REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76288

AT AUCKLAND

Before:	B L Burson (Member)
Counsel for the Appellant:	P Moses
Appearing for the Department of Labour:	M Whelan
Date of Hearing:	21 April 2009
Date of Decision:	22 May 2009

DECISION

---

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), cancelling the refugee status of the appellant pursuant to s129L(1)(b) of the Immigration Act 1987 ("the Act").

[2] The central issue in this appeal surrounds the admission by the appellant that, contrary to the evidence he gave to the refugee status officer who determined his refugee status claim ("the granting officer"), he had not departed Iran from a seaport without using a passport but rather had left via Mehrabad Airport using an Iranian passport issued in his own name. Further issues are that, subsequent to his grant of refugee status, the appellant obtained a further passport from the Iranian Embassy in New Zealand and that he approached immigration officers on a number of occasions requesting that he be returned to Iran.

THE CANCELLATION JURISDICTION

[3] The cancellation jurisdiction of the Authority comprises two distinct streams which may be called the appellate and application streams. This case is under the appellate stream.

[4] The appellate stream derives from what the Authority has recently described in *Refugee Appeal No 75574* (29 April 2009) at [32] as "own motion" cases arising from s129L(1)(b) of the Act. This provides:

> "**129L Additional functions of refugee status officers**
>
> (1) In addition to their function of determining claims for refugee status, refugee status officers also have the following functions:
>
> ...
>
> (b) 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] Where a refugee status officer ceases to recognise a person's refugee status, that person may appeal to the Authority against that decision. See s129O(2) of the Act, which 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."

[6] Under both appeals from "own motion" determinations by a refugee status officer and applications, there are two elements to the inquiry. The Authority must first determine whether the grant of refugee status may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information (hereafter referred to collectively as "fraud"). If so, it must then determine whether the person should cease to be recognised as a refugee. That determination is, in effect, the Authority's usual forward-looking inquiry as to whether, on current circumstances, the appellant faces a real chance of being persecuted for a Convention reason on return. That second stage of the inquiry is engaged only if the first element – that the grant of refugee status may have been procured by fraud – is established – see *Refugee Appeal No 75392* (7 December 2005) at [12].

[7] Furthermore, as noted in *Refugee Appeal Nos 76068, 76069, 76070, 76071*

and 76072 (18 April 2008) at [12]:

> "[12] Given that these are inquisitorial proceedings, it is not entirely appropriate to talk in terms of the burden or onus of proof. Nonetheless, it is the Authority's view that, in "cancellation" proceedings, it is the responsibility of the DOL to present such evidence in its possession by which it can responsibly be said that the grant of refugee status may have been procured by fraud. It is also our view that the term "may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information" is deliberately imprecise and signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion: *Refugee Appeal No 75563* (2 June 2006)."

[8] To put the present appeal in context, it is necessary to record both the appellant's original refugee claim and the granting of refugee status to him.

The appellant's refugee claim

[9] What follows is a summary of the appellant's evidence as recorded in the RSB decision.

[10] The appellant arrived in New Zealand on 8 September 2001 and made an application for refugee status on arrival. The basis of his claim was that, while still a child, he occasionally accompanied his father to meetings held at neighbours' houses where his father and their neighbours shared their pro-monarchist beliefs. The appellant claimed that at some point during his teenage years his father occasionally gave him pamphlets critical of the regime to attach to walls and shop windows. He did not encounter any problems as a result of these activities.

[11] The appellant claimed that he did have occasional problems with the Islamic authorities for breaching the social codes imposed by them. On one occasion during a public holiday in 1996, he suffered an assault at the hands of the *Basij* who took exception to his hairstyle. On another occasion he was arrested and detained for talking to a woman who was not his wife. He was taken before a court and was sentenced to seven days' imprisonment and received 40 lashes.

[12] The appellant further claimed that, approximately two months later, he held a party at his house while his parents were away on holiday. He invited a number of friends to whom he served alcohol, and played loud music. The appellant became drunk and brought out some of his father's pro-monarchist pamphlets and gave them to his friends to look at. The party was raided by the authorities who discovered the alcohol and the pamphlets. They also found cassette tapes of the Shah and posters of the former Empress. The appellant and the other partygoers

were arrested.

