

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

AT AUCKLAND

REFUGEE APPEAL NO 76160

Before: C M Treadwell (Member)

Counsel for Appellant: D Mansouri-Rad

Appearing for the Department Of Labour: S Houliston

Date of Hearing: 12, 13 and 14 May 2008

Date of Decision: 11 September 2008

DECISION

INTRODUCTION

[1] This is an appeal by an Iranian man in his late thirties, against a decision of a refugee status officer under s129L(1)(b) of the Immigration Act 1987 ("the Act"), ceasing to recognise his grant of refugee status, following a finding that it may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information (hereafter referred to as "fraud").

[2] The crux of the present proceedings is that, since being granted refugee status in August 2000, the appellant has been issued with an Iranian passport by the Iranian embassy in Wellington, which records that the appellant left Iran legally in 1999, not illegally, as he had claimed in his application for refugee status. Further, the appellant returned to Iran in 2005 for three months, without difficulty.

[3] The appellant agrees that he obtained an Iranian passport from the embassy and that he visited Iran for three months in 2005. He says, in explanation, that the reference to a 'legal departure' in his passport is the result of a bribe he paid through his brother to have Iranian immigration records amended and to facilitate his passage through the airport. As to his return in 2005, he says that the reformist regime of Ayatollah Khatami at that time encouraged the return of exiled Iranians and, further, the passage of time has diminished the interest of

the Iranian authorities in him, to the point that he took the risk that it would be safe to return, and that this proved to be the case.

THE 'CANCELLATION' JURISDICTION

[4] Section 129L(1)(b) of the Act provides that the functions of refugee status officers include:

“...determining whether a decision to recognise a person as a refugee was properly made, in any case where it appears that the recognition given by a refugee status officer (but not by the Authority) may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information and determining to cease to recognise the person as a refugee in such a case if appropriate.”

[5] Thus, a refugee status officer has a duty to determine whether to cease to recognise a person as a refugee if it appears that the original grant of refugee status by the Refugee Status Branch may have been procured by fraud.

[6] Where a refugee status officer ceases to recognise a person's refugee status, that person may appeal to the Authority. Section 129O(2) of the Act provides:

“A person who is dissatisfied with a decision of a refugee status officer on any of the matters referred to in section 129L(1)(a) to (e) and (2) in relation to that person may appeal to the Refugee Status Appeals Authority against the officer's decision.”

[7] There are two elements to the enquiry. The Authority must first determine whether the grant of refugee status may have been procured by fraud. If so, it must determine whether the person should cease to be recognised as a refugee. That determination is, in effect, the Authority's usual forward-looking enquiry as to whether, today, the appellant faces a real chance of being persecuted for a Convention reason on return. That second stage of the enquiry is engaged, however, only if the first element – that the grant of refugee status may have been procured by fraud – is established.

[8] Relevant to the present appeal are:

- (a) the appellant's refugee claim;
- (b) the granting of refugee status;
- (c) the subsequent 'notice of intended determination concerning loss of refugee status'; and

- (d) the cancellation jurisdiction of the Refugee Status Branch and the Authority.

THE APPELLANT'S REFUGEE CLAIM

[9] The account which follows is a summary of the evidence given by the appellant to the Refugee Status Branch in August 2000, on which refugee status was granted.

[10] The appellant is the son of a former employee of the Shah. His father worked in the palace before the 1979 revolution and, afterwards, was detained, tortured and kept under surveillance after his release.

[11] The appellant was in his late teens during the late 1980s. He was a supporter of the moderate Ayatollah Montazeri, whose policies appealed to young people but who was removed from power by Ayatollah Khomeini.

[12] In the 1990s, the appellant worked in a bookshop. His employer was also a moderate and had been in trouble with the authorities for dealing in books by Dr Shariati, an exiled Iranian cleric.

[13] In 1994, the appellant married and attempted to get a passport, in order to go on his honeymoon. His application was declined, because of his father's background. Shortly afterwards, the family home was searched by the authorities and the family members questioned.

[14] Between 1994 and 1998, the appellant intermittently distributed anti-government pamphlets for his brother-in-law. He did so on approximately 12 occasions. The only difficulty he encountered during this period occurred in 1996, when the authorities searched the family home again and found two books by Ayatollah Montazeri. The appellant was questioned and released.

