

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

**REFUGEE APPEAL NO 76367**

**AT AUCKLAND**

<b><u>Before:</u></b>	B L Burson (Chairperson) J Baddeley (Member)
<b><u>Counsel for the Appellant:</u></b>	D Mansouri-Rad
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	1, 2 & 3 September 2009
<b><u>Date of Decision:</u></b>	5 October 2009

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**DECISION**

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

**INTRODUCTION**

[2] The appellant claims to have a well-founded fear of being persecuted if returned to Iran as a result of the discovery by the Iranian authorities of Christian material which she has posted back to Iran. She also claims to be in fear of being killed by her brother who holds extremist Muslim views and does not accept that she can, as she has, converted to the Christian faith and become an apostate. The appellant also claims to be at risk in Iran as a result of her having attended public demonstrations in Auckland protesting against the officially sanctioned re-election of Mahmoud Ahmadinejad in the recent controversial elections in Iran.

[3] This is in fact the appellant's second claim for refugee status. The appellant originally arrived in New Zealand on 7 November 2007 and made an application for refugee status at the airport ("the first claim"). She was interviewed by the RSB

in respect of the first claim on 12 November 2007. By decision dated 11 April 2008 the RSB declined the first claim. The appellant appealed to the Authority. By decision dated 14 January 2009 the Authority dismissed the appellant's first appeal. The appellant lodged her second claim for refugee status on 15 February 2009. She was interviewed by the RSB in respect of the second claim on 23 March 2009. By decision dated 5 June 2009 the RSB declined the appellant's second claim. The appellant duly appealed to the Authority.

[4] Because this is the appellant's second appeal to the Authority, she must first establish that the Authority has jurisdiction to hear the second appeal.

### **JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL**

[5] Section 129O(1) of the Immigration Act 1987 (which came into force from 1 October 1999) ("the Act") provides:

"A person whose claim or subsequent claim has been declined by a refugee status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that the circumstances in the claimant's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer's decision."

[6] The question of whether there is jurisdiction to entertain a second or subsequent refugee application has been considered by the Authority in *Refugee Appeal No 75139* (18 November 2004). In that decision, the Authority ruled that in a subsequent claim under s129O(1) of the Act there are distinctive aspects to the appeal:

"[55] First, irrespective of the finding made by the refugee status officer at first instance, the claimant must satisfy the Authority that it has jurisdiction to hear the appeal. That is, the claimant must establish that, since the determination of the previous claim, circumstances in the claimant's home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim."

[7] The Authority further ruled at [55](e):

"(e) Jurisdiction under ss 129J(1) and 129O(1) is determined by comparing the previous claim to refugee status against the subsequent claim. This requires the refugee status officer and the Authority to compare the claims as asserted by the refugee claimant, not the facts subsequently found by that officer or the Authority."

[8] The Authority noted at [55](g):

"(g) The Authority does not possess what might be called a "miscarriage of justice" jurisdiction."

[9] In this appeal, therefore, it is proposed to consider the appellant's original claim and his further claim, as presented at the second appeal, with a view to determining:

- (a) whether, in terms of s129O(1) of the Act, the Authority has jurisdiction to hear the second appeal and, if so,
- (b) whether the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

### **Assessment of jurisdiction**

#### *The first claim*

[10] The appellant's first claim was based on her difficulties with the authorities as a result of her failure to comply with the Islamic dress code in force in Iran and as a result of her involvement with a women's association. She claimed to have been arrested on a number of occasions and her shop closed down. She also claimed to have converted to Christianity. The Authority (differently constituted from the present panel) disbelieved the appellant's evidence in relation to the dress code violations and her involvement with the women's association. However, the Authority accepted that the appellant had genuinely converted to Christianity but held that she had no well-founded fear of being persecuted on this basis alone.

#### *The second claim*

[11] The appellant claims that since the determination of the first claim the Iranian authorities have now learnt that she has converted to Christianity and that she has attempted to encourage her sister, currently a Muslim, to abandon Islam in favour of Christianity. As mentioned, she also fears harm at the hands of her brother. She has also taken part in anti-government demonstrations in Auckland in June 2009.

