

**DECISION RECORD**

**RRT CASE NUMBER:** 071911606

**DIAC REFERENCE(S):** CLF2007/127793

**COUNTRY OF REFERENCE:** Iran

**TRIBUNAL MEMBER:** John Cipolla

**DATE DECISION SIGNED:** 10 March 2008

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the dependent applicants satisfy s.36(2)(b)(i) of the Migration Act, being the dependants of the first named applicant.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).

The applicants, who claim to be citizens of Iran, arrived in Australia and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas. The delegate decided to refuse to grant the visas and notified the applicants of the decision and their review rights by letter.

The delegate refused the visa application on the basis that the applicants are not persons to whom Australia has protection obligations under the Refugees Convention

The applicants applied to the Tribunal for review of the delegate's decisions.

The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is the spouse or a dependant of a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa.

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

#### **Definition of 'refugee'**

Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any 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, is unable or, owing to such fear, is unwilling to return to it.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

## **CLAIMS AND EVIDENCE**

The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

The primary visa applicant (the applicant) applied for a protection visa which was received by the Department of Immigration and Citizenship. Included in the application, but without their own claims for protection were the primary visa applicant's children

The form B submitted with the application indicates that the applicant was separated from her husband, she had family members resident in Iran, and that she received some assistance in the completion of the form, and that this assistance was not provided by a registered migration agent.

The form C submitted by the applicant indicates where and when she was born and that she spoke English and Farsi. The evidence indicates that prior to coming to Australia the applicant had been a housewife in Iran. The applicant's claims for protection are outlined in her protection visa application form C. The applicant advised that she was claiming protection for the following reasons:

*"My family and I came to Australia on [date] ([family composition]) on a [type of visa]. Subsequently, my husband left and went back to Iran to establish [a] business. During this period he came to visit us [number of times] and [those] times were during our first year in Australia, ie, [year]. We had not seen him for the past [number of] years and for the past [time period] he has not sent us any money. During this time because I was alone here and for emotional support I met an Iranian man who provided me with emotional support and sometimes if I was desperate for money, he would provide me with little financial help. Again for moral and emotional support I would sometimes go to the church to pray. In the last telephone conversation that I had with my husband, he acknowledged that he knows that I am seeing another man here and also said that he knows that I go to church here and he has got pictures with the dates on them from me and the guy I am seeing and also he has got pictures with the dates on them in different occasions of me going to the churches here. Then he threatened me that if I go back to Iran he will first take the children away from me (he is allowed to do that by law in Iran, which applies Sharia fundamentalist law in all aspects of life) and then threatened me that he will let the Islamic law deal with me on two counts! First, seeing another man (which is adultery) and in Islamic law it is punished by stoning to death; and secondly because I am Muslim I should not have to do anything with the churches, with the pictures he has got in his possession, he can prove over there that I have changed my religion and I do not have anything else to prove otherwise. Therefore, this is another crime for anyone in Iran to change their religion and again the punishment is certain death. In*

*Iran the man or husband has supreme control over his family and the law believes what the man says and the courts are run by Mullahs who are judges and extremely biased towards men, especially that I was living in a western country for the past almost [period of] years, so it is most likely that they will believe him and his pictures. I am appealing to you and applying for refugee visa as I am in extreme fear of my life and I ask the authorities not to send me back where my life would be in extreme danger.”*

The applicant submitted that her husband and the government authorities in Iran would harm her if she returned to her country, because of the Islamic law that applies in all facets of life in Iran. The applicant submitted that she would not be able to derive any protection from the Iranian authorities because fundamentalist and Islamic law runs the system in Iran, and they would not offer any protection.

The Department rejected the application in a decision. The Departmental officer summarised the applicant’s claims as follows:

*“The applicant claims that she came to Australia on [date], with her husband and [number of] children when her husband was granted his [type of] visa for Australia. She claims that later in the same year, her husband went back to Iran to establish [a] business and visited her in Australia [number of times] in that year.*

*The applicant also claims that in the year [stated], she and her husband decided to get separated. She claims that in the last [period of] years her husband has not visited her or provided any financial support to her.*

*The applicant further claims that during the time her husband was away, she met an Iranian man who provided her with emotional and financial support. She also visited a church to pray with this person as she needed emotional and moral support.*

*She claims that her husband in a telephone conversation has mentioned to her that he is aware of her relationship with this Iranian man and has evidence to prove it. She claims that her husband is aware that she had attended church with the Iranian man. She also claims that her husband threatened her that if she returned to Iran he will take her children from her and then hand her over to the authorities to face the Islamic law for adultery and changing her religion. The applicant claims that her husband has pictures of her with this Iranian man attending church and this would incriminate her and she would not be able to prove otherwise. She claims that under the Islamic law punishment for adultery is stoning to death and converting to another religion is considered to be a crime.*

*She claims that she fears returning to Iran as her life would be in grave danger and that the authorities would not be able to protect her because they would support her husband as he is a man/husband and a Muslim.”*

The Departmental officer when addressing the applicant’s claims concluded:

*“The applicant’s claims are vague and general, without any specific Convention nexus. Regardless of the credibility of the applicant’s claims, I am not satisfied that there is a real chance of a Convention related persecution of the applicant if she returns to Iran. Taking her claims at face value, I am not satisfied that she would suffer persecution for a Convention reason, as her most serious claim is that if she returns to Iran her husband would take her children from her, and hand her over to the Iranian authorities because she has received some emotional and financial support from an Iranian man and has attended church with him.*

### ***With regard to departing Iran***

*The Department’s data base indicates that the applicant departed Australia on [date] and returned again on [date] on the same visa sub-class.*