[13] The appellant was detained for approximately seven days during which time he was interrogated about belonging to a pro-monarchist group. He was blindfolded and pushed against the walls of his cell. The appellant told his interrogators that the pamphlets and other material were his as he did not want to get his father into trouble.

[14] The appellant was taken before a Revolutionary Court and told that he had been involved in anti-revolutionary activities and that he was guilty. The appellant's file was then transferred to a District Court because the *Mullah* in charge of the Revolutionary Court became aware of his previous arrest and sentence for being caught talking to a woman.

[15] The District Court judge pronounced him guilty of holding a party and drinking alcohol. The judge also mentioned the family's possession of an illegal satellite dish. The judge told the appellant that he would have to return to prison until sentencing but that he could be bailed if his family provided sufficient guarantees. The appellant's family arranged bail by presenting the ownership papers for the appellant's father's factory. The appellant was released on bail for sentencing on condition that he not leave his home city.

[16] Subsequently, the appellant's father learnt that the sentence of death had been imposed on the appellant and he arranged for the appellant's departure from Iran. The appellant told the refugee status officer that he left Iran by travelling to a port in the south of Iran and then travelling without a passport to Dubai. The appellant then claimed he travelled to various countries on the way to New Zealand. On the way, he obtained a false European passport before eventually arriving in New Zealand.

The grant of refugee status

[17] By decision dated 9 April 2002, the officer recognised the appellant as a Convention refugee. As to the appellant's credibility, the granting officer noted that the appellant "proved to be a very difficult individual to interview" and stated that "it was apparent to the refugee status officer that [the appellant] was not psychologically well". The granting officer noted that a number of discrepancies arose between what the appellant had stated in his original confirmation of claim form completed upon arrival in New Zealand and the evidence he provided in his

written statement and at interview. Nevertheless, after noting the appellant's replies to his concerns and the appellant's demeanour at interview, the granting officer extended the appellant the benefit of the doubt in accordance with the usual principles.

[18] Having accepted the appellant's credibility, the granting officer found that:

(a) the appellant's family held pro-monarchist beliefs;

(b) the appellant was arrested in 2001 after talking to a woman and was lashed as punishment;

(c) he was arrested again shortly thereafter and detained for seven days. He was convicted for anti-revolutionary behaviour and released upon condition; and

(d) the appellant departed Iran illegally.

[19] In reaching his conclusion that the appellant had a well-founded fear of being persecuted the granting officer took into account the generally poor human rights situation in Iran and the fact that summary executions, disappearances, the widespread use of torture and other forms of degrading treatment were prevalent. It was noted that political dissent was generally not tolerated by the Iranian authorities and, specifically, that they did not tolerate the distribution or broadcasting of pro-monarchist material. The granting officer accepted that, as a result of his arrests, the appellant had "a profile with the Iranian authorities" and noted that, as the appellant had departed illegally, "his lack of travel document will undoubtedly bring him to the attention of the authorities on return". The granting officer accepted that his past treatment amounted to past persecution and that this was a reliable indicator of what may await him in the future if returned. It was accepted that the appellant's fear of being persecuted was for reason of an anti-government political opinion.

Notice of Intended Determination Concerning Loss of Refugee Status and Cancellation of Refugee Status by the RSB

[20] On 8 April 2008, the appellant was served with a notice dated 7 April 2008 advising that the RSB intended to make a determination as to whether his original grant of refugee status may have been improperly made. The notice referred to his:

(a) "legal" departure from Mehrabad Airport;

(b) obtaining of a genuine Iranian passport from the Iranian Embassy in Wellington in 2004;

(c) statements to various immigration officials on a number of occasions that he intended to return to Iran.

[21] In response to this notice the appellant filed a statement in response dated 22 July 2008. His then-counsel, Ms Smail, filed submissions dated 8 August 2008 and submitted a certified copy of the appellant's father's death certificate and translation. The appellant was interviewed in respect of the cancellation notice on 11 August 2008. Thereafter, on 17 September 2008, Ms Smail submitted a further statement from the appellant dated 12 September 2008, a copy of the appellant's military service card with translation, and a full psychiatric evaluation of the appellant by Dr McCormick, dated 21 July 2008. Ms Smail filed closing submissions dated 17 September 2008.