### **Assessment of jurisdiction**

[12] The Authority finds the jurisdictional threshold has been crossed. While the appellant's first claim involved a claim based on her conversion to Christianity, the allegation that the Iranian authorities have now become aware of her conversion and of the fact that she has proselytised to her sister amounts to a significant

difference which has occurred since the determination of the first claim. Furthermore, the appellant's participation in the anti-government demonstration here in Auckland took place after the determination of her first claim. The Authority is satisfied that since the determination of her first claim the circumstances in Iran for the appellant have changed to such an extent that the second claim is based on significantly different grounds to the first. The jurisdictional threshold is accordingly crossed.

[13] What follows is a summary of the appellant's evidence given in support of the second appeal. An assessment follows thereafter.

## **THE APPELLANT'S CASE**

### **The appellant's evidence**

[14] The appellant told the Authority that she was born into a family with divergent views about religion. With the exception of a sister who is living in New Zealand and who had converted to Christianity ("the NZ sister"), the remainder of her family were Muslim although they varied greatly in their degree of practice. Whereas her parents were practising Muslims and observed some of the tenets of the Islamic faith, one of her brothers, AA, was more extremist in his views on religion and had become even more so following his conscription. Another sister, BB, was ambivalent about religion.

[15] The appellant herself was always more open-minded. While she was still in Iran, her NZ sister sent two packages back to Iran of clothing and other items, including some Christian material. Of the family members, the appellant was the one who read this material and it aroused a nascent interest in Christianity. When she arrived in New Zealand she lived, until recently, with her NZ sister and brother-in-law. Over a period of time she too adopted the Christian faith, being baptised in 2008.

[16] During 2008, she learnt that BB was upset. A boy with whom she had fallen in love decided to marry someone else leaving her heartbroken. The appellant and BB were very close and the appellant spent many hours on the telephone talking to her sister and comforting her. During these conversations the appellant told BB of some of the difficulties of her own life in New Zealand and how she had come to find comfort and solace in her new-found Christian faith. She went on to

explain some of the fundamentals of Christian belief to BB and that her belief that Jesus was the son of God enabled her to deal with the emotional anguish that she was suffering because of her situation. BB replied that she did not believe that God had a son and that while this may have been the appellant's belief she did not believe that this was true. Nevertheless, the appellant always told her sister about her Christian faith. It is her obligation to try to tell others about the benefits of the Christian faith. This should begin with her family and she truly believed that BB's adoption of Christian belief would help BB as it had helped her in her own life.

[17] The appellant also spoke to her parents about her life in New Zealand and conversion to Christianity. They were aware that she had gone to church and were aware that she had converted. While her mother was happy that she was relying on God for her support in these difficult times, she was not happy that the appellant had abandoned Islam for Christianity and become an apostate. Her parents were upset when she told them that she had been baptised. Her mother told her that she did not know enough about this religion and that she had abandoned her faith and this was not a good thing to do.

[18] Whenever the appellant rang home the telephone was invariably on speakerphone so that all family members could hear what was being said. During one of the telephone conversations the appellant had with her sister, her brother, AA, was at home. He overheard the appellant mentioning to her sister that she should take up Christianity and extolling the benefits of Christianity. AA became very upset with what the appellant was saying. He and the appellant had never been particularly close and he told her to stop talking about religion. He threatened the appellant that if she came back to Iran he would kill her.

[19] In 2008, the appellant and her sister sent three parcels to Iran ("the first and second and third parcels") via a New Zealand courier organisation. Each parcel contained clothes and other items for the family in Iran. However, in the first parcel the appellant sent a letter she had written to her sister BB. In this letter she encouraged her sister to listen to a CD of Christian services in Farsi and to read some pamphlets in Farsi on the Christian religion which the appellant had obtained from her church and also enclosed in the first parcel. The first parcel also contained a number of photographs of holidays the appellant had taken in New Zealand, her attendance at weddings, and photographs of the appellant's baptism in New Zealand. On the back of each photograph the appellant wrote a brief description of what was depicted.

[20] Approximately three weeks later, the appellant received a telephone call at her NZ sister's house. The family informed them that the second and third parcels had arrived but that the first parcel had not. Although aware the parcel which had not arrived contained the Christian material, the appellant and her NZ sister were not unduly worried at that stage. They had completed all necessary customs and insurance declarations on the parcel. Moreover, the appellant's NZ sister herself had sent Christian material back to Iran on a number of occasions previously without any difficulties. They were anticipating there was some innocuous holdup with the post.

