

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76263

AT AUCKLAND

<u>Before:</u>	B A Dingle (Member)
<u>Counsel for the Appellant:</u>	D Mansouri-Rad
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	19 & 29 January 2009
<u>Date of Decision:</u>	18 June 2009

DECISION

[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 citizen of the Islamic Republic of Iran. This is his second appeal to this Authority.

INTRODUCTION

[2] The appellant is a man in his early 30s. He arrived in New Zealand on 1 August 2005. He lodged his first Confirmation of Claim form on 3 August 2005. He was interviewed by a refugee status officer for three days in August and September 2005. The appellant was declined refugee status by the RSB on 23 January 2006 on credibility grounds. He appealed to this Authority (differently constituted) and that appeal was dismissed on 26 June 2006 on the ground that his account of events in Iran were not credible and that he did not possess a genuine desire to evangelise the Christian faith.

[3] The crux of the appellant's subsequent claim is that he has a well-founded fear of being persecuted on return to Iran because he has breached a formal undertaking given to the Iranian authorities in 2004 that he would not promote

Christianity and that he would refrain from applying for asylum if he ever travelled abroad. Although that undertaking was made prior to the determination of his first refugee claim, he claims that since that first determination, the authorities have now become aware that he has in fact applied for refugee status in New Zealand and that he has encouraged his sister, MM, to adopt Christianity. He also claims that because he has spent most of the last 10 years living in westernised countries, he will be unable to assimilate back into Iranian society. He also claims (as he did in his first refugee claim) that he will not be able to practise Christianity in Iran as he wishes to do.

[4] The issues to be determined in this case are:

- (a) whether the Authority has jurisdiction to hear this second appeal;
- (b) whether or not the second claim (or part thereof) to refugee status is credible; and, if so
- (c) whether or not the second claim to refugee status is well-founded.

JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL

[5] This is the second occasion on which the appellant has appealed to this Authority, and therefore the Authority must first determine whether it has jurisdiction to hear the appeal.

[6] Neither a refugee status officer nor the Authority has unlimited jurisdiction to receive and determine a further refugee claim after a first claim has been finally determined. Section 129J(1) of the Immigration Act 1987 ("the Act") is headed "Limitation on subsequent claims for refugee status" and sets out the circumstances in which a refugee status officer may receive and determine a second or subsequent claim for refugee status:

"A refugee status officer may not consider a claim for refugee status by a person who has already had a claim for refugee status finally determined in New Zealand unless the officer is satisfied that, since that determination, **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.**"

[Emphasis added]

[7] Where the refugee status officer declines the subsequent claim, or finds that there is no jurisdiction to consider the claim on the basis that the statutory criteria are not met, the claimant has a right of appeal to the Authority. Section 129O(1) of the Act provides that:

“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 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.”

[8] The Authority therefore intends to consider the appellant’s original claim, together with his further claim as presented at the second hearing, with a view to determining whether it has jurisdiction to hear the second appeal. If so, it will then determine whether the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

COMPARING THE APPELLANT’S FIRST AND SECOND CLAIMS FOR REFUGEE STATUS

[9] In summary, the appellant’s first claim for refugee status was based on his alleged political activities in Iran in 1996-1999 which had led to his arrest and detention, during which time he had been tortured. He claimed to have left Iran illegally because he had not completed his military service and therefore would not be approved for an exit permit. His first claim also relied upon his conversion to Christianity in Germany which he claimed would, if detected by the authorities, lead to him being persecuted to a heightened degree because of his previous political problems. He claimed to have lived in Germany from 1999 to 2005 at which time he travelled to New Zealand.

[10] In determining the first appeal, the Authority rejected the credibility of the appellant as to his political activities and found that he had no political profile in Iran whatsoever. The Authority also rejected his claim not to have completed military service and found that the appellant left Iran legally. The Authority who heard the first appeal did, by application of the benefit of the doubt in favour of the appellant, accept his claim to have converted to Christianity. However, the Authority found that the appellant did not have a well-founded fear of being persecuted in Iran.