[22] By decision dated 8 October 2008, the RSB concluded, after considering all the information submitted, that the appellant's grant of refugee status may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information. Following that finding, it then held that it should cease to recognise the appellant as a refugee. The appellant appeals to this Authority against that decision.

THE RESPONDENT'S CASE ON APPEAL

[23] The Authority heard from Cameron Leslie, the refugee status officer who made the decision cancelling the grant of refugee status. Mr Leslie confirmed that his reasoning in respect of the cancellation of the appellant's grant of refugee status was that contained in the decision dated 8 October 2008.

THE APPELLANT'S CASE ON APPEAL

[24] The Authority heard from the appellant. What follows is a summary of his evidence.

As to his original claim

[25] The appellant told the Authority that, with the exception of the manner in which he departed Iran, his underlying account of his family background, arrests and detentions was true.

[26] The appellant confirmed that at a time he could not now recall he had been arrested for talking with his girlfriend. He explained that at the time of this first arrest he was driving with his girlfriend. They were followed by a car which made him nervous and eventually caused him to have an accident. The occupants of the car following them turned out to be officials from the *mafahset* (an organisation in Iran charged with ensuring people abide by the strict social codes). The officers detained the couple. They had to call for a female officer because they were not allowed to touch his girlfriend. The appellant was kicked and punched with some force and then taken into detention. Although not sure of the precise date of this detention the appellant stated that he "remembered it was some sort of holiday". The appellant stated that he was sentenced to lashes for this offence.

[27] The appellant stated that his next detention occurred when the family home was raided by the Iranian authorities who had been tipped off that the family had an illegal satellite dish. The officials were plain-clothed. The house was searched and photographs of the Shah and some secret confidential documents were taken. He was blindfolded and forcibly pushed into a vehicle and taken into detention. He was detained for between three to four days and a week during which time he was interrogated about the materials they found. During his interrogations he was pushed. While detained, he was hosed down with cold water and deprived of sleep by having fire-crackers thrown into his cell. He was eventually taken before a court attached to the detention centre. The appellant remembered that, during this court appearance, he used bad language against the leadership of Iran. Nevertheless he was bailed.

[28] The appellant stated that he was arrested for a third time two or three weeks later when having a party at his home while his parents were away on holiday. During this party, loud music was played and alcohol served. People were dancing and enjoying themselves. After some time, the house was raided by plain-clothed officials who discovered the alcohol and noticed that some of the partygoers had pictures of the former Shah in their possession. The officers went to his room and found some other secret material relating to the Shah. The appellant and other partygoers were all arrested.

[29] The appellant was unsure how long he was detained for but it was between three to four days and a week. He was interrogated about the pro-monarchist material found at the house. Again, the appellant admitted that the documents were his to spare his father any difficulty. He was hosed down with very cold water and then kept standing waiting for the sun to come out. Fire works were also thrown into the cell to prevent him from sleeping. He was questioned about why he had a party and how he had got hold of the drink. He did not admit anything. They asked him about his friends who were holding the pictures of the Shah and he said he did not know. He was questioned about lots of other things which he could not now remember.

[30] His parents eventually found out that he was detained and they set about getting him released. He does not know what they did but he thinks that either the house title or his father's shop certificate was used to secure his release on bail. The appellant stated that he was charged with an offence because of his being with his girlfriend, the satellite dish, serving alcohol at the party and having the pictures of the Shah and the confidential notes. He was also charged because he swore at the leadership of Iran.

[31] The appellant told the Authority that he left Iran two weeks after being bailed. He said that after his release his mother obtained a passport for him. He assumes she did this through bribery.