*At the airport, travel documents are checked by representatives of several government agencies, passport office, customs, information ministry and revolutionary guard corps at different points of the check-in procedure. Independent country information indicates that with so many different checks, it would be impossible for anyone to bribe their way through an airport to effect departure; similarly, it would be almost impossible to use an unauthorised travel document to pass through, unless the document itself was a genuine one, obtained under false pretences, and/or with the collaboration of a range of people in the passport office. Bribery is common in Iran and it is possible bribes may be paid to avoid arrest at the airport. However, it is unlikely that a bribe could convince an airport official to allow a person on a black list or without a valid passport, to board an international flight. Iranians leaving Iran via Tehran airport are subject to stringent security checks without exception. Travel in and out of Iran through legal exists/entry points is a reliable indication that a person is of no particular adverse political or security interest. Information source for the proceeding is from CIS documents CX109622, CX124083, CX39811 and DFAT CAR No.61/00. ... ..*

*In view of the proceeding independent country information it is reasonable to consider that the applicant was not of adverse interest at the time of her departures from Iran, that is, in [dates]*

### ***With regard to previously departing Iran and returning***

*The applicant travelled out of Iran in [year] and [year] and returned in [year]. It is reasonable to consider that returning to Iran in [year] indicates that there was not a well-founded fear at that point of time, even though she had been allegedly separated from her husband and has formed an association with another male.*

*Further, in view of the independent country information concerning departing Iran, it is reasonable to consider this indicates that there was not an adverse interest by the authorities in the applicant at that point of time.*

### ***With regard to being female***

*With regards to her association with an Iranian man who provided her with emotional and financial support, the applicant has not provided any details or background information, such as, who is this person with whom she formed such association, when she formed this association with him, name or any other details of this man, how long she has known him, what kind of emotional and financial support she received from him, for how long this association was going on before her husband became aware of it; or if this association is still continuing. In her application she addressed him as an “Iranian man” and with whom she also attended church; again she did not give any details of why she attended a church with this man, what is the name of this church, where it is located, how often she attended this church; or if she has converted to Christianity, etc.*

*Also the applicant has not provided any details about her husband or her reasons for separating from him. She has also not explained why she decided to stay back in Australia and did not return with him when her reasons for coming to Australia were to accompany her husband. She has also not given any details of the threats that she allegedly received from her husband, such as, when did she receive the threats, how could she be certain that her husband has evidence of her association with this “Iranian man”, what action she has taken about these threats, etc. The lack of verifiable and credible detail leads me to believe that this situation is not as claimed.*

*The Iranian Constitution says that all citizens, both men and women, equally enjoy protection of the law and all human, political, economic, social and cultural rights in conformity with Islamic rights. Article 21 states the government must ensure the rights of women in all respects, in conformity with Islamic criteria. None-the-less, provisions in Islamic civil and penal codes, in particular those sections dealing with family and property law, discriminate against women. In 2003 the Council of Guardians rejected a Bill that would require a country to adopt a UN Convention ending discrimination against women. During recent years, women fought for an end and received relative liberalisation of gender base treatment in a number of areas. However, many of these changes were not legally codified. Women had access to primary and advanced education. Women can own property and business in their name, and they can obtain credit at a bank. The law provides maternity, child care and pension benefits. The number of women’s NGOs has increased from approximately 130 to 450 in the past nine years. The government-enforced gender segregation in most public spaces and prohibited women from mixing openly with unmarried men, or men not related to them. Women must ride in a reserve section on public buses and to public buildings and universities, and airport through separate entrances.*

*The above information from the United States Country Reports on Human Rights Practises – 2006 released by the Bureau of Democracy, Human Rights, and Labour March 6, 2007 indicates that women in Iran face discrimination. This is confirmed by the UK Home Office Country Report, April 2005, Country Information & Policy Unit, Immigration and Nationality Directorate – Home Office, United Kingdom However, there is a difference between discrimination and persecution.*

*The relevant factor in regard to the grant of a protection visa is whether there would be a real chance of Convention based persecution in the foreseeable future should the applicant*

*return to Iran. Given the preceding country information, and if I were to accept that her husband's threats are genuine, it is understandable the applicant may not wish to return to Iran. Some of Iran's laws discriminate against women and in some areas and under certain circumstances, women are disadvantaged by laws, which favour men. While the applicant may face discrimination for no other reason than she is not a male, it cannot be found that she would be singled out for persecution due to being a woman.*

***With regard to being a Christian.....***

*The applicant claims that she will suffer persecution if she returns to Iran because she has attended church in Australia.*

*The applicant does not claim that she has converted to Christianity, nor has she provided any evidence or details of the church she attended in Australia. In her account on Folio 39, she states that "for moral and emotional support, I would sometime go to the church to pray" I find that the applicant is not a Christian convert or is associated with Christianity even remotely. Based on the quotations above, it is abundantly clear that it is Christian converts who experience surveillance and detention. There is no evidence before me which indicates that the applicant has converted to Christianity and there is no evidence to indicate that she will. Furthermore, there is no claim or evidence of practising Christianity in Iran. Therefore, I am not satisfied that the applicant would be targeted on the basis of her religion or due to the alleged threats of her husband, that she has converted to Christianity by attending a church.*

*The Iranian Constitution declares that the official religion of Iran is Islam and the doctrine followed is that of Ja'Fari (Twelve) Shi'ism. The Constitution also states that other Islamic denominations are to be accorded full respect and recognised the country's pre-Islamic religions – Zoroastrians, Christians and Jews as protected religious minorities; however in practise the government restricted freedom of religion. The population is approximately 99% Muslim; 89% of the population is Shi'a and 10% is Sunni. Baha'i, Christian, and Zoroastrian, and Jewish communities constitute less than 1% of the population. With the exception of Baha'i's, the government allowed recognised religious minorities to conduct religious education of their adherence, although it restricted this right considerably in some cases. Religious minorities are barred from election to a representative body, except for the five Mahles seats reserved for minorities, and from holding senior government or military positions, but they were allowed to vote. Persecution of Muslims by non-Muslims is illegal (US Country Reports on Human Rights Practices – 2006 released by the Bureau of Democracy, Human Rights, and Labour March 6, 2007).*

