

**AT AUCKLAND**

<b>Appellant:</b>	<b>AB (Iran)</b>
<b>Before:</b>	B L Burson (Member)
<b>Counsel for the Appellant:</b>	D Mansouri-Rad
<b>Counsel for the Respondent:</b>	No Appearance
<b>Date of Hearing:</b>	23 & 24 March 2011
<b>Date of Decision:</b>	7 April 2011

---

**DECISION**

---

**INTRODUCTION**

[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), declining to grant refugee status to the appellant, a citizen of Iran.

[2] This appeal was lodged with the Refugee Status Appeals Authority (“the RSAA”) prior to 29 November 2010 but had not been determined by that body by that date. Accordingly, it is now to be determined by a member of the Immigration and Protection Tribunal. See subsections 448(1) and (2) of the Immigration Act 2009 (“the Act”).

[3] Further, pursuant to section 448(2), the appeal is to be determined as if it is an appeal under section 194(1) of the Act.

[4] Pursuant to section 198 of the Act, on an appeal under section 194(1) the Tribunal must determine whether to recognise the appellant as:

(a) a refugee under the Refugee Convention (section 129); and

(b) as a protected person under the Convention Against Torture (section 130);  
and

(c) as a protected person under the International Covenant on Civil and Political Rights (“the ICCPR”) (section 131).

[5] The central issue to be determined is whether or not the appellant faces a real chance of being persecuted in Iran.

[6] Given that the same claim is relied upon in respect of all three limbs of the appeal, it is appropriate to record it first.

### **THE APPELLANT’S CASE**

[7] The account which follows is that given by the appellant at the appeal hearing. It is assessed later.

[8] The appellant was born in X where he lived all of his life prior to coming to New Zealand. He is an ethnic Kurd. As a Kurd, the appellant has faced minor discrimination in Iran both before and after the overthrow of the Shah.

[9] The appellant has a number of siblings, one of whom, a brother called AA was, like the appellant, politically interested and aware. They often engaged in discussion about politics between themselves and with three of their cousins who share similar interests in politics. In the mid-1980s, these cousins, told the appellant and AA that they were involved with a pro-monarchist group, the ABC Party. They said the group aimed to establish a constitutional monarchy in Iran with Reza Pahlavi, the son of the former Shah, as the Head of State. The appellant recalls being dubious at first, reminding his cousins that Kurds suffered greatly under the Shah. The cousins replied that Reza Pahlavi had made it clear that he did not agree with his father’s methods and invited the appellant and his brother to investigate the ABC Party for themselves.

[10] The appellant did so and told the Authority that Reza Pahlavi had given speeches in which he said that he promised to promote the general welfare of Kurds and ensure they receive support from the central government. He promised that he would ensure that officials in Kurdish areas were elected from the local population. The appellant explained that in Kurdish areas of Iran, senior public officials such as mayors were imposed from Teheran and were not Kurdish. Reza Pahlavi promised to take steps to ensure that the Kurdish language was protected

and that there would be greater autonomy given to the Kurdish regions. As a result, the appellant became attracted to the aims of the ABC Party and a short while later joined a local cell of the group in X. Subsequently, AA also joined.

[11] The appellant began attending meetings of the cell held in X with his cousins and AA. The appellant, his brother and cousins formed part of the ten to fifteen core members of the cell. The meetings were held in the evenings at secure private locations determined by the cell leaders. The meetings were held every month or bi-monthly. At the meetings, the cell discussed the relevant issues of the day and speeches and declarations that had been made by Reza Pahlavi in exile. The core members of the cell spoke to youths whom they knew and trusted and who were sufficiently opposed to the regime to support the ABC Party. From time to time, these people also came to the cell meetings.

[12] The leaders of the group had obtained copies of Reza Pahlavi's speeches which were distributed at the conclusion of each meeting. The core cell members divided into teams of two and went to different parts of X where they left the pamphlets in public places where large numbers of people congregated. The number distributed varied but, overall, a few hundred pamphlets were distributed by each team of two members on each occasion.