As to his departure from Iran

[32] The appellant told the Authority that he left Iran using the passport his mother had obtained for him. He left through the airport in Tehran and did not encounter any difficulties apart from having his luggage searched. His mother told him that he should not be worried and that everything had been arranged. He was told by his mother that he would be travelling through Thailand and that someone would be meeting him there. In Thailand he was met by an associate of the agent who took him to a hotel in Bangkok where he stayed for a while with other persons being helped by the agent. From there, he travelled to Malaysia before travelling to New Zealand via South Korea. He explained that he was approached by someone in the transit lounge in South Korea and given a boarding pass in a European name which he believed was Dutch.

[33] The appellant told the Authority that he had been warned by the agent's associate who assisted him that he should not disclose that he had left via the

airport using his passport. He was told that if he said this he would be immediately deported back to Iran. He was also told that he should tell the New Zealand authorities that he had not done his military service when he had, in fact, done so.

As to the obtaining of the passport in 2004

[34] The appellant freely admits that he obtained a passport from the Iranian Embassy in Wellington in 2004. He said he did so at the time because everybody in the Iranian community was getting them as they were being encouraged to do so. Furthermore, he had learnt that his father was sick and he was very upset and anxious. He stated that "at that moment my life was not important" and that he did not care for himself.

As to his approaches to various immigration officials requesting a return to Iran

[35] The appellant admits that he made requests to immigration officers both before and after his father's death in the middle of 2006 about returning to Iran. However, the appellant disputed that in one of the conversations he had with an immigration officer, referred to in the cancellation proceedings, he requested that he be returned to Iran. According to the appellant, in this conversation he was making an inquiry about citizenship. He explained that at the time he made requests to return to Iran, he was distressed because of his father's illness and death. According to Iranian custom, as the oldest son, he should be there. He said he did not care about any risk to himself. He explained he did not go because he was advised by one of the immigration officials that he could not return to Iran because he was a recognised refugee.

Submissions and documents received

Material received prior to the hearing

[36] The notice of appeal against the cancellation of the appellant's refugee status was filed by Ms Smail. However, by letter dated 7 November 2008 the Authority received a signed authority to act from the appellant in favour of Mr Moses. In his letter Mr Moses advised the Authority that the appellant "presents with mental health problems" and that he considered it appropriate for a further professional psychiatric report to be obtained. The Authority agreed to re-list the matter after a date by which counsel indicated that the psychiatric report

would be prepared. On 9 April 2009, the Authority received Mr Moses' memorandum of submissions together with a further statement from the appellant. On 14 April 2009, the Authority received from Mr Moses a copy of a psychological assessment dated 13 April 2009, by Amanda McFadden, psychologist.

Submissions by the DOL

[37] By letter dated 17 April 2009, Ms Whelan, on behalf of the DOL filed her opening submissions and enclosed a statement by Mr Leslie, the refugee status officer.

[38] Ms Whelan submits that 'stage one' of the test is clearly met in this case. The appellant has admitted to concealing his true mode of departure and this information was relevant and important in the refugee context. She submits that it is not credible that the appellant could make a legal departure thought Mehrabad Airport if he had truly been convicted of the offences in the Revolutionary Court as claimed.

[39] As regards the second stage of the inquiry, Ms Whelan submits this should be answered in the negative. The appellant has lied in the past and this, she submits, necessarily colours the evidence he has given in support of his claim to be currently at risk. Ms Whelan also notes that there are a number of discrepancies between what the appellant had stated in his oral evidence before the Authority and that which he had said previously. She also mentions that the appellant for the first time has introduced a new arrest and detention in relation to the satellite dish which had not been mentioned to the refugee status officer.

[40] Ms Whelan also submits that Ms McFadden's report is entirely equivocal as to the nature of the appellant's underlying mental illness. She points to Ms McFadden's comments that the appellant's low score in a particular test raised the issue as to whether he was "making some effort" to obtain a low score which, Ms Whelan submits, further undermines his credibility. She notes that Ms McFadden observed that one of the low scores was "within the threshold that would signal concerns about effort, and exaggeration of memory difficulties".

[41] In relation to the appellant's obtaining his Iranian passport in 2004, Ms Whelan pointed to the appellant's vagueness as to when he first learnt that his father was ill and that his obtaining of the passport and various approaches to the

immigration officials requesting to return to Iran was inconsistent with him having a current well-founded fear of being persecuted.