[11] The appellant’s second refugee claim (summarised below) is that he travelled back to Iran from Germany in 2004 and, while there, was detained and tortured because the authorities knew he had converted to Christianity and had applied for asylum in Germany. As a result, he had to sign an undertaking promising that he would desist from practising Christianity and would never seek asylum in any other country. He claims that since the determination of his first

refugee claim in New Zealand, the Iranian authorities have become aware that he has applied for refugee status in New Zealand and that he has been encouraging his sister, MM, in Iran to convert to Christianity. Both of these acts are in direct contravention to the undertaking he gave in 2004 and therefore he is at risk of being detained and tortured should he now return to Iran.

HAS THE JURISDICTIONAL THRESHOLD FOR A SUBSEQUENT CLAIM BEEN MET?

[12] The determination of the first claim was made on 26 June 2006. The appellant (both in his evidence and via counsel's submissions) concedes that his alleged difficulties with the authorities on return to Iran in 2004 pre-date the determination of his first appeal. They cannot therefore form the basis for a second or subsequent claim, notwithstanding their non-disclosure during the first claim. However, the appellant now claims that his sister, MM, has been of interest to the Iranian authorities (in 2007) because of her Christian beliefs and that his involvement with her conversion is known by the authorities. Furthermore, he claims that, since the determination of his last claim, the Iranian authorities are also aware that he has applied for refugee status in New Zealand and that this is a direct breach of the formal undertaking he gave to the authorities before he left Iran in 2005. These two events have both occurred since the final determination of his first claim.

[13] The Authority concludes that this amounts to a change of circumstances such that the second claim is based on significantly different grounds from the first. The change in circumstances, namely the sister's conversion to Christianity, the appellant's identification by the authorities and the breach of his undertaking, has arisen since the determination of the first claim. The Authority therefore has jurisdiction to consider the second appeal.

[14] This decision now turns to summarise the evidence provided in support of this subsequent appeal and then consider whether the appellant is a refugee within the meaning of the Refugee Convention.

THE APPELLANT'S CASE

[15] The account which follows is the summary of the evidence given by the appellant and his witness in respect of his refugee claim.

THE APPELLANT'S EVIDENCE

[16] The appellant was born in Tehran in 1977, the youngest of six children. His father was killed in the early 1980s as a result of an air raid by the Iraqi Air Force on his workplace.

[17] For the purposes of this decision, the appellant's early life was unremarkable.

[18] In 1999, after completing his military service, the appellant travelled to Germany. He had originally intended to travel to the United States where one of his sisters, AA, is living but he was unable to secure a visa for that country. Instead he travelled to Germany where another sister (MM) was studying and, once there, he made a claim for refugee status.

[19] A detailed summary of his activities, which he maintains is an accurate account, in Germany is provided in the first appeal decision, *Refugee Appeal No 75800* (26 June 2006) at [31]-[51]. For the purposes of this decision, it is sufficient to record the following. He travelled to Germany in 1999 and applied for refugee status at the airport on arrival. His application was dismissed, as was his first appeal. Some time later, he made a second application for refugee status but this too was dismissed in 2004. While living in Germany, the appellant became interested in Christianity and in late 2001 he was baptised. He introduced his mother to Christianity when she visited Germany, as well as encouraging others to attend church. His sister MM knew about his interest in Christianity but did not show interest in it herself. MM departed Germany and returned to Iran in approximately 2001 before the appellant was baptised.

[20] When his second refugee application in Germany was dismissed, he negotiated via his lawyer to make a voluntary departure from Germany. To do so he had to obtain another Iranian passport in the course of which he submitted to the Iranian Embassy his German identity card which identified him as an asylum seeker. He was duly issued with a passport and he returned to Iran in May 2004.

Travel back to Iran from Germany in 2004

[21] On arrival in Iran, his passport was confiscated and he was detained for 24 hours in the transit area of the airport. He was asked about his activities in Germany and whether he had applied for asylum. He denied his asylum claim and

said that he had been working illegally. He was then provided with a “receipt” for his passport and told to attend the passport office after two days to recover it.

[22] In approximately June, the appellant, accompanied by his sister, returned to the airport office to collect his passport. He was directed to the passport department which was in another location. Once there, he was told to send his sister home because she was not permitted to wait for him. After a wait of some hours, he was taken into an office for interrogation. He was asked personal details and to explain the nature of his asylum case abroad. Again he denied having applied for asylum but the officials insisted they knew of his claim and of the fact that he had converted to Christianity. Eventually the appellant admitted to having applied for asylum but he tried to persuade the officials he had only done so in an attempt to gain residency.