[13] In the mid-late 1980s the appellant's cousins fled Iran to another country where they successfully claimed refugee status on account of their involvement with the ABC Party. The appellant visited them in that country in the early 1990s and they urged him to seek asylum too. He refused and said that he believed that he should stay in Iran and continue to promote the political changes they were seeking from within.

[14] He returned to Iran after a number of weeks and resumed his activities for the cell. He carried on with his activities for the ABC Party as before, until mid-2000 when he, AA, and the remaining core members of the cell were arrested by the security forces while conducting a meeting. The security forces seized a bundle of pamphlets that were to be distributed that evening along with a computer and other materials. They were all blindfolded and taken to a detention facility where the appellant was placed in solitary confinement, in a small cell with no natural light, bedding, or toilet facility. The cell was so small the appellant could not lie down and had to sleep in a huddled position against the wall.

[15] The following day the appellant was taken for questioning. He was questioned about why he joined the monarchist group and the activities. The

appellant explained that he joined the group because of discrimination against the Kurds. The interrogators wished to know the leading members of the group but the appellant replied he only knew them by their aliases. The appellant admitted that he had been distributing pamphlets but said he was only involved at a very low level. He was interrogated for somewhere between half an hour to an hour during which time he was repeatedly punched and kicked about his face and body and verbally abused. The appellant was detained for a week in these conditions. He was interrogated twice per day and during each interrogation he was beaten in similar fashion.

[16] The appellant was eventually charged with acting against the regime. He was told he would be released if he repented and signed an undertaking not to take any action or propaganda against the regime. Fearing for his safety if he did not, the appellant agreed to sign an undertaking and was released. He had to sign over his house ownership papers.

[17] After his release, he spoke to his brother and understood that he and been mistreated in a similar fashion and had been required to sign a similar undertaking and sign over his house papers. Approximately a year after their release, the appellant's brother left for overseas as he had not felt safe since his arrest and detention. He eventually applied for and obtained refugee status in another country on account of his activities for the ABC Party and detention.

[18] After his release, the appellant ceased to participate in any meetings. However, approximately three times a year he arranged to meet in public places with two other members of the cell called BB and CC. At these meetings they talked about monarchist issues and politics generally. They did not engage in any pamphlet delivery or other overt political action.

[19] The appellant undertook no further political activity until shortly prior to the presidential elections in June 2009. In the run-up to the elections there had been a change in atmosphere at street level in X. In the context of the forthcoming presidential elections there was generally a greater willingness to voice criticisms. Within this period the appellant met with CC and BB and it was decided they would reactivate their activities for the ABC Party. It was agreed that CC and BB would concentrate on distributing ABC Party pamphlets and the appellant would engage in political discussions with youths. Approximately ten days prior to the presidential election this activity began again and the appellant spoke openly with people about the criticisms that Reza Pahlavi was making of the Ahmadinejad Government and his call for a boycott of the election. The appellant encouraged

people he spoke to, to support the establishment of a constitutional monarchy in Iran.

[20] The appellant had a showroom for his business in X, situated not far from a place where a large demonstration was taking place. On the day of the demonstration BB was with him outside his shop. In the afternoon the security forces authorities attacked the crowd and people began dispersing. BB ran away and the appellant went into his shop. A few minutes later a group of protesters ran into the shop and the appellant told them to hide in the back. Very shortly thereafter members of the security forces entered the shop and began attacking the protesters with batons. In the ensuing melee, the appellant was repeatedly hit with batons and suffered an injury to his shoulder. His shop window was smashed and other damage to the shop occurred. While some of the demonstrators managed to escape, a number were arrested. One of the officers asked him why he let the protesters into the shop. The appellant said that the demonstrators had simply run into his shop. The officials swore at him and said they would deal with him.

[21] The following day the appellant returned to his shop and set about repairing the damage. While there, officials from the security forces came and the appellant was arrested. At their building, he was questioned about why he had let the demonstrators into his shop. The appellant repeatedly informed them that he had not done so, that they had simply entered the shop uninvited. The officials questioning him did not believe him. They mentioned they were aware of his political background, but the appellant told them he had repented from this and was no longer politically active. Although the appellant was not physically mistreated on this occasion, he was verbally abused. The appellant was released later that day on bail after paying a sum of money and signing another undertaking not to take any action or spread propaganda against the regime.