[21] They rang their family a few days later and were told that the first parcel had still not arrived. They suggested to the family that they go to their local post office and enquire what had happened. A few days after that the family rang and told them that the first parcel had still not been received. The appellant and her sister went to the post office to find out what had happened. The person in the post office gave them a complaint form to fill out. Not understanding how to fill out a written complaint in English the appellant's NZ sister rang a telephone number that the New Zealand courier organisation provided to them. The representative of the New Zealand courier organisation who answered their call gave them a job number and told them that their records were showing that, at that time, the first parcel had not been received in Iran.

[22] In early 2009, the appellant received advice from her lawyer that her first refugee appeal had been dismissed. The appellant was very distressed and upset by this as was her NZ sister and her parents, whom she telephoned the same evening and informed them of this news. The issue of the parcel was put to one side while they sought advice from Mr Mansouri-Rad, who had also represented the appellant in the first appeal, as to what the implications of the decision were.

[23] The appellant had entered New Zealand on a false passport and as a result of this had been charged with an offence relating to her use of this false passport. In accordance with usual court practice, the criminal charges against her were remanded without plea pending the outcome of the appellant's refugee case. She understood that if she had been found to be a refugee by the Authority hearing her first appeal the charges would be dropped. However, if found not to be a refugee, the appellant could be expected to be prosecuted and, if found guilty, sentenced to a term of imprisonment. The appellant's immediate concern became the outstanding criminal proceedings as she was due to appear the following month in the Manukau District Court.

[24] Prior to the court appearance in early 2009 the appellant's emotional state deteriorated substantially. She was at a loss to understand why she was not believed by the RSB or the Authority in the first appeal. She resolved that as she was not believed then she would go to court, plead guilty, go to prison and then be deported back to Iran. She believed that by doing this she would be imprisoned in Iran and show the New Zealand authorities that they were wrong to dismiss her claim.

[25] The appellant went to her next hearing at the Manukau District Court in early 2009 determined to plead guilty. However, her criminal lawyer and her support group comprising her NZ sister and a New Zealand couple who had become close to her, EE and FF, were imploring her not to plead guilty and to think about what she was proposing to do. In the end, the appellant relented and agreed not to enter a plea on that date.

[26] Approximately two days later, at EE's suggestion, the appellant's family in Iran were contacted. When EE told her father that she was facing a term of imprisonment in New Zealand and after that could be deported back to Iran, her father pleaded over the telephone for EE to do everything to make sure she did not come back to Iran. He said it was not safe for her there and that he should do everything he could. The appellant had a conversation with her father in which she was very upset with him. He was telling her to think about her decision to plead guilty. Both the appellant and her father were crying and it was a very emotional conversation.

[27] Five days later, the appellant received a further telephone call from her family at her NZ sister's home. On this occasion she was informed by her family that a month earlier the family had been summonsed to the *Ershad* (the Ministry for Islamic Guidance) office attached to the customs office in X. They were told that it was to obtain clearance for a parcel that had been received. The appellant's parents went to X as requested and were surprised to be informed by an *Ershad* official that a parcel containing a CD, pamphlets, photographs and the note from the appellant to BB, all relating to Christianity, had been seized. The *Ershad* official said that it was clear from this material that the appellant had abandoned Islam and become an apostate and was now trying to proselytise and convert her sister. The *Ershad* official informed the appellant's parents that the matter had now been forwarded to the *Ettela'at* (intelligence service) and security officials and that a file had been opened against the appellant. The official indicated that should she return to Iran she would be arrested and punished.

[28] The appellant was shocked to hear this news. The appellant's parents explained that they had not mentioned this to the appellant previously because, while they had been intending to tell her what had happened at the *Ershad* office, when the appellant informed them that her first refugee case had been dismissed they decided that they would not burden her by revealing this further piece of information. However, now aware from the telephone conversation with EE five days earlier that the appellant was seriously contemplating returning to Iran, they felt that they could not keep this information from her any longer.