Closing submissions on behalf of the appellant

[42] Mr Moses, for the appellant, accepts that he had provided false information about his departure and that this was relevant information for the purpose of the cancellation jurisdiction.

[43] Mr Moses submits that even if the Authority is to find that stage one of the test is met, the appellant nevertheless has a well-founded fear of being persecuted. Mr Moses submits that in making its credibility assessment of the appellant the Authority ought to "lighten the burden of proof" in light of the appellant's clear mental problems. He submits that although it is conceded Ms McFadden did raise an issue as to whether the appellant was feigning his loss of memory, no conclusion had been reached in this regard and that Ms McFadden had requested a further prolonged period of in-patient care to make a full and proper assessment. Mr Moses submits that, on a full reading of Ms McFadden's report, it is clear that the appellant is mentally unwell. Ms McFadden's report suggests that the appellant labours under conceptual disabilities and presents with clear cognitive problems. He also points to Ms McFadden's suggestion that he might have some underlying psychotic illness.

[44] Mr Moses submits that, whilst there had been discrepancies, the core element of his claim had been "reasonably consistent" and the discrepancies which existed were commensurate with a person suffering from mental health difficulties.

[45] In terms of the risk to the appellant, Mr Moses submits that the appellant's mental health profile is a relevant factor to take into account. The appellant's behaviour both at the interview before the Authority and in his behaviour in driving to the airport and demanding to be put on a plane to return to Iran were highly indicative of not only a mental health problem, but also how he might be expected to behave before Iranian officials if returned. Mr Moses submits the appellant has a provable history of not acting in his best interests with regard to officials and that his mental health difficulties mean he is more likely to get into difficulties with the Iranian authorities upon return who would view him with suspicion because of his past profile anyway.

Submissions on the existence of an airport blacklist of persons convicted in the Revolutionary Court

[46] A particular issue arose in relation to the existence or otherwise of an airport blacklist on which the names of person convicted in the Revolutionary Court would necessarily appear in order to prevent their departure. Ms Whelan submits that the Revolutionary Court is the judicial institution charged with dealing with serious political offences and therefore his claim to have effected a legal departure via the airport, despite being convicted in the Revolutionary Court, was not credible. Mr Moses submits that it cannot be assumed that, merely because the appellant had been awaiting sentencing on a matter before the Revolutionary Court, his name would have automatically appeared on some 'blacklist' at the airport in Iran. The Authority indicated that it was not aware of any country information on the file upon which Ms Whelan based her submission that a conviction in the Revolutionary Court would necessarily mean that a border alert is made in respect of the convicted individual. Leave was given to the parties to file country information and submissions on this point.

[47] On 28 April 2009, the Authority received a bundle of country information from Ms Whelan and a letter outlining her brief submissions on the point. Ms Whelan's letter acknowledges there is "no information available which is directly on point" but refers to "general indications" as reported in *United Kingdom Home Office Country of Origin Information Report: Iran* (March 2009) ("the 2009 UK report") that it would be "doubtful that anyone with a security record and convictions for political offences would be able to leave the country legally by air".

[48] On 5 May 2009, the Authority received a letter of the same date from Mr Moses responding to the DOL's submissions on this point. He submits there is no direct country information to support the DOL's proposition and notes his own researches have not yielded any relevant information on the point. In any event, he submits the passage expressly cited by Ms Whelan is no more than a contention and does not, on its own, undermine the credibility of the appellant's account of his departure. Mr Moses refers to further material in the 2009 UK report which refers to the extensive corruption in Iran. He notes Iran is ranked 141 out of 180 in Transparency International's 2008 Corruption Perception Index. He also submits that no system is completely efficient and that, even if an "interdepartmental alert" was issued, the relatively shot period between the

appellant's conviction and his departure means that it might not have been recorded at the airport by the time of his departure.