*Iran is a Theocratic state and the majority religion is Shi'a Islam. Christians form a small religious minority. Evangelical Christians suffer persecution at the hands of the Iranian authorities; however there is nothing before the department to indicate that the applicant is an Evangelical Christian.*

*.... The applicant has not made claims that she has converted to Christianity or has such intention. Considering her claims and her background information provided, I find that her profile is not one where there would be a real chance that she would be detained,*



*interrogated and seriously harmed upon return to Iran, because of imputed religious beliefs. The applicant may face some discrimination. It cannot be found that she would face a real chance of Convention-based persecution on the basis of her imputed religious opinion.*

*In the absence of detailed information, I have been unable to research this aspect of the applicant's claims, and without corroborating evidence, I am not satisfied that the applicant would have an imputed political/religious profile as claimed. I consider that threats and intimidation of this kind she allegedly received from her husband relate to criminal activity. There is no reason to suppose that her husband whom the applicant fears, may pursue her would have any interest in her for a reason which is included in the Refugee's Convention. I do not regard this claim as being of sufficient gravity to constitute persecution of the applicant.*

### ***Relocation***

*Even if the applicant faced family difficulties, if need be, she could reasonably be expected to relocate to another area of Iran.*

*Australia is not under an obligation to provide protection outside the borders of the country of nationality if real protection can be found within those borders. Therefore, the Convention does not provide protection if the applicant could avail him/herself of the real protection of his/her country of nationality elsewhere within that country.*

*... Country information advises that there is no system of residential registration and people can move freely from one neighbourhood to another or one city to another without seeking the permission of, or informing the local authority. The document further advises that most harassment cases are locally based, and the departure of an individual from the problem area would resolve their difficulties.*

*Consequently, I do not accept that the authorities in Iran would withhold protection from the applicant for a Convention reason, and I find that the harm feared by the applicant is not Convention-related.*

*In addition, I have taken into account the following comments from Hathaway:*

*“A person cannot be said to be at risk of persecution if she can access affective protection in some part of her state of origin. Because refugee lawyers intended to meet the needs of only those who have no alternative to seeking international protection, timely recourse should always be to one's own state.*

*I consider that the applicant will be able to relocate internally within Iran in order to avoid the claimed threats from her husband in her local area. I note that she has her own parents and several siblings residing in Iran, whom she can approach and seek any support she might need.*

*Therefore, after carefully considering the applicant's circumstances, and taking all of the above information into account, I am not satisfied that the applicant faces a real chance of Convention-based persecution in the reasonable foreseeable future, if she returns to Iran.”*

At the time of lodging the application for review to the Refugee Review Tribunal, the applicant provided supplementary comments to the Tribunal which are replicated in full. Those comments were received by the Tribunal on [date].

*"I am [name] and I have applied for Tribunal. My RIT file No. is 071911606. I was born in [date], and I live in [address in Australia]. I would like to correct some mistakes in a letter that I received from Department of Immigration referring to my application for a protection visa. They haven't understood my story correctly and also there was a mistaken date, that I put on my application. The mistaken date was my separation date with my husband, which said [year], but it is meant to be [another date]. [Earlier year] was the date of us arriving. Another thing that they didn't understand correctly, was that I separated from my husband for the reasons that, we have had conflicts since years ago. For the reason that I could not live with him any more and all the disrespects he had for me. For example, he hit me, swear at me, and my family, also the last time I went to Iran, which was in [year], my [child] saw my husband giving his number to another woman in a restaurant. And he thought that my children would not know, but my [child] saw it and told me. [The child] also told me that my husband had been talking to the woman on the phone constantly.*

*I didn't see all this because he was in another city with my children in Iran because his parents live in another city. And I was with my parents at that time. These are some of the reasons that made me separate from him. And the reason for us coming to Australia was so that [stated purpose]. And also for my children to have a good education. He owns a [business] in Iran which is [description of business] and he wanted to [stated purpose].*

*In [year] I never saw him or talked to him. And all that emotional and financial issues really hurt me at the time which is the reason of me meeting an Iranian man and, who supported me both emotionally and financially. If he wasn't here, I would have been really sick and depressed. He is a very good man who understands me and helps me a lot. And now he is my boyfriend. He even accepted to share a house with me later on because of my high rent. I also didn't know what I had to give information and details about him. His name is [name], born in Iran [date], who lives in [address in Australia]. His number is [telephone number]. He came to Australia with a [class of] visa. I met him [where they met]. He was currently in Iran and was waiting to receive his visa to come to Australia. He asked for some information about Australia, which I helped him with that. That is when I got to know him and from then we got friends and chatted every day, [method of contact]. And when he arrived to Australia in [date], I went to see him. From then we went out a lot and showed him around and I helped him to get to know places better. My children didn't know about us.*

*Another things that was mistaken in my application was that it said that I attended church with this man. I didn't attend church with this man. I only went to church before he came to Australia. I attended church for prayers, in [street address]. After [name] came to Australia I stopped going to church. And the photo that was taken of me was just me in church. And another photo that was taken of me and [name] was at [location in Australia], which was taken by someone who my husband sent.*

*My husband received those two photos and that's how he knows that I am having a relationship with another man. The reason that my husband sent someone to take photos of me was because my [child] had found out that I am having a relationship with [name] and got really upset so [my child] told my husband on the phone. I don't know who took these*