[15] The appellant was again questioned in 1998 (and mistreated) when his brother-in-law came under scrutiny and had to flee the country. After being interrogated, the appellant was required to report regularly to the Revolutionary Court.

[16] In 1998, the appellant bought a share in the bookshop where he worked.

[17] In July 1999, the appellant became involved in the student protests in Tehran. He made pamphlets and placards in his shop, for use by the protesters. Some days into the protests, however, pro-government 'extremists' broke into the shop, causing the appellant to flee. Knowing that they would find half-made pamphlets and placards, as well as soft drink bottles for making Molotov cocktails, the appellant resolved to flee.

[18] After hiding with his wife's uncle, the appellant escaped into Turkey by land, crossing the border illegally. Once there, he found an agent who organised his travel to New Zealand.

[19] The appellant applied for refugee status on arrival at the airport in December 1999.

GRANT OF REFUGEE STATUS

[20] The appellant was interviewed by the Refugee Status Branch on 12 April 2000 in respect of his application and a decision granting him refugee status was issued on 31 August 2000.

[21] The appellant lodged an application for permanent residence on 3 October 2000. He was granted permanent residence in November 2000.

[22] On 28 March 2007, nearly seven years later, a refugee status officer issued a 'notice of intended determination concerning loss of refugee status' to the appellant.

NOTICE OF INTENDED DETERMINATION CONCERNING LOSS OF REFUGEE STATUS

[23] In brief, the notice advised the appellant that the refugee status officer intended making a determination which might result in the loss of his refugee status. The grounds relied upon were, in essence, that:

- (a) the appellant appeared to have departed Iran via Mehrabad airport in September 1999, using a genuine Iranian passport, contrary to his claim to have left illegally by land, to Turkey;

- (b) the appellant returned to Iran in March 2005 on a genuine passport, obtained from the Iranian embassy in Wellington, and remained there until June 2005, despite having asserted in his refugee claim in 2000 that he would be executed if he returned to Iran.

[24] In view of these concerns, the refugee status officer intended to determine whether or not the refugee status of the appellant may have been obtained by fraud and, if so, whether it should be cancelled.

[25] Having interviewed the appellant on 25 June 2007, the refugee status officer issued a decision on 13 November 2007, concluding that:

- (a) the appellant's refugee status may have been procured by fraud; and
- (b) he ought to cease to recognise the appellant's refugee status.

[26] A decision was duly delivered to that effect, against which the appellant now appeals.

APPELLANT'S CASE ON APPEAL

[27] The account which follows is a summary of the evidence given by the appellant, at the appeal hearing. It is assessed later.

[28] The appellant maintains that the account he gave in respect of his original claim to refugee status was truthful. He rejects the suggestion that his claim was procured by fraud. He does, however, concede that:

- (a) he was issued an Iranian passport by the Iranian embassy in Wellington in June 2003;
- (b) he returned to Iran in 2005, as alleged.

[29] He says, however, that none of this establishes that his refugee status "may have been procured" by fraud.

Events after the grant of refugee status

[30] As well as recounting the events leading up to the grant of refugee status, the appellant gave evidence as to events since then.

[31] In 2001/2002, the appellant's mother began to suffer from depression. The appellant attributes it to the fact that many of her children had left Iran. One of his sisters had been granted refugee status in Australia, a brother was applying for it in England and another brother was living in Greece. The appellant was concerned for his mother's health but did not, at that time, take any steps to visit her.

[32] In 2002/2003, the appellant became aware that, under the more moderate regime of Ayatollah Khatami, the Iranian government was extending a public invitation to Iranians who had sought refugee status overseas, to return without fear of reprisals. He heard this news both from the BBC and also from other Iranians living in New Zealand. In consequence, he decided to apply for a passport, though he had not formed any specific plan to return at that time.

Passport

[33] According to the appellant, he first looked at the Iranian embassy's website. There, he saw that the standard application form required him to give the date of his last lawful departure from Iran.

[34] Concerned that he could not do this, the appellant called his brother AA by telephone. AA was an agent for a large company in Iran and was well-connected in government circles. By paying a bribe of approximately NZ\$10,000, AA was able to arrange for the necessary letter to be sent to the embassy in Wellington.