[23] After three or four hours, the appellant was transported to another location where he was detained incommunicado for 29 days. During that time he was physically mistreated on three occasions. At the end of the detention, in approximately September 2005, the officials released him without explanation. However, before he was released he was made to sign an undertaking stating that he would not promote or evangelise Christianity to anyone and that he would not apply for refugee status in any other country. He was also told that he would be barred from leaving the country for six months. The appellant believes he was detained for that long so that he would be too scared to proselytise Christianity or seek refugee status again.

[24] In early 2005, the appellant went to his local passport office to apply for a new passport. After making many repeat visits and paying small bribes to the office guards and the officials processing his file, he was issued with a new passport in March 2005.

[25] Once he was released from detention, the appellant had no further difficulties in Iran and he departed Iran legally in June 2005. He travelled to Thailand where he stayed for approximately two months, during which time he arranged with an agent to travel on to New Zealand. The appellant says he left Iran because he felt he could not freely express his opinion or his Christianity and the way of life in Iran irritated him. He believed that favouritism, nepotism and other social practices stifled the way he had to live his life and he wished to escape those pressures by living in a western nation.

MM's problems in Iran since 2007

[26] In early 2007, the appellant began talking to MM (living in Iran) about Christianity and he encouraged her to attend church and explore the faith. She became interested and attended a church in her city on a number of occasions although the appellant did not talk to her about her church attendance at the time. The appellant says he introduced her to "the good news" about Christ but did not speak with her about her specific Christian activities.

[27] Some months later, when it came time for MM to have her work contract renewed, she was taken for questioning by her workplace *Herasat* officers. They referred to her church attendance and asked her why she was going there. MM denied being interested in Christianity and, as far as the appellant knows, told them that she was interested in the museums in that suburb of the city. She was interrogated over the course of the next week or so and then, after approximately a month, she was told that her contract would not be renewed. She was not told the reason for the non-renewal but she believes that it is due to her church attendance. During some of the questioning sessions, MM was also asked about the appellant, where he was and what he was doing there. The appellant believes that because the Iranian authorities know that he is a Christian, they assume that he has influenced MM and will consider him to have proselytised to her, in breach of his 2004 undertaking.

[28] MM has not had any difficulties with the Iranian authorities since she lost her job but she is not confident that she will be able to secure another job because of her situation.

Events pertaining to the appellant since arrival in New Zealand

[29] The appellant arrived in New Zealand on 1 August 2005 and claimed refugee status on arrival at the airport. He was interviewed at the airport by an Immigration New Zealand (INZ) officer. He lodged a Confirmation of Claim form with the RSB on 3 August 2005. He was interviewed by the RSB in August and September 2005 and a decision declining his claim was issued on 23 January 2006. His appeal was also dismissed on grounds that his claim to have been politically active in Iran and to have outstanding military service obligations was not credible.

[30] In mid-2006, the appellant agreed with INZ to lodge an application for an Iranian travel document to facilitate his departure from New Zealand. In the interim, the appellant faced criminal charges for his use of a false passport for his travel to New Zealand. In April 2007, when he failed to appear at court to face those charges and was not able to be located at the refugee hostel, he was then subject to arrest without warrant under s128AC(2) of the Immigration Act 1987 because he had breached the conditions of his conditional release. In November 2007, the appellant was arrested in relation to another matter and was taken into custody. He was released on conditions on 26 March 2008, pending his departure.

[31] On 1 April 2008, he travelled to Wellington with an INZ officer to collect his newly issued Iranian passport from the embassy. When the appellant saw the passport, he noticed that it contained an annotation which is translated as "Passport Authorisation Document: Instruction (damaged) [5 digit series] [date]". The appellant asserts that this annotation may cause him difficulties on return to Iran because the numbers could represent a secret code to the authorities relating to his situation. Presumably due to his previous breach of the conditions of his release, the passport remains in the possession of INZ until such time as the appellant's status in New Zealand is determined or he is required to leave.

[32] On 17 April 2008, approximately two weeks after collecting his passport, the appellant lodged a subsequent claim to refugee status. In May 2008, the appellant was interviewed by the RSB. On 30 June 2008, the RSB issued a decision declining his subsequent claim for refugee status. The appellant has now appealed to this Authority for the second time.