[22] After this incident, the appellant ceased his activities on behalf of the ABC Party. He received a phone call from BB which made him believe that he had not, at that point been detained.

[23] The appellant attended a further two protests both in X during mid-late 2010. On both occasions the demonstrations were disrupted by the authorities. On neither occasion was the appellant arrested. However, during the last of these his son attended and was arrested. Through a distant relative of his wife, the appellant paid a bribe to the arresting officer and his son was released.

[24] Prior to the appellant's resumption of open political activity for the ABC Party, he had applied for an extension of his passport which had been granted. However, following his release from detention in June 2007, the appellant became anxious and worried about his situation. His wife suggested that he come to New Zealand. She has a sister living here and had herself visited New Zealand. She told him it was a peaceful country and believed a short break in New Zealand would do him good. He therefore applied for a New Zealand visa in mid-2009 which was granted in late December 2009.

[25] Following the grant of his visa the appellant, through a contact of another cousin, had enquiries made as to whether he was on any list of persons banned from leaving the country. He paid a substantial sum for this to be done. The cousin told him that his contact had informed him that there was no barrier to the appellant leaving and that it had been taken care of. The appellant has no idea whether he was on a banned list or not. He departed Iran without any difficulty and arrived in New Zealand in early 2010.

[26] Approximately two weeks after he had arrived in New Zealand the appellant was telephoned by his wife. She informed him that a visit had been made to his place of work by the authorities who said they wanted him for questioning. The authorities were in plain clothes. His son was working at the shop and told the authorities that his father was away on an overseas trip. They left a number and told the family that the appellant should contact them on this number as soon as he returned. His wife also told them that his son had been suspended from university for participating in another demonstration in another city in Iran.

[27] The appellant was anxious about his situation and soon afterwards lodged his refugee application.

[28] Since then the appellant has been in regular contact with his wife. She has told him that in mid-2010 the authorities came to the family home inquiring as to whether he had returned from overseas. His wife told the authorities that he was overseas for medical reasons and would not be back soon. She asked them where they were from but they simply told her that they needed to see the appellant for questioning.

[29] The appellant believes that this interest in him is related to his detention in June 2009 and his previous political activity on behalf of the ABC Party. He states that the authorities have been systematically reviewing groups who were active during the protests in 2009, and this included pro-monarchist groups. He suspects

because he has been a low level member, it has taken them some time to get round to him. He has had no contact with BB or CC. He fears that they may have been arrested and, if so, it would not be safe for him to contact them or safe for his family to do so.

[30] The appellant believes that if he returns to Iran, he will be arrested, interrogated and imprisoned.

### **Documents and Submissions**

[31] On 21 March 2011, the Tribunal received from counsel a written memorandum of submission with attached country information relating to the general human rights situation in Iran; the persecution of prisoners and the treatment of failed asylum seekers upon return to Iran. At the conclusion of the hearing counsel made oral submissions to the Tribunal. These submissions and material have been taken into account in reaching this decision.

### **THE REFUGEE CONVENTION – THE ISSUES**

[32] 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.”

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

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

## **ASSESSMENT OF THE CLAIM TO REFUGEE STATUS**

### **Credibility**

[34] Although the Tribunal has some reservations about the timing of the renewed interest in the appellant, occurring as it does shortly after his arrival in New Zealand, it is satisfied that the account is a truthful one. It notes the appellant's evidence has been consistent throughout his refugee application and that he has demonstrably failed to take opportunities available to embellish his claim. He presented in an open, forthright and credible manner.

[35] The Tribunal therefore accepts the appellant's account of his background in Iran. It finds the appellant is a Kurdish man who has, in the past, been actively involved in support of the ABC Party, a pro-monarchist group. In 2000, he was arrested and detained in poor conditions for a week as a result of these activities. During this detention he was repeatedly beaten during a number of interrogation sessions and he was released following the giving of an undertaking to stop all anti-regime activities.