[29] In mid-2009, elections were held in Iran. Mahmoud Ahmadinejad was controversially declared the victor. Many people believed this was a 'rigged' election. The appellant's NZ sister received a text from a friend advising that demonstrations were being held in downtown Auckland to protest this. Wanting to show their support for people in Iran and their opposition to Ahmadinejad the appellant, her sister and her sister's friend went to this demonstration. In all, the appellant attended four or five demonstrations in June/July 2009. During these demonstrations people were taking photographs and videos of them.

[30] The appellant is now very concerned about returning to Iran. She believes she will be arrested upon arrival because *Ershad* have created a file against her. They know that she has become an apostate and has been attempting to convert her sister. Furthermore, video footage of her participating in the demonstration has been posted on YouTube and picked up on a number of other web media. She has no doubt that the Iranian authorities in New Zealand would be aware of her participation in this demonstration and that this would be made known to the authorities in Iran. She is also frightened that her brother will make good his threat to harm her.

### **Evidence of the appellant's NZ sister**

[31] The Authority heard from the appellant's NZ sister who has been in New Zealand since 2001 and who, along with her husband was recognised as a refugee. She was granted refugee status on the basis of her having converted to Christianity in Iran and the authorities' belief that she was attempting to proselytise neighbours.

[32] She confirmed her sister had been living with her from early 2008 until very recently. The appellant's sister confirmed that she had on a number of occasions sent parcels from New Zealand to Iran and included in these parcels, on at least



two occasions, Christian material intended primarily for the appellant. She told the Authority that on these occasions the parcels had passed customs without any difficulties. She produced a consignment note for one such parcel sent in 2005.

[33] The appellant's NZ sister confirmed that she and the appellant did post three parcels in 2008 as the appellant had stated, one of which contained Christian material from the appellant. This was intended for their sister, BB, with whom the appellant was particularly close.

[34] The appellant's sister confirmed that their family had told them that two of the parcels had been received but that one had not. They were later told that this had been intercepted by the *Ershad* and the Christian material found. Prior to finding this out, she had made a telephone call to the New Zealand courier organisation enquiring as to its whereabouts. She told the Authority that the New Zealand courier organisation employee advised her that their records showed that it had not been received in Iran at that time.

[35] The New Zealand sister confirmed that she had heard her brother threaten the appellant in the way the appellant claimed as the conversation was audible on speakerphone. She believes that he will carry out his threat because he has become "brainwashed" by the regime as a result of his conscription. The appellant's sister told the Authority that AA has now refused to talk to her (the NZ sister) because of her role in converting the appellant to Christianity in New Zealand.

### **Evidence of CC**

[36] The appellant heard from CC. CC is an Iranian national and has been living in New Zealand for a number of years along with his brother, both of whom have converted to Christianity. He explained that he has returned to Iran on two occasions, staying for months at a time.

[37] His first trip back was approximately three years ago and he remained for 10 months. He went to the Central Christian Church in his home city in order to pray. The priest of the church told him that this was not possible. He explained that the Iranian government had told him that they should not take any Muslim converts and had to inform the authorities of any Muslim convert who came to the church. The priest advised CC to attend a house church instead.

[38] Approximately three or four months into his first trip he met a member of a house church who informed him that she had been detained for two days and questioned about her own Christian practice, the identity of people in her house church and what they were doing. She also told him that the intelligence services questioned her about him and his family and that his name was on a list of known practising converts. He also heard of a church member who was arrested and was required to give an undertaking not to talk about Jesus.

[39] His most recent trip to Iran was in late 2008 to early 2009. CC located a number of house churches in his home city and attended them throughout his time in Iran.

[40] While he encountered no difficulties during his trips, he was aware that the Christian community lived in fear. Although 90 per cent of the Iranian population were decent and gave the Christian community no difficulties, 10 per cent held extremist views and would attack and hurt Christians. He met a priest whose house had been fire-bombed and his wife and daughter killed.

[41] He explained that most members of his family have converted to Christianity and had established a house church in the family home. However, they were very careful. For instance they made it very clear to their children that they should not talk about Jesus while at school.