AA'S EVIDENCE

[33] AA, the appellant's older sister, gave evidence on the second day of the appeal hearing. She lives in the United States and gave her evidence by way of speaker telephone. She has lived in the US for many years and gave her evidence in English.

[34] AA confirmed that she had travelled to Iran to visit family in July 2008, returning to the US in September 2008. She said that when she was in Iran, she visited MM and found out that MM had problems relating to her Christianity and her job. She said that MM had lost her job at the hospital because of her church attendance and she (MM) was unable to tell her husband or anyone else in Iran about the cause of her problems for fear that would cause further difficulties. AA was unable to specify when MM had lost her job because she says family in Iran did not tell her about it at the time if happened for fear it would worry her too much. AA said she heard about it when she went to Iran.

[35] AA explained that she had told the appellant about MM's problems because the family in Iran were unable to talk to him about it for fear of the telephones being monitored by authorities. AA said that the appellant "had a feeling" MM was in some kind of difficulty in early 2008 but that no-one had told him about MM's specific problems. AA then confirmed that she told the appellant about MM's problems ("everything that MM told me") in September 2008 when she (AA) returned to the US from her trip.

[36] AA said that MM was questioned at work for two whole days and then on various occasions over the course of the next month at which point they dismissed her from her job. AA also said MM had told her about the officials referring to the appellant and his conversion to Christianity and that he had been in Germany.

[37] AA also referred to the harsh approach the Iranian regime takes to Christian converts and urged the Authority to provide the appellant with an opportunity to live outside of Iran and start afresh.

OTHER MATERIAL SUBMITTED IN SUPPORT OF THE APPEAL

[38] On 16 January 2009, counsel filed a Memorandum of Submissions in support of the appeal. Counsel also made oral submissions during the hearing. On the first day of hearing, and on direction of the Authority, INZ produced the appellant's passport so that a copy could be made and attached to the file. On 29 January 2009, the Authority received a letter from (AA), the appellant's older

sister, who was called to give oral evidence that same day. At the close of the hearing on 29 January 2009, leave was granted for counsel to file further evidence and submissions within seven days. Under cover of a letter dated 10 February 2009, counsel filed submissions with attached country information relating to Christian converts in Iran.

THE ISSUES

[39] 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."

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

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

ASSESSMENT OF THE APPELLANT'S CASE

CREDIBILITY

[41] Before the identified issues can be addressed, an assessment must be made of the appellant's credibility.

[42] The appellant was an unimpressive witness. Important aspects of his account were inconsistent with his statement (dated 12 May 2008), his evidence to the refugee status officer and with the evidence of his sister, AA. The Authority also found aspects of his evidence to be implausible and, when asked to clarify apparent inconsistencies or implausibilities, the appellant's evidence became mobile and evasive.

[43] In assessing his evidence, the Authority has had regard to the submissions made by Mr Mansouri-Rad that the inconsistencies and vagueness can be attributed to the passage of time since the events and that they are only minor in nature. For reasons which are expressed in detail below, the Authority finds that the flaws in his evidence go to the core events of his claim and cannot be explained by trivial lapses in memory attributable to the effluxion of time.

[44] The Authority also rejects the evidence of AA as to the circumstances faced by MM and the appellant in Iran. Her evidence could not be reconciled with that of the appellant and when pressed for clarification or details, AA became mobile and evasive to a degree which indicated that she was not providing a truthful account. Her evidence on specific points is examined more closely below.

[45] The decision now turns to address specific credibility points.

False claim advanced on arrival in New Zealand

[46] It is evident from the summary of claims above that the appellant's first claim, as advanced on arrival in New Zealand and throughout his first appeal, bears little resemblance to the claim he now asserts as his genuine refugee claim.

[47] The appellant was asked to explain why he had given a false refugee claim on arrival in New Zealand. He explained that he had been told by his agent in Thailand that if he admitted going back to Iran in 2004 or leaving legally in 2005, he would be unlikely to secure refugee status in New Zealand. When asked for further clarification, he simply asserted that what he now said was the truth. He also referred to the fact that Jesus Christ was sent to earth to help those who had sinned, apparently implying that on arrival here he had been a Christian in need of saving and that now he had been led by Christianity to tell the truth.