*photos and when and how it happened. I found out about the photos, when my husband called me and threatened me of taking my children away from me and also he threatened me that if I ever go back to Iran he will let the Islamic law deal with me for being with another man. Which, in Islamic law, the punishment for it is, stoned to death or execution. Also my husband has a photo of me going to church, so he thinks that I have become a Christian, and changing your religion is in Islam has a punishment of certain death. And I am certain that he has photos of us because he described [name] and me, so I am certain that he has prove (sic). And man, in Iran have all the power. So the Islamic law will believe him more than me. Currently I have applied for a divorce and with help of my family and a lawyer in Iran, it is taking place. The reason of me not divorcing him in Iran is that I knew that he would take away my children from me after the divorce.*

*A letter that I received form Immigration said that if I go back to Iran, I can go live with my parents. Or if I am scared from my husband I can go live in another city. But I cannot go back to Iran because I know that my children are going to be taken away from me and I am never gonna see them again. And I cannot live with my parents, even if I could go back to Iran, because they are very old and stay at home and they don't work. Also my [other family members] have their own financial issues. Also in a letter we received, says it's hard for them to believe that I will get persecuted. But believe me, it will happen because so many girls in Iran are being persecuted for sleeping with men, girls with the age of 17 years old. Now think what would happen to me, a woman who is married and is having a relationship with another man. So please help me, don't let my children be taken away from me. Please give me the chance to get interviewed so that I can explain even more."*

## **TRIBUNAL HEARING**

The applicants appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from the applicant. The Tribunal hearing was conducted with the assistance of an interpreter in the Farsi (Persian) and English languages.

The Tribunal conducted the first hearing on [date]. The applicant gave evidence and was assisted by an accredited interpreter.

The applicant advised what her name is and the date that she was born in Iran.

The Tribunal asked the applicant who assisted her in the completion of the form B and form C submitted to the Department in support of her claims for refugee protection. The applicant stated that an Iranian friend helped her to complete the forms and that this friend read the information back to her and that apart from some minor errors it was correct in every detail. The Tribunal asked the applicant to correct any errors in the forms and the applicant stated that there was only one error namely the date of separation of herself and her husband. She advised that she and her husband separated in Year 2 around the time that she went to Iran in early Year 2, and the applicant advised that she and her husband did not cohabit during the return visits to Iran in Year 2, and that this is the time that she pin points the breakdown of the relationship.

The Tribunal noted that the applicant travelled to Australia with her husband and her children, in Year 1 and asked the applicant whether she was cognisant of the type of visa that her husband had been granted. The Tribunal asked her whether she knew what it was about. The applicant advised the Tribunal that her husband was attempting to do in Australia, and

that during the first year the family were in Australia her husband returned to Iran on a number of occasions in relation to issues [stated].

The Tribunal asked the applicant where she and her family had settled upon their arrival in Australia, and how they established themselves in this country. The applicant stated that she and her children were totally dependant on the financial support of her husband. She advised that they had a friend in Australia, an Australian citizen who was originally from Iran, and was a professional person, and she helped the family a lot to get established. They rented a home in Australia, and they have been living in the same place since their arrival in Year 1. The applicant stated that her children were schooled initially in the English language, and they have been attending school since that time. She advised that the lease for the residential premises is in joint names, and that it was initially at an agreement for a stated period, and has been a continuing agreement since that time. The applicant further advised that she and her husband purchased a motor vehicle in joint names, she advised it was still in joint names.

The Tribunal asked why the car was still in joint names given the applicants separation from her husband, and the fact that he has not resided in Australia since late Year 1. The applicant stated that she did not believe she would be able to transfer it into one name without her husband's signature, and she also believed that she would have problems selling the motor vehicle because it is still registered in two names.

The Tribunal made reference to the movement record for the applicant and her estranged husband. Movement records indicated the date that the applicant first arrived with her husband. Tribunal noted a date that the movement records indicated that the applicant departed Australia and when she returned. However, her husband departed Australia a short time after arriving in early Year 1 not returning until some months later he departed again soon after returning some months after that and finally departed soon after that in Year 1 never to return. The Tribunal asked the applicant why she returned to Australia in Year 2 with her children, given the breakdown of the marital relationship in Year 2 in Iran. The applicant stated that she and her husband had long term marital problems. She stated that she was not going to come back to Australia at this time in Year 2 but her husband had a [stated purpose] in Australia. In addition to this because of her children's education and because the family had a visa [of stated duration].

However the Tribunal noted that if her condition present to the grant of the visa changed, it was incumbent on a visa holder to advise the Department of the change of circumstances. The applicant stated that at that point in time the marriage had broken down, however the applicant believed her husband's intention was to return to Australia to [stated purpose], and he was unclear as to the fate of the marital relationship at that point in time.

The Tribunal noted the applicant's husband multiple departures from Australia in Year 1, and asked how her estranged husband organised for she and her children to be provided for in his absence. The applicant stated that she did not have permission to work, she stated that during the [stated purpose] and early days in Australia, her husband provided full financial support. She stated she continued to receive financial support until mid-Year 3. Financial support had ceased since mid Year 3 when her husband found out about her new relationship with an Iranian man in Australia. The applicant also asserts that her husband made threats to her at this time stating that he would take the children from her if she married this man.

The Tribunal asked the applicant to comment on the fact that she had effectively been abandoned by her husband when he departed Australia at the end of Year 1, and asked the applicant what circumstances she believed led to her and her children being effectively abandoned. The applicant stated that the marriage had been on rocky ground for some time. She stated that when she returned to Iran in Year 2 so that her husband could see the children, and she could visit her family, that they resided in separate residences, and that she resided with her parents. She stated that the final breakdown of the marriage occurred when the estranged husband heard that she commenced a new relationship with an Iranian man in Australia.