[35] The appellant does not know the name of the official with whom his brother dealt. All he knew was that AA rang him, to say that it had been arranged and that he should put a particular date in the application form. The date given was approximately a month after the appellant's actual departure and he was told that this was the date on which a file had been opened on him.

[36] On submitting the application form to the embassy, the appellant was required to state why he was in New Zealand. He wrote that he had been granted permanent residence here, following the grant of refugee status. As to the details of any previous passport, he simply left that space blank. He submitted the application by mail and, after complying with a request that he write a letter of contrition and remorse for having sought refugee status, he received his passport. It did not contain an Iranian exit visa but the appellant was unaware of the need for this and so did not notice.

[37] In June 2003, the appellant was issued a New Zealand passport.

[38] In 2004, the appellant's wife returned briefly to Iran, with their children. She was homesick and wished to visit her family. She did not experience any difficulty entering Iran or leaving it.

The trips to Iran

[39] The appellant was encouraged by the lack of difficulty experienced by his wife, the fact that he had obtained a passport himself and the news he had heard that exiled Iranians were able to return without reprisals.

[40] In spite of having both passports, however, he did not return to Iran himself until March 2005. Before leaving New Zealand, his brother arranged through a relative who worked at Mehrabad airport to give the appellant advance notice of a day on which a friendly immigration official would be on duty. Such a day was advised to the appellant but, just as he was to board the aircraft in Thailand, he received word from his brother that the person was unexpectedly not on duty. The appellant was told to wait for further advice and he deliberately 'missed' the flight, travelling the following day after he had received word that the person was back on duty. On arriving in Iran, he went to the person in question for processing and entered the country without difficulty.

[41] Three months later, in May 2005, the appellant attempted to leave Iran. At Mehrabad airport, however, he was stopped and was told that he could not leave without an exit permit. He was then taken to a room where he was questioned, before being detained overnight at the airport.

[42] The following day, the appellant was taken to the Security Department of the Passport Office, where he was questioned again. He was asked about his activities in New Zealand, but not about his refugee status or his activities in Iran.

[43] On being released, the appellant was required to report to the Passport Office every day for the next six weeks, where he would sometimes be questioned and harassed for several hours.

[44] To resolve his situation, the appellant took his New Zealand passport to the Ministry of Foreign Affairs in Tehran. They made enquiries with the New Zealand embassy as to its genuineness. Thereafter, they sent a letter to the Passport Office, confirming that he was a New Zealand resident.

[45] The appellant still found it impossible to obtain an exit permit on his own, and so enlisted the help of a travel agent. The agent was able to arrange for an exit permit to be issued, in return for a bribe of 5 million *tomans* to an official. Again, AA paid the bribe and the permit was issued.

[46] In June 2005, the appellant was finally able to leave Iran. On arrival back in New Zealand, he was searched by Customs officers, who found his Iranian passport.

Documents and submissions

[47] In support of his appeal, the appellant submits:

- (a) a letter dated May 2005, from the Iranian Ministry of Foreign Affairs to the Passport Office, confirming that the appellant "holds permanent residency" of New Zealand;
- (b) various items of country information.

[48] The respondent has provided the Authority and the appellant with a copy of the Refugee Status Branch file relating to the 'notice of intended determination concerning loss of refugee status', including a copy of the file relating to the appellant's original claim for refugee status.

[49] The Refugee Status Branch file contains a number of documents which the appellant had submitted at first instance, several of which require to be recorded:

- (a) Brain scan and other medical records, dated early 2005, in respect of the appellant's mother;
- (b) Travel itinerary prepared in February 2005 for the appellant's travel from New Zealand to Iran, via Sydney and Bangkok, and return;
- (c) The appellant's unused boarding pass for the flight from Tehran to Bangkok in April 2005;
- (d) The appellant's Iranian passport, containing an exit permit issued in Iran in June 2005.

[50] Both counsel have made oral submissions and have tendered both opening and closing submissions in writing.

ASSESSMENT

[51] Where an appellant disputes that his or her refugee status may have been procured by fraud, it is necessary to determine, at the outset of the assessment, the facts which are to be relied upon in determining whether the 'may have been procured' threshold is established. That will generally require an assessment of the credibility of the appellant's explanation.