[48] While the Authority acknowledges that in some cases genuine refugee applicants lie about their mode of departure from Iran, it does not accept that this appellant was genuinely motivated to do so. The crux of his refugee claim relies on the events which occurred to him on return to Iran in 2004 including: an alleged 29-day incommunicado detention without charges or a court appearance, serious mistreatment in the form of physical torture and threats against him should he ever apply for asylum in another country. Given these events occurred as a result of his return to Iran in 2004, there is no sensible reason why disclosing his return would undermine a potential refugee claim. In fact, the opposite is true and

his refugee claim required that very disclosure to be made. The appellant has been unable to explain sensibly the non-disclosure of what he now asserts is his true account. In light of the other credibility concerns discussed below, the Authority finds that his second refugee claim was not disclosed on arrival in New Zealand because it is a false claim invented for the purpose of mounting a subsequent refugee claim which would meet the jurisdictional threshold, the first claim having failed for lack of credibility.

Appellant's difficulties in Iran in 2004

[49] The appellant's evidence as to his claimed difficulties in Iran in 2004 and 2005 was flawed in several respects.

Obtaining passport

[50] With regard to obtaining a new passport after his detention, the appellant's statement says: "I finally got my passport by spending so much money as a bribe". In contrast, he told the Authority that he did not pay a bribe to obtain his passport, he went through the normal processing and had no difficulties obtaining it. When asked to explain the apparent inconsistency, his evidence became mobile and he said that he had to pay many smaller bribes to office guards and the officials looking after his file to get the passport. He also mentioned he had to pay numerous taxi fares to and from the offices, impliedly asserting that this is why he mentioned a bribe in his statement. The Authority then reminded him that he had earlier given evidence (in the hearing) that he had no problems getting his passport, at which point he said that because he did not have a "really big" problem like some people, he had told the Authority he had no difficulty getting it. This explanation is rejected as a weak attempt to mend the inconsistency in his evidence. The questions he was asked about obtaining his passport were simple and straightforward and there is no sensible reason for the discrepancies in his evidence. Strengthening this view, in his response to the RSB report (dated 16 June 2008, [11]), he submits (via counsel) that he was able to obtain an Iranian passport in 2005, notwithstanding his previous detention, because he "never applied for the passport himself but obtained it through bribes".

[51] The Authority finds that the appellant obtained a new passport in 2005 by going through the usual administrative channels and did not encounter any difficulty doing so.

Travel restrictions

[52] In his statement, the appellant gave the following account of his plans to leave Iran in 2005:

“I was aware that I had been prohibited to leave the country for some time and I knew this because the authorities told me that during the time I was detained. However, I did not know how long I had to be under their order. For this reason I thought it was better to facilitate by exit by bribery in case my name was in their list.”

[53] In contrast, he told the Authority that three months after he entered the country, he was told he would be barred from leaving Iran for a further six months. In other words, in approximately August 2004, he was told he could not leave until March 2005. In response to a further question, he again confirmed that he was barred until March 2005. He also told the Authority that he did not have to pay a bribe to facilitate his departure.

[54] When asked to explain why his statement said he did not know the length of time for which he was prohibited from leaving, the appellant could not explain his statement but he urged the Authority to accept his most recent evidence. The Authority resists his submission because there is no sensible reason why he would have incorrectly recalled the situation at the time of writing his statement, were the events genuine. His oral evidence on appeal was unequivocal and cannot be sensibly reconciled with his previous statement.

Bribe on departure

[55] Asked to address the discrepancy relating to whether or not he paid a bribe on departure, the appellant said that he would have paid a bribe if he had experienced problems leaving, thereby impliedly asserting that that was why his statement claimed he had paid a bribe. The Authority is not persuaded by that assertion and prefers the view that his statement and oral evidence are different because they are both parts of a fabricated claim, inconsistently recalled.

[56] Taken cumulatively, the Authority finds that the appellant's evidence cannot be believed. There is no sensible reason why his evidence about such matters is inconsistent. The Authority is of the view that the evidence is all part of a false account.

MM's difficulties in Iran in 2007

[57] The appellant's evidence about MM's difficulties in Iran was mobile and evolving. In addition to inconsistencies about the specific nature of MM's problems, the appellant's evidence as to how he heard about her problems was equally mobile and inconsistent. Examples of the inconsistencies and mobility follow.