Stage One of the Inquiry – whether the grant of refugee status to the appellant may have been procured by fraud

[49] The first point to note is that in *Refugee Appeal No 75989* (14 June 2007) at [57]-[59], *Refugee Appeal No 75802* (23 January 2007) at [57], and *Refugee Appeal No 76151* (25 July 2008) at [45], the Authority has accepted that the question of whether a refugee claimant makes a legal or illegal departure is a relevant factor to the granting officer's task of determining the refugee claim. That said, however, it simply cannot be said that the mode of departure in Iran is determinative of stage one of the inquiry and the Authority does not understand the previous decisions referred to, to make any such suggestion. Rather, the Authority must be satisfied that the concealment of this relevant information procured the grant of refugee status although this will not, in most cases, be difficult to establish – see *Refugee Appeal No 75574* (*op cit*) at [92].

[50] In this case there can be no doubt that the appellant withheld relevant information and that this withholding may have procured the grant of refugee status. First, the granting officer applied the benefit of the doubt. It simply cannot be said the truth about the appellant's mode of departure could not have caused the balance to tip in the officer's mind against giving the appellant the benefit of the doubt.

[51] Second, even if a contrary position were taken on the first point, a perusal of the granting officer's decision reveals the illegal departure was a factor that was taken into account and weighed when making the decision to grant him refugee status. It is true that the risk was, in large measure, a function of the granting officer's conclusion that the appellant was "detained and accused of being pro-monarchist, and convicted of anti-regime activities" and his having been released only upon agreeing to appear in court for sentencing, gave him a profile with the Iranian authorities. However, it is equally true that his claimed illegal departure was central to the granting officer's assessment of his exposure to the risk which flowed from this profile. The granting officer stated:

> "It is also noted that the appellant departed Iran illegally and his lack of a travel document will undoubtedly bring him to the attention of the authorities on return
>
> …

> Whilst the penalties for illegal departure do not of itself amount to persecution, it is noted that the appellant does not have a valid Iranian passport, with which to return to Iran. On this basis there appears to be every reason to believe that the Iranian authorities will question him, upon his re-entry to the country, as they have in the past, establishing that he was previously imprisoned, and that he failed to attend a court appearance. When such information comes to light, it is expected that any penalties meted out to the appellant will be harsh."

[52] It is impossible to separate out the appellant's claim to have departed illegally from the granting officer's reasoning that the appellant was at risk of being persecuted immediately on his return.

Stage Two of the Inquiry – whether the appellant currently possesses a well-founded fear of being persecuted

[53] This limb of the cancellation test requires the Authority's orthodox inquiry into whether the person is, today, a refugee.

THE ISSUES

[54] 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."

[55] 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?

CREDIBILITY

Discrepancies

[56] Ms Whelan is on solid ground when she points to discrepancies between the appellant's various statements to the Authority in the hearing and what he had said previously. It is true that in his written statement dated 7 April 2009 and in his

oral evidence he mentioned a detention in relation to the satellite dish that he had not mentioned before. There were other discrepancies in his evidence, for example, he described the material discovered in the possession of his friends during the raid as being 'photographs of the Shah' whereas previously these had been described as 'pamphlets'. In relation to his detention for being with his girlfriend he told the Authority this happened while he was driving his car but told the granting officer that he had been talking to his girlfriend in public when this happened. He also told the Authority that he thought this event happened during a public holiday whereas he told the granting officer that the incident on the public holiday was the event where the *Basij* officers took exception to his haircut.

[57] However, Mr Moses is on equally solid ground when he observes that core events underpinning the appellant's account are essentially unchanged. He has mentioned an arrest in relation to a party where pro-monarchist material was found. He has mentioned an arrest in relation to his girlfriend where he was lashed. He has mentioned that he had been taken before a Revolutionary Court. Although it is true that the appellant mentioned a separate detention in relation to a satellite dish, in his interview with the granting officer the appellant also mentioned that the judge who had found him guilty in respect of holding a party and drinking alcohol "also mentioned the family satellite". Something did happen on a public holiday. In other words, the core features of events which the appellant stated to the granting officer are repeated in his evidence before the Authority.