[36] The Tribunal further accepts that in the run-up to the disputed presidential elections in June 2009, the appellant and other members of his pro-monarchist group resumed their political activities. The appellant was detained briefly when a number of protestors entered his shop following the attack on the protestors by the authorities and he hid them in his shop. He was briefly detained as a result.

[37] The Tribunal accepts that since coming to New Zealand there have been two visits by the authorities as to his whereabouts.

[38] His claim will be assessed against that background.

### **Objectively, on the Facts as Found, is there a Real Chance of the Appellant Being Persecuted if Returned to the Country of Nationality?**

#### *Relevant principles*

[39] For the purposes of refugee status determination, the correct approach to interpreting "being persecuted" has been determined by the RSAA to comprise the sustained or systemic violation of basic or core human rights such as to be demonstrative of a failure of state protection – see *Refugee Appeal No 2039/93* (12 February 1996) and *Refugee Appeal No 74665/03* [2005] NZAR 60;



[2005] INLR 68 at [36] to [125]. Put as a convenient shorthand formulation, it has been expressed by the RSAA as comprising serious harm plus the failure of state protection – see *Refugee Appeal No 71427* (17 August 2000).

[40] As to the degree to which a risk of being persecuted must be established on the evidence, the RSAA has consistently adopted the approach taken in *Chan v Minister of Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), which held that a fear of being persecuted is well-founded when there is a real, as opposed to a remote or speculative, chance of such persecution occurring. This entails an objective assessment as to whether there is a real or substantial basis for the anticipation of being persecuted. Mere speculation will not suffice.

## Country Information

### *General human rights situation in Iran*

[41] Iran continues to be a country with a poor human rights record. Human Rights Watch *World Report 2011: Iran* (January 2011) observes that:

“Iran’s human rights crisis deepened as the government sought to consolidate its power following 2009’s disputed presidential election. Public demonstrations waned after security forces used live ammunition to suppress protesters in late 2009, resulting in the death of at least seven protesters. Authorities announced that security forces had arrested more than 6,000 individuals after June 2009. Hundreds—including lawyers, rights defenders, journalists, civil society activists, and opposition leaders—remain in detention without charge. Since the election crackdown last year, well over a thousand people have fled Iran to seek asylum in neighboring countries. Interrogators used torture to extract confessions, on which the judiciary relied on to sentence people to long prison terms and even death.”

[42] The United States Department of State *Country Reports on Human Rights Practices 2009: Iran* (11 March 2010) gives more detail on the parlous state of human rights in Iran generally. While the report covers events in 2009 only, what it describes can be considered as indicative of current practises given the worsening human rights situation inside Iran. The report states, at section 1a, that the government has been implicated in numerous cases of unlawful killing, particularly in the context of the disputed 2009 presidential elections. As to the treatment of those detained, the report states, at section 1c:

“The constitution and law prohibit torture, but there were numerous credible reports that security forces and prison personnel tortured detainees and prisoners, especially those arrested after the June election. In X alone, 37 detained protesters, male and female, claimed prison or security officials had raped them. Major human rights and news organizations reported “systematic” torture of individuals after the election.

Common methods of torture and abuse in prisons included prolonged solitary confinement with extreme sensory deprivation (sometimes called "white torture"), beatings, rape and sexual humiliation, long confinement in contorted positions, kicking detainees with military boots, hanging detainees by the arms and legs, threats of execution, burning with cigarettes, pulling out toenails, sleep deprivation, and severe and repeated beatings with cables or other instruments on the back and on the soles of the feet. Reported practices also included wetting prisoners before beating them with electric cables, to intensify the abuse. Prisoners also reported beatings on the ears, inducing partial or complete deafness; blows in the area around the eyes, leading to partial or complete blindness; and the use of poison to induce illness."