First version of account

[58] When first asked by the Authority, the appellant stated that he did not hear any detail about MM's problems until September 2008 when his sister, AA, had returned to the US from her trip to Iran. He said that MM told him nothing about her difficulties with the authorities or being questioned by the *Herasat*. He confirmed that he only knew about MM being questioned about her Christianity "through my sister [AA] who lives in America". In response to a further question, he said that MM had never told him (the appellant) anything about the interrogations because "I'm thinking maybe she's too afraid to tell me".

[59] Asked why he did not discuss the events with MM, given that they were related to her Christian belief which he had nurtured, he replied "I just didn't talk to her about it, no reason". When pressed on the point, he justified his lack of communication with MM by saying that he had only just been released from detention in New Zealand and was "not in a very good place myself".

Second version of account

[60] Within a short time in the hearing, he changed his evidence to say that during a telephone conversation in late March or early April 2008 (within a week of his release from detention in New Zealand), MM did advise him that she had problems at work. He says she told him that her work contract was not renewed and that work officials made a passing reference to her church attendance. At this point in the hearing, he maintained that he was not told more detailed information about the questions MM was asked, the length or number of interrogations or the nature of any enquiries about him. He claimed that that information was provided by AA after her return to Iran in September 2008.

[61] However, the appellant's statement of May 2008 gives considerable detail about the alleged interrogation of MM by the *Herasat* – detail the appellant said (in his second version of events) that AA did not divulge until September 2008. AA also said in evidence that she was the first one to pass on such detail to the appellant and that she did so in September 2008. The relevant part of his statement reads as follows:

- “26. Following my contact and after encouraging my sister, she had been going to church in Esfahan every now and then. Approximately one year ago the security officers of her work place, [x] Hospital, found out about her interest in Christianity. *They detained and interrogated her for hours and threatened her because of her activities. She was also asked about my whereabouts.*
27. My sister lost her job about 8 months ago because of her Christianity, she was told that she was not morally fit.
28. I believe that the authorities in Iran clearly know that I have been the cause of my sister's interest to Christianity.”

[62] When asked to explain how he could have included this detail in his statement, when both he and AA stated he did not know of it until September 2008, the appellant's evidence became mobile. He suggested, in contrast to his initial evidence (outlined above), that MM had told him in early 2008 that she had been questioned by the *Herasat* about her church attendance and about the appellant's whereabouts. He further suggested that although not all the details about MM's difficulties (such as the length of the interrogation) may have been relayed to him before May 2008, he could glean details simply by observing the tone of voice used by MM and other family members when speaking about it on the telephone. When pressed for an explanation as to how details such as the length of the interrogation could be inferred from the tone of voice of his siblings, the appellant's evidence became fanciful. He suggested that if MM told him she

was interrogated for a few hours, his own experience with the Iranian authorities meant that he would interpret that as meaning that it was for a day or more.

[63] The Authority rejects the explanation for several reasons. First, it is irreconcilable with his first version of events in which he claimed MM told him nothing. Second, his suggestion that he could interpret specific details about MM's experience (such as that she was detained and interrogated for hours and threatened) simply from her tone of voice, could not be sensibly explained. Thirdly, even if he had been capable of discerning details of her treatment from her tone of voice (which we wholly reject), the details he wrote in the statement are inconsistent with the evidence he and AA gave in the appeal hearing, that MM was not detained or threatened and that she was questioned on a number of occasions over a month-long period.

Third version of account

[64] Still later in the hearing, after AA had given evidence (which contradicted both of the above versions), the appellant changed his evidence again. He then claimed that MM told him in the late March/early April 2008 telephone conversation *all* the information about MM contained in his statement. In other words, MM told him about the length of the questioning sessions, the nature of the questions and threats either through what she actually said or through the tone of her voice.

[65] This also contradicts his earlier evidence and AA's evidence that he learned about MM's problems through AA in 2008. When asked to identify what information AA told him in September 2008 that he did not already know, he said that AA told him that MM's husband was upset about the situation, that MM had been questioned by the *Herasat* for more than two hours and that she had not been detained but had had to undergo repeated sessions of interrogation.

[66] This final version of his evidence – that he knew almost all the details of MM's problems, including all of the details provided in his statement, after his conversations with MM in March/April 2008 – cannot be reconciled with either his first or second version of the account. The Authority has no hesitation in concluding that the mobility of his evidence and his inability to explain sensibly the inconsistencies is the result of fabricated evidence which he has been unable to recall accurately. The fact that he changed his evidence a third time, after AA had given evidence, was clearly an attempt to align his account more closely with hers.