[58] The fact that there are discrepancies between the accounts is not determinative of the appellant's credibility, particularly in this case where there is a plethora of psychological reports on file. These are helpfully summarised in Ms McFadden's report dated 13 April 2009. It is clear that the appellant has undergone psychiatric evaluation on a regular basis, commencing in November 2001, that is, soon after his arrival in New Zealand. As Ms McFadden observes, there has been a range of opinions offered in respect of psychiatric symptoms and diagnoses. The most consistent diagnoses have been post-traumatic disorder with co-morbid mood disorders such as anxiety and depression. However, as Ms McFadden notes, the following additional diagnoses have been questioned or proposed: Attention deficit hyperactivity disorder; Conduct disorder; Manic episodes; Anxiety disorder; Anti-social personality disorder; Borderline personality disorder and Histrionic personality disorder.

[59] She further notes that her review of the historical medical documents reveals that the appellant's cognitive ability had also been questioned on multiple occasions with a number of health professionals requesting that he undergo intellectual testing. Ms McFadden herself conducted a range of tests on him. She noted that the appellant's responses to psychological testing were "highly unusual and outside the limits of any responses observed previously". Ms Whelan points out that one of these hypotheses is that the appellant has "attempted to deliberately exaggerate his cognitive difficulties" but this statement must be seen in context. It is no more than one of a range of possible explanations in relation to one type of test amongst a host of other tests and hypotheses. These other hypotheses included: a level cognitive impairment that negatively impacted on his test taking ability and capacity to understand the task presented to him; a very limited capacity to conceptualise in a verbal and non-verbal manner and significant intentional and information processing deficits.

[60] Ultimately, it was not possible for Ms McFadden to make a diagnosis with any certainty and in her professional opinion the appellant required "careful longitudinal assessment by mental health professionals". It is not the case that Ms McFadden's conclusion was that the appellant was exaggerating symptoms. In a field notorious for the difficulty of diagnosis, assessors will always be alive to the possibility that their assessment might be manipulated for an ulterior purpose. But Ms McFadden does no more than to say that this *might* have been the case here. She does not say that it *was*. Ms Whelan does not advance any contrary expert evidence to take the matter beyond that point, or to undermine Ms McFadden's finding that the appellant:

> "…presented with a significant degree of psychological and psychiatric disturbance. At all interviews there was evidence of mood and behavioural lability, disorganised and incoherent thinking patterns, impaired concentration and memory, poor emotional regulation, lack of self awareness and insight, significant impulse control problems and mood and behavioural disinhibition."

[61] What emerges is that the appellant has been regarded by many mental health professionals as suffering from some sort of cognitive impairment or psychiatric disorder, even if the precise aetiology of this is unknown. Many of the features described by Ms McFadden were present in the appellant's appearance before the Authority. His memory was poor and his thinking patterns were clearly disorganised and incoherent. The appellant often deviated from the matter he was asked about into an unrelated area. This would occur frequently and without warning. Taking this into account, and noting that there is a sufficiently unchanged

core in terms of his evidence as to his problems in Iran, the Authority is not satisfied that such discrepancies as have emerged around that core are symptomatic of an underlying untruth as to his original claim.

As to his departure from the airport

[62] Ms Whelan submits that it is implausible that the appellant could effect a legal departure if truly convicted before the Revolutionary Court. A legal departure, however, is not what the appellant claims. His evidence is quite clearly that his parents had engaged the services of an agent and that he believes his parents obtained his passport by paying a bribe. If his was truly a legal departure then this would not have been strictly necessary.

[63] Furthermore, country information simply does not confirm that a conviction in the Revolutionary Court would automatically result in a travel ban being imposed. Such country information as has been submitted by the DOL suggests that, for an accused person, a travel ban can (not shall) be imposed but that a court order under Article 133 of the Procedures for Criminal Courts is required for this to occur – see Human Rights Watch *Activist banned from travelling aboard* (7 February 2007). Other country information also points towards the discretionary nature of travel bans – see the Danish Immigration Service *Report on fact finding mission to Iran* (2000) at page 13 where it refers to an exit ban being able to be imposed for either financial reasons such as tax arrears or ”criminal acts”. The report states that, in relation to the latter, the judge will decide whether the criminal act is “of such a nature” as to warrant a ban being imposed. It is not clear from this report whether the term “criminal act” is meant to cover convictions for criminal offences. No mention is made in any country information of the existence of automatic notification in the case of convictions before the Revolutionary Court. The strongest information in support of this proposition comes from the 2009 UK report which, at page 96, cites correspondence from the Tehran office of UNHCR. This correspondence states that security officials at the airports do have lists of “wanted people” and that security checks are strict. It asserts that it is doubtful that anyone with a security record and convictions for political offences could leave legally. As Mr Moses remarks, however, this is simply an assertion. Moreover, the same report notes that it may happen that a person wanted or under suspicion for political offences can pay bribes to pass though unharmed: “the higher the risk, the more they pay”.