Whether the appellant's explanations are credible

[52] On its own, the obtaining of a passport is not of significance. There is clear country information that, during the 2001-2005 period when Ayatollah Khatami was in power, his more liberal and tolerant regime actively promoted the safe return of exiled Iranians. In an interview with the newspaper *Ettelaat* on 20 September 2001, Dr Mohammad-Ali Hadi, the then-Deputy Consul of the Minister of Foreign Affairs stated (as translated):

"Deputy Consul Office provides service including issuing birth certificate and passport to all Iranians regardless of their political or ideological views; we mean all Iranians who have resided or sought asylum in foreign countries, or in some way have confronted the Islamic Republic of Iran. This has been an effective policy up to now tens of thousands of refugees have received passport or returned to Iran. I must add that the Iranians, who have in some way confronted the Islamic Republic of Iran in foreign countries, are less than half percent."

[53] And see the United Kingdom Home Office *Country Report: Iran* (October 2003), which noted:

"6.105. Government attitudes to the question of returnees people who left illegally, failed asylum seekers etc seems to have become more pragmatic. In September 2002 the deputy foreign minister announced that Iranians who have obtained the citizenship of foreign countries with Iran's prior agreement can, once again, become Iranian citizens.... and further that the question of illegal exit had been resolved.

6.106. In the case of returned asylum seekers it has been reported by observers that they have seen no evidence that failed claimants, persons who have illegally exited Iran, or deportees face any significant problem upon return to Iran.... Several times in the recent past, senior government officials have declared that all Iranians living abroad are welcome to return home without fear of reprisal.... and the Foreign Ministry's Consular Department has confirmed that applying for asylum abroad is not an offence in Iran."

[54] As to the existence of the policy during Khatami's rule, of welcoming returning Iranians without reprisals, see also *Refugee Appeal No 75974* (25 September 2007).

[55] The end of that era occurred in June 2005, with the election of hardline President Ahmadinejad. See the article “Arrest and Exit Ban: A Message to Expatriates” by Masoud Behnoud, on the BBC’s website www.BBCPersian.com, as from 5 July 2005, which referred to the June 2005 elections and stated:

“After the new government took office winning the presidential election over the reformists, there were many signs of the new government’s efforts suggesting that the era of flexibility and tolerance against opposition and critics, and being agreeable to cultural exchange and migrant Iranians’ freedom in entering and leaving their country has ended.”

[56] The country information seems clear that, during this period, passports were able to be obtained by Iranians living overseas, including refugees. Mr Houlston submits that it is implausible that the appellant would have told the embassy that he was a refugee if he did, in fact, apply using the normal application form. While it does seem to have been gratuitous to have done so, it is not significant because he does not assert that anything of consequence flowed from it. He says that, apart from requiring him to write a pro forma letter of apology, the embassy seemed uninterested in it.

[57] What is troubling about the passport is, of course, the ‘legal departure’ entry. The appellant says that it was inserted by bribery, orchestrated by his influential brother in Iran. There is no evidence of this but, in fairness, one would not expect the appellant to be able to produce evidence of it.

[58] It is noted that, in 2003, there was more than one type of application which could be made. A printout of pages from the Iranian embassy website indicates that, *inter alia*, one could apply normally (stating the place and date of legal departure), or one could apply as someone who had departed illegally, in which case a modest fine would be payable and Tehran would need to give approval to the passport being issued.

[59] The appellant says that he simply did not see the second, or any other, option. He saw only the normal application form, which forced him to make arrangements through his brother for the creation of a fake legal date of departure.

[60] Again, there is no direct evidence of this, but there is some support for the truth of the appellant’s assertions in his conduct subsequent to the passport being issued.

[61] First, his account of his travel to Iran included the revelation that he had not been able to catch the flight from Bangkok to Iran because the right person at

Mehrabad airport was not on duty. According to the appellant, he got as far as checking in at Bangkok, and was waiting in the departure lounge when he telephoned his brother to double-check the arrangements. His brother informed him that the person was not on duty and told him to delay his flight.

[62] These events are corroborated by the appellant's passport, which carries a Thai exit stamp for the day of intended departure. That stamp has been cancelled and a fresh exit stamp is present, for the following day.