[67] Notwithstanding the appellant's attempt to align his account with AA's in his third version, their respective accounts still cannot be sensibly reconciled. AA told the Authority that although the appellant suspected there was something wrong with MM in March/April 2008, he had no specific details about MM's situation until she (AA) gave him the details in September 2008, on her return from Iran. AA confirmed that she was the only one able to talk to the appellant about the situation and that she told him all the details of what happened to MM. AA claims this information was passed on during or following her visit to Iran, that is, after July 2008. AA's evidence contradicts both the appellant's first version of events (that he knew nothing until told by AA) and his later versions (that he already knew specific details of MM's problems).

[68] Furthermore, the appellant could not sensibly explain why, if he did in fact know the details of MM's problems at the time of writing his statement (May 2008), he had not shared this information with AA before she travelled to Iran in July 2008. Both AA and the appellant confirmed that they were in regular telephone contact between March and July 2008 and discussed MM's situation during this time. When asked to explain, the appellant became vague and evasive. Essentially he said that he told AA that MM "had problems" but did not specify them and asked AA to investigate the matters while she was in Iran. He did not directly address the Authority's repeated questions about why he did not share details of MM's problems with AA. The appellant's evasive answers point to the underlying untruthfulness of his evidence. It is implausible that he would not have shared the information if it were genuine. His inability to explain his actions simply underscores that fact that there is no explanation. The evidence is false.

[69] The Authority also observes that AA exhibited similar evasiveness when asked exactly what information the appellant gave her before her trip to Iran. Despite repeated questions, she was not able to say what he had told her except that MM did not seem herself and that she (AA) should get more information on arrival in Iran. She was unwilling to specify whether the appellant told her of MM's arrest or any other details. Her evasiveness gave the clear impression that she was attempting to give her evidence in a general way which would not conflict with the evidence already provided by the appellant.

CONCLUSION ON CREDIBILITY

[70] Considered cumulatively, the credibility concerns outlined above lead the

Authority to conclude that the appellant's account is a fabricated story which cannot be believed. The Authority finds that he was not detained for 29 days in 2004, did not sign an undertaking to remain in Iran and desist from making further refugee claims, and has not been identified as aiding or encouraging MM to convert to Christianity. Nor, for the reasons detailed above, does the Authority believe that MM has had any difficulties with the Iranian authorities of the nature asserted in this claim. The Authority finds that this aspect too is false and is an attempt to advance a claim which meets the jurisdictional threshold for a subsequent claim.

[71] As to the appellant's claimed intention to proselytise Christianity on return to Iran, the Authority rejects it as a disingenuous claim made to bolster his fraudulent refugee claim. The Authority rejects his claim to have proselytised to MM since he has been in New Zealand. The appellant did not seek to proselytise when he returned to Iran in 2004/2005 and the Authority finds that he will not do so should he now return. More likely, in the Authority's view, is that on return to Iran where the incentive to continue his Christianity to support a refugee claim no longer exists, any vestige of Christian faith or practise will dissolve to nothing.

A WELL-FOUNDED FEAR OF BEING PERSECUTED

[72] The credibility findings above lead the Authority to conclude that the appellant has no profile with the Iranian authorities, either because of his own activities or in relation to MM, and has never signed an undertaking that he will not proselytise or apply for refugee status overseas. Therefore, he has no well-founded fear of being persecuted in Iran on that basis.

[73] However, at the outset of the appeal hearing, counsel made several submissions as to other matters which the appellant claims will exacerbate his predicament on return to Iran. These are addressed below.

[74] Mr Mansouri-Rad submits that because the appellant has spent many years living outside of Iran in the last decade and has applied unsuccessfully for refugee status in Germany and New Zealand, he will be subject to greater scrutiny by Iranian officials when he returns. He submits that during any interrogation which will likely follow the appellant's return, his Christianity will be revealed and he will be subject to serious harm. This will be exacerbated says counsel by the fact that the research copy of the appellant's first appeal decision is available (in non-personalised published form) on the Authority website and therefore the Iranian

authorities will be able to identify him and his refugee claim by linking the information in that published version of the decision with other details they know about the appellant.