[64] Weighing-up this information, the Authority is not satisfied *on the evidence before it* that such an automatic procedure existed at the time the appellant left. Even if it did, it would seem that it could be circumvented through the payment of bribes. This is not to say that the Authority finds that a person with a conviction before the Revolutionary Court can pass through immigration control with ease. There is every reason to believe that control will be strict without necessarily meaning that each and every conviction before the Revolutionary Court is automatically transferred to an airport 'blacklist'. Whether claims of this nature are accepted will depend on the facts of any individual case. In this case, the Authority concludes there are insufficient grounds to reject the appellant's claim that this is in fact how he managed to depart Iran.

The obtaining of the passport

[65] The appellant obtained his Iranian passport in 2004. He maintained that at the time many people in the community were applying for a passport and that he did so only because his father was unwell. As to this, the Authority has noted previously that prior to the election of President Ahmadinejad in 2005 the previous administration was encouraging expatriates to return home without fear of reprisals – see *Refugee Appeal No 75974* (25 September 2007) at [57]-[61] and *Refugee Appeal No 76160* (11 September 2006) at [52]-[56]. His evidence that many people in the community were doing this at the time is consistent. His requesting a passport *at this time* provides no basis for impugning his credibility.

The appellant's approaches to the immigration officers

[66] The appellant has filed a certificate corroborating his claim that his father died in mid-1996. His explanation that he was so anguished by his father's illness and subsequent death that he wished to return home in disregard of any risk to himself is plausible. As has already been explained clearly in other cases – see *Refugee Appeal No 76014* (30 May 2007) at [79] and *Refugee Appeal No 75574* (*op cit*) at [126], a return to Iran is not necessarily inconsistent with his having a well-founded fear of being persecuted. In this case, the appellant was only motivated to do so because of his father's illness. Moreover, he has not returned at all to Iran at any time. In the circumstances, the Authority finds no basis for impugning his credibility on the basis of the comments he made.

CONCLUSION ON CREDIBILITY

[67] In the circumstances, like the granting officer, the Authority extends to the appellant the benefit of the doubt. It accepts that the appellant did manage to flee Iran in breach of his bail conditions after being found guilty of offences before the Revolutionary Court. It accepts that he had been previously arrested, detained and lashed for breaches of the strict social code as he claimed.

A WELL-FOUNDED FEAR OF BEING PERSECUTED

[68] The Authority finds that the appellant has a well-founded fear of being persecuted. He fled Iran while on bail for offences before the Revolutionary Court for engaging in anti-regime activities. Having been away from Iran for a not inconsiderable length of time, there is a real chance that the appellant will be subjected to routine questioning upon his return. In these circumstances, the possibility that his previous history would be revealed is a real one. Having discovered that he fled the country while on bail for such offences there can be no doubt that the appellant would be taken into custody where there is a real chance that he would be subjected to ill-harm amounting to his being persecuted.

[69] The Authority further finds that there is considerable force in Mr Moses' submission that the appellant's psychological impairment means that he would be more vulnerable and in particular prone to making statements or saying things which would only enflame the situation and render him even more liable to be subjected to ill-harm.

NEXUS TO CONVENTION GROUND

[70] The harm that would be inflicted on him is contributed to by negative, pro-monarchist political opinions being imputed to him.

CONCLUSION

[71] For these reasons the Authority finds that the appellant is a refugee as defined in Article 1A(2) of the Refugee Convention 1951. The appeal is allowed. Refugee status is not cancelled.

"B L Burson"

B L Burson
Member