The Tribunal noted that the applicant, in her application claimed to be Muslim, she confirmed that this was the case, that she was raised a Muslim and came from a strict Muslim family. The Tribunal asked the applicant whether she married her husband in a Muslim wedding ceremony and she advised that she did and that her children were also Muslim. The Tribunal asked the applicant, since she had been in Australia, had she continued to practice as a Muslim, she advised that she had continued to practice as a Muslim but her children had not. The Tribunal asked the applicant whether she had ever visited a mosque in Australia and she advised on how many occasions.

The Tribunal noted the applicant's assertion in her refugee application that she would sometimes go to the church to pray. She confirmed that this was the case, and the Tribunal asked the name and address of the church, the applicant stated that she did not know the names of the two churches that she would frequent from time to time but they were both local in her area. She had been a few times since Year 1. The Tribunal asked why she went to these churches to pray given that she was Muslim. She stated that a church is a place of worship and it does not matter about the denomination if a person feels the need to go to a quiet place to pray. The Tribunal asked why she would not have gone to the mosque, and the applicant stated that she was not a fundamentalist Muslim.

The Tribunal asked the applicant to summarise the basis of her claims. The applicant stated that the reason she feared persecution, if she was to return to Iran, was for the following reason:

“I should tell you that since I've been here I met another Iranian guy, if I return to Iran my husband will put me under Islamic law and get full custody of the children. Because of my infidelity I will face death.”

The Tribunal noted that the parties had been separated since Year 2, and the applicant confirmed that this was correct however there had been no official divorce because under Islamic law, it is difficult to divorce as women cannot ask for divorce, or initiate the divorce process as this must be done by a male.

The Tribunal asked the applicant if she was still with her partner in Australia The Tribunal asked why he was not in attendance at the hearing to provide support to the applicant. The applicant stated that she did not think that it was necessary, and that because her partner had not been formally invited by the Tribunal he was reluctant to come, however she stated that had he been invited he would loved to have had attended and provided endorsement of the applicant's claims, the applicant stated that if the Tribunal wished it could adjourn the proceedings another day and that her partner would attend and provide evidence corroborative of their relationship.

The Tribunal asked the applicant, when her husband departed Australia in Year 1, whether she had an expectation of whether he would return. She stated that she fully believed that he would return to Australia because he loved his children, and was [stated purpose]. The Tribunal asked whether the marriage was over in Year 1, and the applicant said no, that she was still officially married to her husband at that time, however in Year 2 when she went to Iran she and her estranged husband were in severe conflict. She made a decision not to live with him at that point in time. She made this decision at the airport on her return to Australia. The applicant stated that in Year 2 at the time of her departure from Iran and return to Australia that she and her estranged husband were in the car on the way to the airport, the applicant felt that due to the severe conflict that had existed over the time of this return trip to Iran, and pre-existing conflict that had existed throughout the marital relationship, that the future of the marriage was precarious.

The Tribunal asked the applicant about ongoing financial support provided by her husband. The applicant advised that her husband stopped financial support from Year 3, when he heard about the relationship through his children, and that no financial support was forthcoming from that time. The applicant stated that she had been supported by her family in Iran, and that she had worked legally in Australia for a short time whilst the holder of the husband's visa and had saved some money whilst in that position. The applicant stated that while she was working she forwarded money back to Iran to prepare for her return in order to buy some accommodation. This money had been forwarded to her family. The applicant stated that this money was now being returned to her to help meet her living expenses in Australia.

The Tribunal asked the applicant about the prospect of her relocating in Iran. The applicant stated that relocation was not an option for her because she stated that Islamic law applies all over Iran, and if she went to another city the law would be applied to her and she would face persecution, namely the death penalty because of her infidelity to her husband. She confirmed that the penalty for infidelity in Iran is execution.

At the second hearing [on date] the Tribunal took evidence from the applicant and her partner. The Tribunal did this in order to test the genuineness of the claimed relationship between the couple, as the existence of this relationship was central to the applicant's claims for protection. The applicant advised the Tribunal how she and her partner had first met. The circumstances were described. The applicant responded and they began to communicate about their respective lives. The applicant advised why she was in Australia and that she was resident in Australia with her children. She advised that her husband's status in Australia and had effectively abandoned her and the children in Year 1 when he returned to Iran and failed to return to Australia.

The applicant had advised her partner that she and her estranged husband's relationship had been problematic for some time and that she had been very unhappy and very depressed. The applicant advised the Tribunal when she and her partner started communicating in Year 3 and that when he arrived in Australia later that year they met at a house that her partner had organised to stay at in Australia and that their relationship developed from this time. The applicant claimed that over Year 4 she and her partner would meet at her place usually during the day when the applicant's children were at school. The applicant stated that she was very sensitive about exposing the relationship to her children and that up until recently they had been of the view that it was more of a friendship. The applicant stated that when she first started seeing her partner that one child was very distressed and angry about the friendship and it was that child who contacted the father in Iran and informed him of the relationship in

late Year 3. It was as a result of this contact that the applicant's husband decided that he would, when his wife returned to Iran, hand her over to the Islamic authorities on the basis that she had committed adultery and that he would take custody of the children.

The Tribunal asked the applicant and her partner, during a separate interview, about the social, domestic and financial aspects of the relationship and they gave consistent information about these aspects of their relationship and the evidence indicated that the couple were in a genuine and continuing relationship and had been since at least late Year 3. The evidence indicated that the applicant was reliant on her partner for financial support and this was supplemented by her family in Iran. In addition to this the couple had begun to cohabit in Year 5 and they discussed plans to marry if the applicant is to initiate a divorce from her husband. They noted that a divorce in Iran is always initiated by a male however the applicant stated that she had engaged an Iranian lawyer through her family to look at any other possibility of initiating a divorce.

The Tribunal asked the applicant whether she had asked her husband for a divorce. The applicant stated that she had raised this with her husband but he had stated that if she ever returned to Iran that he would hand her over to the police so she could be dealt with for her infidelity and that he would take custody of children.