[63] Granted, the appellant might have simply missed the flight by accident, or the aircraft may have had last-minute mechanical trouble, but it would have taken considerable mental acuity to weave an invented account so neatly around the details evident in the passport.

[64] There is also the further, undeniable point that the appellant returned to Iran on an Iranian passport which did not contain an exit permit enabling him to leave again. His explanation is that he had never had an Iranian passport before, had never left the country legally before and did not realise that he needed an exit permit at all. There is no doubt that the appellant went so far as to attempt to leave Iran without one. That is corroborated by the unused April 2005 boarding pass (still with stub attached), the Ministry of Foreign Affairs letter and the fact that he did arrive back in New Zealand in June, two months after his April attempt to leave. That he had intended to return to New Zealand in April is also confirmed by the itinerary which had been prepared for him by a travel agent in New Zealand before his departure.

[65] Such independent evidence as there is (the Thai departure stamps, the lack of an exit permit in the passport before June 2005, the Ministry of Foreign Affairs letter, the unused boarding pass and the travel itinerary) are consistent with the appellant's claim to have taken steps to protect himself on his return and his lack of knowledge of the legal departure procedures for Iran. There is no further evidence from the respondent which might suggest that these documents do not in fact have corroborative weight. Having seen and heard the appellant, the Authority concludes that his evidence should be accepted as truthful.

[66] It reaching this conclusion, the Authority is not blind to the ease with which it can be asserted that a 'lawful departure' date was obtained by bribery. In similar vein, the frequent assertions made to the Authority that a bribe was paid to facilitate passage through Mehrabad airport, are also easily capable of concoction.

Both explanations have been advanced in numerous 'cancellation' proceedings which have come before the Authority in recent years. The notion that so many Iranian refugees in New Zealand have contacts at home who know someone bribable, in a position to falsify Iranian immigration records, might be seen as bordering on the implausible. So too the notion that the same number of people can arrange for someone at Mehrabad airport to facilitate their safe entry.

[67] Three points must be made however.

[68] First, the fact that some persons might fabricate an explanation does not mean that all persons do so.

[69] Second, the cynical observer must not lose sight of the 'funnel' effect in similar fact analysis. The more restrictions which exist, through which a group of people must filter, the more that the small pool which emerges at the end will resemble each other. The short point is that there is no evidence of the number of Iranian refugees who attempted to return home during the Khatami era, or the number who were successful in doing so, or the number who found ways other than bribery in which to obtain passports and safe entry, or the number who returned home but were not able to leave again. The aperture through which we are compelled to view Iranian 'cancellation' cases is a small one and the wider picture must be kept in mind.

[70] Third, and most compellingly in this instance, the appellant does not merely make bare assertions. He has produced documentation which tends to corroborate both his lack of knowledge of Iranian 'lawful departure' procedures and his having taken steps to arrange safe passage through Mehrabad airport.

[71] Returning to the finding that the appellant's evidence is accepted as credible, it is now necessary to address the first of the two limbs raised by the respondent's Notice.

Whether recognition as a refugee may have been procured by fraud

[72] The threshold of 'may have been procured by fraud' is a low one. It does not require the Authority to find that refugee status was procured by fraud. Instead, as was said in *Refugee Appeal No 75563* (2 June 2006), at [20]:

"...the term 'may have been' signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion. Beyond that it is not realistic to define an expression that is deliberately imprecise."

[73] Notwithstanding that the threshold is low, this is an instance in which the evidence leads the Authority to conclude that fraud did not occur. The Authority is satisfied, on the evidence, that the explanations advanced by the appellant adequately explain both the 'lawful departure' date and his ability to return in 2005. In consequence, it cannot be said that refugee status may have been procured by fraud. It follows that the Authority must find that the 'may have been' threshold is not met.

[74] Given that finding, there is no jurisdiction to address the second limb of the test, namely whether it is appropriate to cease to recognise the appellant as a refugee.

[75] It follows that the appeal must succeed.

CONCLUSION

[76] In view of the foregoing, the following determinations are made:

- (a) The evidence does not establish 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;
- (b) The appellant is to continue to be recognised as a refugee.

[77] Consequent upon those findings, the Authority continues to recognise the appellant as a refugee. The appeal is allowed.

"C M Treadwell"

C M Treadwell
Member