[42] CC explained that his family and other members of the Christian congregation generally obtained their material from America. There were two satellite television channels that were broadcast into Iran from America. The American channels had various Christian programmes showing interviews, singing, prayers and Bible study sessions. These channels clandestinely supplied material to Christian groups in Iran. CC explained that he was aware of Christian material being sent to Iranian converts through the ordinary international post and that sometimes this material was received without incident while on other occasions it was detected and confiscated. He knew this because he saw talk-show programmes on the American Christian television channels during which people would sometimes telephone from Iran and enquire of the whereabouts of Bibles and other Christian material which they had ordered from the channel. At this point the call would be redirected so that the viewers could not hear the conversation but it was clear that the television channels were organising the shipping of Christian material to Iran clandestinely.

[43] While on these trips he met a number of Christians who had themselves been or who had heard of other Christians who had been arrested for possession of Christian material and their Christian material was confiscated.

[44] CC explained that he had been in recent contact with his family. They explained that the situation for Christians in their city had worsened following the recent post-election violence. Two people who attended their house church had been arrested and had not been heard from. The family was very worried and has now closed down the house church at their home pending developments. However, no member of his family had as yet been arrested.

#### **Evidence of DD**

[45] The Authority heard from DD. He is a Pastor of the appellant's church. DD told the Authority that he had been in regular discussions with CC and his brother about the situation in Iran. He had also carefully followed the situation of Christians in Iran and had obtained some country information from the Internet relating to the situation in Iran. He produced a bundle of country information which was received by the Authority.

[46] DD confirmed that although he had not personally provided the appellant with pamphlets she sent to Iran, the church attended usually had pamphlets in Farsi on a table to which the appellant and other Iranian members could have free access.

#### **Evidence of FF**

[47] The Authority heard from FF. EE and FF met the appellant through her NZ sister whom they met at a church outreach. Over time FF and the appellant have become friendly and they have spent much time with the appellant, her NZ sister and brother-in-law.

[48] FF told the Authority that even before the court appearance in early 2009 she had become aware through casual conversations with the appellant's NZ sister that the appellant and the NZ sister had sent some parcels back to the family in December. She was also aware from these conversations that the appellant had sent some Christian literature for one of their sisters in Iran.

[49] FF confirmed that she was present during the telephone conversation with the appellant's father following her court appearance in early 2009. She said the

appellant's father made a plea that they do everything that they can to avoid having the appellant sent back to Iran. She described it as a very emotional conversation.

[50] FF told the Authority that she was first told that the parcel with the Christian material had been intercepted by the appellant's brother-in-law after that telephone conversation. She described both the appellant and the appellant's sister being visibly "disturbed" by this news. She understood that the sister had sent similar things in the past without problems and that they were at a loss to understand why this had happened on this occasion.

### **Evidence of EE**

[51] The Authority heard from EE. EE confirmed that he and his wife have become close to the appellant, her sister and her brother-in-law and that he acts as a kind of surrogate father figure to her.

[52] He explained that the appellant was in a very bad emotional state when she went to the Manukau District Court in early 2009. She was very upset that her first appeal had been dismissed. She told him that she wanted to just go somewhere and die. He felt her pleading guilty was not in her best interests given her emotional state at that time and pleaded with her lawyer to have the matter adjourned. Eventually, after much persuasion, the appellant agreed to this course of action.

[53] EE explained that it was his idea that contact was made with the appellant's father. He said that he wanted to speak to the appellant's father to make the appellant's father understand just how precarious her situation was in New Zealand and that this was the reason for the telephone call being made. EE told the Authority that since the appellant's first appeal had been dismissed, he and his wife had been doing everything they can to help the appellant come to terms with the fact that she may have to go to prison in New Zealand and that she would then be returned to Iran. EE told the Authority they were helping her use her faith to deal with this reality but that there was a limit to what he could do and that he felt some comforting words from her own father might help.

[54] The appellant and her father had a very bitter telephone conversation. EE said that the appellant was telling her father that she did not love him and that both were crying and it was a very distressing call. He confirmed the appellant's father pleaded with him to do everything he can to avoid having her sent back to Iran.

[55] He confirmed that subsequent to this telephone conversation he learnt from the appellant's brother-in-law that one of the parcels had been sent back and opened by the authorities. This had contained Christian material and this was a matter of concern to both the appellant and her NZ sister.