The applicants partner was able to confirm that the applicant and her estranged husband had suffered marital difficulty for many years and this became exacerbated in Australia. The partner stated that in Iran if a woman is unfaithful to her husband she faces punishment at the hands of the Iranian authorities and that the worse outcome is execution by stoning.

The Tribunal discussed what future plans the applicant and her partner had for the future and her partner advised that he would like to marry the applicant if he is able to in the future.

## **COUNTRY INFORMATION**

Evidence from other sources  
Women in Iran

According to Haleh Esfandiari, writing some ten years ago, since the establishment of the Islamic Republic in Iran in 1979 the government had enacted a large body of new regulations and legislation governing and often altering the legal rights, conditions of employment and social standing of women. It was also noted that this did not occur in a social vacuum and that in the Assembly of Experts, which drafted the post-Revolution Constitution, and the male-dominated Majles (parliament), matters touching on the rights and status of women were widely debated. These debates revealed the attitudes towards women among members of the clerical hierarchy, government officials and elected representatives to legislative bodies who, since the Revolution, had dominated Iran (Afkhami M. & Friedl E. 1994, "The Majles and Women's Issues in the Islamic Republic of Iran", in "In the Eye of the Storm: Women in Post-Revolutionary Iran", Syracuse University Press, New York, p.61). The author goes on to say that laws dealing with women's rights had to be in harmony with Islamic law and the Constitution, but the interpretation of the Constitution as it applied to women had varied, with more conservative clerics pressing for total adherence to Islamic law, and the less conservative deputies arguing that Islam was tolerant and that thus equality between men and women should be promoted. Esfandiari notes that the government sought to accommodate some of the wishes of women so, while implementing the harsh Islamic penal code, such as

lashes and stoning for various violations, it also introduced bills to extend maternity leave and provide for part-time work for women. The Constitution did not prohibit women from voting or joining the government at any level apart from the presidency or presiding over the courts. It was left to the government to deal with issues such as polygyny, divorce, child custody, part-time work without loss of benefits or pensions, maternity leave, equal rights with men to study abroad on government scholarships, financial support for war widows, elderly women and children, and other issues of importance to women (pp.77-78).

In 1996 the Department of Foreign Affairs and Trade (March 1996, paras. 1.12.1-2) observed that Article 21 of the Constitution required the government to "ensure the rights of women in all respects" although the 'respects' it enumerated related more to the preservation of the family than to individual rights. The Government had been very active in stressing the advances made in relation to women's rights after the Revolution. Despite such claims, the reality was that there had actually been a reversal of many of the legal rights and protections women had achieved under the more secular rule of the Pahlavis. For example, the minimum marriage age for women had been lowered from 18 to 13 and the Family Protection Act repealed. Women had been prohibited from marrying without the consent of their male guardian. A groom had the right to repudiate the wedding if virginity was not proven. From 1983, women had been required to cover their hair and body with a traditional chador or coat and scarf. Divorce laws, which followed traditional Islamic dictates and were heavily disadvantageous to women, had been reintroduced. For example, women could seldom win custodial battles for children. In late 1995, the Majlis endorsed the provision under Islamic law which allowed a man to kill his wife if he discovered her in an act of adultery. The position of women in Iran was constrained partly by traditional Islamic values conflicting with universal notions of human rights but also by deliberate state action to reinforce such values. There were active programmes to advance women's rights, but reform was subject to the dictates of Koranic law as interpreted by the revolutionary authorities.

Nevertheless, as has been more recently observed, the 1979 revolution succeeded in creating a new class of women - educated, money-earning, more independent and politically minded - and now its own conservative system was struggling to meet their needs. As Iran's political reformers pushed to open that system, they were wrapping their efforts at change in the rationale and religious edicts provided by liberal clerics. In fact, women were "at the very heart of the struggle between the reformers and Iran's conservative clerics", who held most power and wanted to maintain it through a strict interpretation of Islamic law. After 1979, with the sense of security provided by an Islamic government, many tradition-minded parents began to send their daughters to schools and universities. Fathimeh Rakei, leader of the Women's Commission of Parliament, had met with Ayatollah Saanei and other liberal clerics to get their endorsements to change laws that discriminated against women. Most laws had their roots in Islamic jurisprudence, and without strong religious justification could not be changed. "There are concepts that intimidate women and they need to be replaced . . .," Rakei reportedly said. But powerful conservative clerics had proved tough when it came to women's issues. The reformist Parliament passed three laws in 2000 concerning women. One bill allowed single women to study overseas on state scholarships. But the other two bills - one to raise the marriage age from 9 to 13 for girls, and another that gave more authority to women in divorce - were blocked by the Guardian Council, the conservative religious body that vetted bills to confirm whether they complied with the Islamic law. In general, change regarding women's issues had been slow and had been permitted only up to a certain point. A vivid example was women's *hejab*, the obligatory veiling. Restrictions remained. Even Ayatollah Saanei did not compromise on hejab, which he firmly pronounced a duty when pressed to specify where in the Koran the Iranian form of covering women had been



described. He also believed, as Islamic law prescribed, in the absolute obedience of a wife to her husband. "Even a working woman must receive her husband's consent to work," he wrote in one of his books addressing women's issues. While he did not endorse secular feminism or much else for women outside Islamic jurisprudence, it was his and similar views that had kept reforms alive (2001, Fathi, N. "Khomeini's feminist protégé", Cairo Times, Volume 5, Issue 23 9 - 22 August).