*Political prisoners in the aftermath of the 2009 elections*

[43] In the report *From Protest to Prison: Iran one year after the election* (June 2010) Amnesty International ("AI") charts the arrest and detention of persons involved in the protest surrounding the dispute of the presidential elections of June 2009. AI observes, at page 5, that given that the official estimate is that approximately 5,000 people had been detained since protests erupted in June 2009, the true figure was "almost certainly higher". AI goes on to note:

"Those who demonstrated against the Government were met by security forces wielding batons, using tear gas and sometimes firing live rounds. Hundreds of others have been arrested at their homes or workplaces, usually by unidentified plain clothes officials bearing generic arrest warrants. Some have been detained in conditions amounting to cruel, inhuman and degrading treatment. Many have been tortured, including by beatings, rape and solitary confinement in small spaces for long periods. Hundreds have been sentenced after grossly unfair trials to lengthy prison sentences, while many others are still held without charge or trial. Some have been sentenced to death."

[44] AI observes, at page 8, that the vast majority of persons arrested have been "ordinary citizens". People went out on the streets to protest. Arrests have taken place before and after demonstrations. Significantly for present purposes, AI goes on to observe, that over time, the authorities have cast their net of interest far wider:

"Those targeted for arrest have included political and human rights activists, journalists, women's rights defenders and students. As time has progressed, new groups have been brought into the fold of suspicion, including clerics, academics, former political prisoners and their relatives, people with family links to banned groups, members of Iran's ethnic and religious minorities – particularly the Baha'is, but also other minorities such as Christians, Dervishes, Azerbaijanis, Sunni Muslims (who are mostly Baluch and Kurds), and lawyers who have defended political detainees."

[45] At page 17, AI quotes the Minister of Intelligence stating in December 2009 that:

“Elements such as the hypocrites [PMOI], monarchists, religious and ethnic terrorists, Baha’is, homosexuals, feminist groups, nationalists and Marxists are participating in this [seditious] current.”

[46] The report observes that the Iranian authorities have sought to blame banned groups for the arrests. AI observes that the groups blamed include left-wing groups and monarchist groups. AI goes on to state:

“To find scape-goats and to validate their claims of a “soft revolution” orchestrated from abroad, they have turned to former political prisoners and to those whose relatives are members of banned groups.”

[47] The government continues to be extremely sensitive to organised protest of any kind in the wake of popular uprisings against repressive regimes in the Middle East and North Africa in recent months. Mass demonstrations have taken place which have resulted in the massive deployment of security force personnel, unlawful killings, and mass arrests of protestors including the arrest of 1,500 demonstrators at one demonstration alone – see S Tisdall “Egypt revolt has Iran in a spin” *The Guardian* (1 February 2011); S Kemali Dehghan “Iranian Opposition calls for fresh protests over pair killed during rally” *The Guardian* (19 February 2011); M Javedanfar “Iran’s repressive regime cannot last” *The Guardian* (22 February 2011).

[48] Political prisoners associated with banned political organisations or groups, including pro-monarchist groups have been executed. In this regard, the *Interim Report of United Nations Secretary General on the Situation of Human Rights in Iran* United Nations Human Rights Council (60<sup>th</sup> Session) A/HRC/16/75 (14 March 2011) at [14], refers to:

“A worrying trend [in] the increased number of cases in which political prisoners are accused of Mohareb (enmity against God) offences which carry the death penalty. In Iran’s law, Mohareb relates to the use of armed violence, however special procedures mandate holders and other independent experts have questioned the problematic and arbitrary nature of such charges. At least 22 persons charged with Mohareb have been executed since January 2010.”

[49] The report notes at least two people have been executed for their alleged participation in post-election unrest and contact with banned groups. Another report notes that two men arrested during post-election protests were executed in January 2010 after being convicted for *Mohareb* and membership of banned pro-monarchist groups following unfair trials. One of the men’s lawyers said his client had played no part in the election protest and was forced to confess in a show trial after family members were threatened – see AI *Shocking Execution of Iran Protestors Condemned* (28 January 2010).