### **Submissions and documents**

[56] On 31 August 2009, the Authority received a written memorandum of submissions from Mr Mansouri-Rad of the same date. Attached to this memorandum was a witness statement from the appellant's NZ sister and CC. During the course of the hearing the Authority has received the following:

- (a) Affidavit from Lynn Hughes, Barrister & Solicitor attached to the Public Defence Service at Manukau who represented the appellant at the hearing in early 2009. She confirms she advised the appellant that, given the fact her refugee appeal had been refused, she had no viable defence to the charge of possession of a false passport and that if she pleaded guilty on that occasion she would receive a term of imprisonment and would be remanded in custody immediately upon entering a plea. Ms Hughes confirms the appellant instructed her to enter a guilty plea. However, the appellant was very distressed, to the point where Ms Hughes was concerned about whether she was fit to enter a plea. Two days prior to the court hearing EE had contacted her to advise her that the appellant's supporters had concerns about her mental health. Ms Hughes states that the appellant was sobbing throughout the court appearance and states "I would describe her behaviour as bordering on hysterical". In the end, she decided that as a result of concern for the appellant's mental health she persuaded the court to remand the matter without plea for a further two weeks. Ms Hughes states the appellant was clutching a Bible throughout that morning in court.
- (b) A bundle of country information from DD.
- (c) Four photographs of the appellant at a demonstration in Auckland following the disputed recent election in Iran, taken from a YouTube video.
- (d) CDs containing video footage of the appellant at a demonstration, taken from YouTube.

- (e) Original consignment notes of the three parcels sent from New Zealand to Iran in 2008.
- (f) Original consignment note for the parcel sent from the appellant's NZ sister to the appellant's family in 2005.
- (g) Copy alert from Reza Fazeli regarding the arrest of persons participating in demonstrations overseas upon their return to Iran.
- (h) Copy of email correspondence between Mr Mansouri-Rad and the New Zealand courier organisation regarding the delivery of the two parcels received by the appellant's family.

[57] The Authority also provided counsel with a copy of the Norwegian Country of Origin Information Centre ("the LanInfo Report"): *Christians and Converts in Iran* (10 June 2009).

[58] At the conclusion of the hearing on 3 September 2009 Mr Mansouri-Rad made lengthy closing submissions. He submitted that there was much documentary and oral witness evidence corroborating the appellant's account and that she should be found credible. There can be no doubt that parcels were sent by the family in New Zealand to the family in Iran both prior and after the appellant's arrival in New Zealand as is established by the consignment notes. The emails from the New Zealand courier organisation indicate that at least one of their parcels has not been delivered to the appellant's family in the fashion that the other two have.

[59] Mr Mansouri-Rad submits that given that the appellant's conversion was known to the Iranian authorities, and her attempts to proselytise her sister there is a real chance she could receive harsh punishment upon return. Her risk has been compounded by the fact that her sister is also suspected by the Iranian authorities of proselytising and was granted refugee status on that basis. Furthermore, there is, he submits, no doubt, that the Iranian authorities would be aware of her participation in the demonstration and that given the clampdown on demonstrators the authorities would view this as further proof that the appellant was deserving of harsh punishment. Mr Mansouri-Rad points to allegations made that persons detained following the recent post-election violence have been tortured, raped and killed while in detention. He submits that the appellant would, because of her negative religious and political profile and the patriarchal structure of the Iranian

criminal justice system, receive no assistance or protection from the authorities from the harm threatened by her brother.

[60] Finally, Mr Mansouri-Rad submits that any one of the bases is sufficient to create a well-founded fear of the appellant being persecuted but that, taken cumulatively, the threshold is easily crossed.

[61] On 7 September 2009, the Authority received a further letter from Mr Mansouri-Rad enclosing emails of the URLs for the web pages where the videos recording the appellant's attendance at the demonstrations in June 2009 could be located on YouTube. Also enclosed was an email from the New Zealand courier organisation dated 3 September 2009 regarding the delivery of the second and third parcels. The email states that generally a parcel is scanned as at the date it is delivered at the addressee's physical address by the courier but that, on rare occasions, a parcel can be scanned as delivered when it is handed over to a post office for collection by the addressee. On 7 September 2009 the Authority provided Mr Mansouri-Rad with the reference number written on the back of the receipt issued by the New Zealand in respect of the first parcel but no further information on this has been received as at the date of this decision.