A 1996 report states that there has been a quiet revolution in women's rights since 1979 - through a combination of circumstance and design. Ironically, the hijab had turned out to be a vehicle not only of repression but, temporarily at least, of liberation. Hidden behind shapeless clothing, Iranian women were able to take part in a wide range of business and other activities traditionally closed to them in a conservative society. By 1996 large numbers of women were running their own businesses or acting as managers. Many government offices were also run by women. Most notable was the presence of women in positions of middle management - where both the private and public sectors had traditionally suffered from a shortage of skills. Segregation of schools, generally seen as a regressive step, also unwittingly became what it was asserted may be the most important vehicle for the women's rights struggle in Iran. Millions of young girls from religiously conservative families, who would previously never have been exposed to the "perils" of mixed schools, had since 1979 been receiving an education. As a result, there was a new generation of young, educated women in rural and urban areas pushing their traditionalist families in novel directions. Women's literacy was also dramatically up since 1979. The greater segregation of facilities according to sex had had other unintended effects - such as an expansion of university facilities for women doctors and engineers. Even in state-related facilities, many or most of the engineers were women (Reuter Business Briefing Electronic Download (sourced from Middle East Economic Digest) "Iran's second revolution", 13 May 1996 CX17214).

American journalist and Middle East expert Robin Wright comments on the changing situation for women in Iran in her book "The Last Great Revolution: Turmoil and Transformation in Iran" (Wright, R. 2000, Alfred A. Knopf, New York). She says that:

In the 1990s, a revolution erupted within Iran's revolution. Its pace has been slower. It has rarely spoken with a single voice. And it still faced obstacles so formidable that, in comparison, ending 2,500 years of monarchy looked almost easy. But the passions that have emerged from disparate corners of Iranian society to inspire a vibrant women's movement are just as deep as the emotions of 1979. The impact has been visible in every aspect of Iranian life. In politics, an unprecedented two hundred women ran for the 270-seat Parliament in 1996. And fourteen won - more than the total of women in the US Senate at the time. In 1997, four women registered to run for the presidency at the same time a poll by Zanan magazine revealed that 72 percent of the public approved of the idea of a woman as president. A year later, nine women tried to stand for the Assembly of Experts. In both elections, all the women were rejected by the Council of Guardians that vets candidates-but because of lack of qualifications, not gender. By then, even the clerics would no longer dare declare sex an issue. Before a stadium full of women during Women's Week, Ayatollah Ali Khamenei, the conservative Supreme Leader, declared in 1997, "A blind imitation of Western women is noxious. The feminist movement in the West has only brought sexual promiscuity." Yet even he commanded "greater participation of women in social and political

affairs" and urged traditional families to allow their daughters to seek higher education.' As the revolution celebrated its twentieth anniversary, almost a third of government employees were female - ... [V]arious Iranian ministries employed 342 female director-generals. And five thousand women ran in Iran's first local elections in 1999. More than three hundred won, several taking among the highest vote counts. Professionally, growing numbers of Iranian women had also become lawyers, doctors, professors, newspaper and magazine editors, engineers, business executives, economists, coaches and television newscasters. By 1999, Iran had 140 female publishers, enough to hold an exhibition of books and magazines published by women.' In the arts, they'd become painters, authors, designers, photographers and movie producers, directors and stars-and winners of international awards in all three. In education, Iran was cited in 1998 as one of the ten countries that had made the most progress in closing the gap between boys and girls in the education system. More than 95 percent of Iranian girls were by then in elementary school. Over 40 percent of university students were women-compared with 28 percent in 1978. And more than a third of university faculties were female. In 1998, Zahra Rahnavard, a writer and the wife of a former prime minister, became the first female university chancellor .... Just as important was the general sense of power shared among Iran's women. Millions had begun to define the way Islam was applied and to put their own imprint on widely diverse aspects of Iranian life. Since 1994, female pressure had changed laws on employment, divorce, child custody, alimony and maternity leave. The overwhelming turnout and unity of the female vote had been one of two factors behind the 1997 victory of President Mohammad Khatami in the biggest election upset since the revolution. Women increasingly - and boldly - were speaking out. "Unfortunately, our society has inherited certain erroneous assumptions that are accepted in the name of religion," reflected Zahra Shojaie, a woman who was director of the High Council of the Cultural Revolution under President Rafsanjani and later became President Khatami's adviser on women's affairs. "Some people regard a good woman to be chaste and submissive, one who doesn't seek personal and professional growth. This is totally wrong. Nowhere in the Holy Koran has it been said that women should be bound to the home". Most Iranians agree that whatever happens to the revolution's political agenda or economic goals, its deepest impact will be on Iran's social order. If this is true, then the revolution's legacy may be most enduring among women. (pp 136-138).

According to a more recent BBC overview, women candidates did well in 2001's local elections - the first since the revolution - with the President's sister and a former female adviser among the winners. Since the revolution, the Iranian clergy had stressed the traditional family role of women. The majority of traditional clerics still believed men were superior. There remained many inequalities under Iran's Islamic law. President Khatami, however, had said that according to Islam men and women were equal and in 1999 a senior cleric, Ayatollah Yusef Saanei (see above), said there should be nothing to stop a woman becoming the Supreme Leader or president. He also said it was wrong not to allow women to become judges or to accept them as full witnesses in courts. There were women judges before the revolution, but they were removed in 1979. In recent years they had been brought back, but only in an advisory capacity. Laws had recently been passed allowing women to join the

police force (2002, "Iran: The struggle for change", BBC News at [www.bbc.co.uk](http://www.bbc.co.uk), CX81359).