[75] The Authority does not agree. The appellant has no profile with the Iranian authorities other than as a returning national who has been issued with a passport from the Iranian Embassy in Wellington who may be identified as having applied for asylum in New Zealand. There is no credible evidence before the Authority that this profile exposes the appellant to a real chance of serious harm on return.

[76] As to his submission that he will be at risk because he is identifiable from the published version of his first appeal decision, the Authority finds no merit in it. Firstly, as the appellant himself concedes, much of the information he provided in his first claim is false and does not represent genuine events. Therefore it is difficult to see how the appellant could be linked to the information contained therein. In any event, even if the appellant is identified by the Iranian regime as a returning failed asylum seeker, there is no credible evidence before the Authority to suggest that he will, for that reason, face a real chance of being persecuted on return. This point was conceded by Mr Mansouri-Rad in his oral submissions (although he maintained that cumulatively the appellant was at risk).

[77] Mr Mansouri-Rad also submits that the appellant will find it difficult to adjust to life in Iran after living in western countries for close to 10 years. He submits that those difficulties will likely bring him to the attention of authorities and expose him as a Christian. Again, the Authority rejects that submission. When the appellant was asked to identify what aspects of Iranian life he found difficult, he mentioned that he was frustrated by favouritism in Iran and that to get anything done, he had to fill out forms in which he had to say he was a Muslim. He also says he was offended by the fact that those individuals considered religious were able to access more favourable treatment and that he was not able to openly express his Christianity. As already noted, it is not accepted that the appellant will attempt to maintain or openly express his Christian faith on return to Iran. He did not attempt to do so on return to Iran in 2004 (and consequently did not have any problems there) and there is no basis for concluding that he will act any differently on return to Iran now. His false account of having encouraged MM to adopt Christianity and his cynical efforts to maintain the appearance of being a committed Christian in New Zealand undermine his claim to be a committed Christian who will openly espouse and practise Christianity in Iran.

[78] Finally, both Mr Mansouri-Rad and the appellant asserted that the lack of an exit permit and the notation of the word “*Makhdusheh*” (translated as “damaged”) in the appellant’s passport issued from the Iranian Embassy in Wellington indicates that the appellant is of interest to the Iranian authorities and that he will be the subject of great scrutiny on return. Counsel contends that this scrutiny will lead to the appellant being identified as a Christian and someone who has breached his undertaking not to apply for asylum again and, as a result, he will be subjected to serious harm. In support of this submission, counsel referred to *Refugee Appeal No 74711* (22 August 2003) in which the Authority considered the lack of an exit permit in a passport.

[79] The Authority does not accept the submission. The appellant’s assertion invites speculation as to the significance, reason and consequence of the lack of an exit stamp and the notation in his passport. There may be any number of reasons why the passport lacks an exit stamp and has such a notation. There is no credible evidence before the Authority which supports a finding that it is for sinister reasons which will lead to the appellant facing a risk of being persecuted on return to Iran. He may well be of interest to the Iranian authorities on return given that he has been absent for four years, during which time his passport expired. However, the Authority finds that there is nothing in the profile or circumstances of the appellant which will expose him to a risk of being persecuted even if he is questioned about his whereabouts or activities on arrival back in Iran. Additionally, there is no apparent Convention reason for such questioning. As to *Refugee Appeal No 74711* (22 August 2003), in that decision the Authority specifically stated that the lack of an exit permit was not determinative of interest by the authorities, but found that in the circumstances of that claim (an otherwise credible and corroborated claim), it “may be read as providing some support for the evidence that the appellant was of continued interest to the authorities”. The Authority has already found that there is no credible or corroborative evidence to support the appellant’s account in this appeal. No independent evidence has been provided to indicate the notation in the passport is of any concern and nor is the Authority aware of any. The Authority finds that the notation and the lack of an exit stamp will not lead to the appellant being at risk of serious harm on return to Iran to the real chance level.

CONCLUSION ON WELL-FOUNDEDNESS

[80] Having considered whether a person having all of the appellant’s

characteristics, facing the particular circumstances identified, would face a real chance of being persecuted on return to Iran, the Authority finds, for the reasons given, that the answer is “No”. The appellant does not face a real chance of being persecuted should he return to Iran.

[81] Accordingly, the first principal issue is answered in the negative. The second issue does not therefore arise for consideration.

CONCLUSION

[82] For all the reasons mentioned above, the Authority finds that the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

“B A Dingle”
B A Dingle
Member