## **THE ISSUES**

[62] 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."

[63] 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**

[64] After careful reflection on this matter the Authority accepts the appellant's account as credible. Having closely observed the appellant over a day and a half of evidence and noting all of the credible corroborative oral and documentary evidence provided, this panel is satisfied that she has been telling the truth.

[65] There can be no doubt that this appellant has genuinely converted to Christianity. Her sister and brother-in-law remain committed Christians and her close support network consists of Christians who have given credible evidence that she has a real and deep belief in Christianity and a steely determination to rely on her faith in times of hardship. That this is so was clear to the Authority from her demeanour.

[66] There is no doubt that the three parcels were sent to Iran in 2008 as she claims because this has been corroborated by:

- (a) the consignment notes that were produced;
- (b) the appellant's NZ sister, EE and FF, each of whom gave credible evidence on this point.

[67] Moreover, there is no good reason for holding that the evidence surrounding including Christian material in one of them is simply an attempt to manufacture the basis for a second claim because:

- (a) the parcels were sent prior to the Authority reaching its decision on the first claim;
- (b) the posting of such material took place against a history of the appellant's NZ sister doing exactly the same, without incident, in the years *prior* to the appellant's even arriving in New Zealand. That this was so was also supported by documentary evidence in the form of the 2005 consignment note which shows the parcel being sent to the appellant's family address;
- (c) the posting of the Christian material in 2008 is entirely consistent with the overall nature of their intra-sibling relations stretching back a number of years. In addition to the appellant's NZ sister sending



Christian material to Iran, the appellant's first refugee appeal, the appellant's brother-in-law and sister confirmed that they had spoken to the appellant about Christian matters while she was still in Iran.

[68] Importantly, credible documentary evidence establishes that the first parcel could plausibly have been intercepted as the appellant claims. Careful examination of the three consignment notes for the parcels sent in 2008 shows that, in respect of the first parcel, the official procedure followed was different from that followed in respect of the second and third parcels. In particular, there has been a failure, by the agent of the New Zealand courier organisation, to complete the official declaration stating that they have ensured that there is no prohibitive material contained in the parcel and discussed this with the sender. Whereas in respect of the two parcels that the appellant claims have been received, this declaration was completed and signed by an agent of the New Zealand courier organisation – for the parcel that they claim was seized it was not completed.

[69] This is an extremely plausible explanation for the seizure of the parcel and something which was entirely beyond the control of the appellant. It stands to reason that receipt from overseas of a parcel which did not have its official declaration completed would attract the suspicion of the mail handlers and therefore is likely to have been opened. In the context of Iran, should this happen and the parcel contained prohibited Christian material, it is highly probable that this would have been referred to the *Ershad* office attached to the Customs Department as the appellant claims.

[70] The Authority is aware that the email received from the New Zealand courier organisation stating that they have been advised by an Iranian courier organisation that the first parcel was received in Iran in late 2008 and had been awaiting uplift by the appellant's family since that date. However, this simply does not make sense. The same email correspondence states that the Iranian courier organisation has indicated that the second and third parcels were delivered at a later date to the first parcel. If it is true that the first parcel had been received on the date indicated, then there is no good reason why this would not have been delivered and received by the appellant's family with the other two parcels, given the addressee was identical on all three parcels.

[71] Mr Mansouri-Rad (and indeed the appellant in her evidence) suggested that the information coming from Iran regarding the first parcel being received cannot be relied on. They submit that the Iranian courier organisation is unlikely to admit

to the New Zealand courier organisation that prohibited material has been seized from this parcel because this may engender enquiries as to the nature of the prohibited material. It would be a matter of some embarrassment and concern to the Iranian authorities for them to disclose to the New Zealand courier organisation that the “prohibited material” consisted of no more than Christian pamphlets, something innocuous in the New Zealand context. The Authority accepts this is a plausible explanation.

[72] Weighing everything in the round, the Authority is satisfied that the material information from Iranian courier organisation cannot be safely relied on.

