: WHETHER THE APPELLANT SHOULD CEASE TO BE RECOGNISED AS A REFUGEE**

[51] Having found that the appellant's grant of refugee status may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information, it is necessary to consider the second stage of the two stage test. The Authority will therefore consider whether the appellant currently meets the criteria for refugee status.

### **THE ISSUES**

[52] 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.”

[53] 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?

[54] The Authority has already found that when the appellant left Iran in 1997 he was not a person of concern to the Iranian authorities for the reasons which he has maintained until now.

[55] During the appeal hearing, the Authority asked whether there were any other reasons why the appellant was at risk in Iran. He said that there were none.

[56] Given the absence of any credible evidence that the appellant faces a real chance of being persecuted in Iran for any reason at the date of this decision, the

Authority finds that the first issue must be answered in the negative. Accordingly the second issue does not fall for consideration.

**CONCLUSION**

[57] The Authority makes the following determinations:

- (a) Refugee status may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information.
- (b) It is appropriate to cease to recognise the respondent as a refugee.

[58] The appeal is therefore dismissed.

"A N Molloy"  
A N Molloy  
Member