### **Application to the Appellant's Case**

[50] Against this background the predicament of the appellant falls into stark relief. The appellant has been arrested on suspicion of helping shelter demonstrators against the regime following the disputed 2009 presidential elections. The AI report makes it clear that the range of people being targeted for arrest by the regime in the wake of the popular unrest has broadened to include not only those caught demonstrating at the protest, but those known to have an association with banned political parties including pro-monarchist parties, former political prisoners, and members of Iran's ethnic minorities. The appellant falls within three of these categories: he is a Kurd, a former (if briefly held) political prisoner and a person with family links to a banned group.

[51] There is ongoing interest in his whereabouts by the regime. Country information makes it clear that those arrested continue to be at risk of being tortured or otherwise seriously mistreated amounting to serious harm.

[52] For these reasons, the first principal issue is answered in the affirmative.

### **Nexus to a Convention Reason**

[53] There are a number of overlapping convention grounds contributing to the appellant's predicament. Most obviously, his risk of being persecuted is linked to his political opinions of a pro-monarchist nature. However, the appellant's Kurdish ethnicity is also a factor contributing to an increased risk of him suffering serious physical mistreatment amounting to his being persecuted.

[54] Therefore, the second principal issue is also answered in the affirmative.

### **CONCLUSION ON CLAIM TO REFUGEE STATUS**

[55] For the above reasons the Tribunal finds that the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Pursuant to section 129 of the Act this means the appellant must be recognised as a Convention Refugee. The appeal is successful. Refugee status is recognised.

### **THE CONVENTION AGAINST TORTURE – THE ISSUES**

[56] Section 130(1) of the Act provides that:

"A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand."

## **ASSESSMENT OF THE CLAIM UNDER THE CONVENTION AGAINST TORTURE**

[57] Because the appellant has been recognised as a refugee he is entitled to the protection of New Zealand from *refoulement* to Iran. The recognition of the appellant as a refugee means that he cannot be deported from New Zealand to Iran – See Article 33 of the Refugee Convention and sections 129(2) and 164 of the Act – the exception to section 129 which is set out in section 164(3) of the Act does not apply. Therefore, there are no substantial grounds for believing the appellant would be in danger of being subjected to torture in Iran.

## **CONCLUSION ON CLAIM UNDER CONVENTION AGAINST TORTURE**

[58] The appellant, being recognised as a refugee in New Zealand, he cannot be deported from this country as a matter of law. There are thus no substantial grounds for believing he is in danger of being subjected to torture in Iran. He is not a person requiring protection under the Convention Against Torture. The appellant is not a protected person within the meaning of section 130(1) of the Act.

## **THE ICCPR – THE ISSUES**

[59] Section 131(1) of the Act provides that:

"A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand."

## **ASSESSMENT OF THE CLAIM UNDER THE ICCPR**

[60] Again, because the appellant is recognised as a refugee he is entitled to the protection of New Zealand from *refoulement* to Iran. For the reasons already given in relation to the claim under section 130 of the Act, there is no prospect of the appellant being deported from this country. Therefore, there are no substantial

grounds for believing that the appellant is in danger of being subjected to arbitrary deprivation of life or to cruel, inhuman or degrading treatment or punishment in Iran. Accordingly, the appellant is not a person who requires recognition as a protected person under the ICCPR.

### **CONCLUSION ON CLAIM UNDER ICCPR**

[61] The appellant, being a person recognised as a refugee in New Zealand pursuant to section 129 of the Act, cannot be deported from this country as a matter of law. Therefore, the Tribunal determines that the appellant is not a person requiring protection under the ICCPR and it follows that the appellant is not a protected person within the meaning of section 130 of the Act.

### **CONCLUSION**

[62] For the foregoing reasons, the Tribunal finds that the appellant:

- (a) Is a refugee within the meaning of the Refugee Convention;
- (b) Is not a protected person within the meaning of the Convention Against Torture;
- (c) Is not a protected person within the meaning of the Covenant on Civil and Political Rights.

[63] The appeal is allowed.

**Certified to be the Research  
Copy released for publication.**

**B L Burson  
Member**

"B. L. Burson"  
B L Burson  
Member