[73] As a result the appellant’s evidence is accepted in its entirety.

### **A well-founded fear of being persecuted**

[74] Having accepted the appellant’s account, the Authority is satisfied she has a well-founded fear of being persecuted. The Iranian authorities are aware that she has converted to Christianity as a result of their seizing photographs showing her baptism. She has also however, attempted to proselytise her sister and sent her Christian material to this effect. Moreover, the appellant’s sister and brother’s profile must be taken into account. Examination of their grants of refugee status reveal that that they fled Iran while under active investigation for proselytizing to a neighbour and that the issue was, at the time of the decision granting them refugee status, their prosecutions were before the Revolutionary Court.

[75] No useful purpose is served by the Authority embarking in this case upon another review of country information about the position of Christian converts in Iran though Mr Mansouri-Rad urges this course. He submits that the Authority’s position on Iranian Christians – namely that those who are ordinary converts and not church leaders and who do not seek to proselytise have no well-founded fear of being persecuted (see for example, *Refugee Appeal No 74911* (1 September 2004), *Refugee Appeal No 75368-71* (12 July 2005), *Refugee Appeal No 75376* (11 September 2006), *Refugee Appeal Nos 76083 76084 and 76085* (27 June 2008)) – is untenable. The Authority declines to do so in the circumstances of this case because it is satisfied that the appellant is unlikely to be considered simply as an apostate given her attempt to convert her sister, particularly when her conduct in this regard is viewed against the conduct of her sister and brother-in-law.

[76] Mr Mansouri-Rad has filed country information with the Authority suggesting that there is a heightened degree of fear amongst Christian communities as a

result of the post-election violence. This was amply corroborated by the evidence of CC who told the Authority that his own house church in his family home had shut down because of this fear. There is evidence of arrests of Iranian Christians – see, for example, *Iran tightens Grip on Christians as unrest Rolls Compass* Direct News (11 August 2009). It is difficult to say whether these arrests are part of a wider campaign by the conservative establishment to blame “foreign interference” for the civil unrest or are unrelated. Nevertheless, the heightened state of insecurity in Iran generally at the present time is also a matter which cannot be ignored in this case and adds to the general risk the appellant faces.

[77] Considering these factors cumulatively, the Authority is satisfied that the appellant has a well-founded fear of being persecuted on return. The Iranian authorities know of her apostasy as photos of her baptism ceremony have been seized. They know she has encouraged her sister to embrace Christian beliefs as they have seized her letter and Christian material. She is likely to be perceived not simply as an apostate, but also as a proselytizing Christian. A file having been created by *Ershad* and sent to the *Ettela’at*, it is likely that she would be arrested at the airport and interrogated. The Authority has no doubt that she is unlikely to recant her Christian faith in the face of the questioning. The LanInfo report , at p11, states:

“Problems with the Authorities arise primarily in relation to outgoing and evangelical activities aimed at Muslims. All Christians (whether born Christians or converts) who evangelise in relation to Muslims and, for example, hand out Christian literature risk problems in the workplace and local community. If the matter is reported, the person in questions risks being tried on serious charges.”

[78] Country information makes clear that the conditions in Iranian prisons carry with them a risk of incommunicado detention, physical mistreatment including torture. The Authority is also mindful that allegations have been made that female detainees have been raped. As Amnesty International *AI report: Iran* (2008) states:

“Torture and ill-treatment of detainees were common, facilitated by prolonged pre-charge detention, denial of access to lawyers and family, and a longstanding pattern of impunity for perpetrators.”

[79] See also, Human Rights Watch *World Report: Iran 2008* (January 2009) at p1 and United States Department of State *Country Reports on Human Rights Practices 2008: Iran* (25 February 2009) at section 1a.

[80] For these reasons the Authority is satisfied the appellant has a well-founded fear of being persecuted. The first principal issue is answered in the affirmative. It is not necessary to consider what risk if any she faces as a result of her

participation in the demonstrations in New Zealand or the risk to her from her brother, AA.

**Convention ground and nexus**

[81] The appellant's predicament is plainly being contributed to by her religion. The second principal issue is also answered in the affirmative.

**CONCLUSION**

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

"B L Burson"

B L Burson  
Chairperson