Despite these views being expressed by some prominent figures in Iran, in the 2002 "Report on the situation of human rights in the Islamic Republic of Iran", issued by the United Nations High Commission on Human Rights at [www.unhchr.ch](http://www.unhchr.ch) on 16 January 2002 (CX81194), the Special Representative of the Commission on Human Rights, Mr. Maurice Danby Copithorne, reiterated his concern over the status of Iranian women. He called upon the Government to tackle both the discriminatory norms in Iranian law and the patriarchal attitudes in society, the latter expressed perhaps most obviously in violence against women and in the difficulty faced by women in entering the work force in positions commensurate with their training. He expressed the view that there had been "little evident progress in either of these areas" in the last six years. He said that the status of women had improved only in the sense that the demands of women and their supporters were now out in the open. Legislated discrimination remained in the statutes and regulations, and the current legislature's efforts to change this had been blocked by conservative political elites. Patriarchal attitudes remained very much in evidence. He added that;

... the social and political pressure for change in the law has been steadily growing. Women themselves have become more outspoken, as have reformists among the clerics, including at least one Grand Ayatollah. More broadly, the populace has spoken through those it has elected to the Majilis. Resistance seems to rest largely with a relatively small group of non-elected, male, political elites. In the year under review, this group has, among other things, refused to approve any of the female candidates nominated to run in the presidential election and refused to approve draft legislation to raise the minimum age of marriage, notably that of girls, which remains at nine years of age, in clear violation of the Convention on the Rights of the Child. ...

In July [2001], a female member of the Majilis called for a major overhaul of legislation to give women the same rights as men. According to the press, she noted "A mother whose child needs an emergency operation in a hospital does not have the right to authorize it" even in the case of the father's absence or death. She also asked "why give the custody of a child to an 80-year-old grandfather and not to the young mother who has lost her husband?" Why indeed?

With regard to the physical and verbal abuse of women, particularly in the family setting, the Special Representative has frequently called on the Government to take firmer action to address what is generally regarded as a widespread problem. In the Special Representative's opinion it is not enough for the Government simply to condemn the situation or to encourage women's NGOs to tackle it, or to write it off as a cultural issue that only time will cure. The establishment of crisis hot lines may help some of the women concerned but does nothing to cure the problem. The objective must be to make Iranian society as a whole intolerant of such conduct ...

Another area in need of attention is the empowerment of women, specifically including them in senior management and professional positions in government and in the private sector. In the year under review, the touchstone

issue was perhaps the widely expected appointment of women to the second Khatami Government. The 12 women members of the Majlis prepared their own list of three women candidates for the cabinet. This was not to happen and, according to one press report, the President's plan to appoint women as education minister and as cooperatives minister was overruled by higher authority.

During the period under review, there were two events that could clearly be seen as efforts to constrain women who were advocating change. One was the arrest of a prominent female film maker, ... some of whose films deal with male chauvinism in the Iranian family, and who has been quoted in the press as declaring that feminism was a way of "salvation for women who are deprived of equal rights" ... The other case was the imposition of a 22-month prison sentence on a female member of the Majlis, ... According to the press, she was found guilty of having, in a statement on the floor of the Majlis, misinterpreted the words of the founder of the republic, "propagated" against the establishment, and insulted the Guardian Council and the head of the Tehran Revolutionary Court.

According to the U.S. State Department Country Reports on Human Rights Practices in Iran for 2003 (pub. 2004), violence and legal and societal discrimination against women continued to be problems. In July 2002, in an effort to combat "un-Islamic behaviour" and social corruption among the young, the Government announced the formation of a new "morality force." The force was meant to enforce the Islamic Republic's strict rules of moral behaviour. Press reports indicated that members of this force chased and beat women who wore makeup or clothing that was not modest enough. While not uniformly enforced, in November 2003, seven women in Shiraz were reportedly sentenced to 50 lashes for disrespectful behaviour during the month of Ramadan. This report went on to say that women still had to obtain the permission of their husband, father or other male relative to obtain a passport. Married women had to receive written permission from their husbands before being allowed to leave the country. Spousal abuse and violence against women occurred. Abuse in the family was considered a private matter and seldom was discussed publicly. Provisions in the Islamic Civil and Penal Codes, in particular those sections dealing with family and property law, discriminated against women. In August 2003 the Guardian Council rejected a bill that would require the country to adopt U.N. conventions on eliminating torture and ending discrimination against women. All women had to have the permission of their father or a male relative to marry. They had the right to divorce if their husband had signed a contract granting that right or if he could not provide for his family, or was a drug addict, insane or impotent. However, a husband was not required to cite a reason for divorcing his wife. In December 2002, a new law made the adjudication of cases in which women demanded divorces less arbitrary and less costly. Traditional interpretations of Islamic law recognized a divorced woman's right to a share in the property that couples acquired during their marriage and to increased alimony. Women who remarried were forced to give the child's father custody of children from earlier marriages. However, the law granted custody of minor children to the mother in certain divorce cases in which the father was proven unfit to care for the child. In November 2003 women were granted the right to custody of both male and female children up to 7 years of age. The testimony of a woman was still worth half that of a man in court. The "blood money" paid to the family of a female crime victim was half the sum paid for a man. Women had access to primary and advanced education; however, social and legal constraints limited their professional opportunities. While the enforcement of

conservative Islamic dress codes varied, what women wore in public was not entirely a matter of personal choice. The authorities sometimes harassed them if their dress or behaviour was considered inappropriate, and women could be sentenced to flogging or imprisonment for such violations.

Recently it was reported that Iran's feared morals police had launched a crackdown on "social corruption", in what analysts said may reflect a changing political climate. Islamic conservatives who swept aside reformists in a February 2004 parliamentary vote had said they did not intend to roll back social freedoms, but analysts said the conservatives must play a delicate balancing act between upsetting their loyal supporters and provoking unrest by taking a tough line on social offences. "This (crackdown) is a display of their power" said one political analyst who declined to be named. "The conservatives have to satisfy the people who elected them." Tehran residents had noted an upsurge in arrests for "immoral behavior" in recent weeks (Hughes P. 2004, "Iranians face crackdown on 'immoral' behaviour", Reuters, <http://news.yahoo.com/>, 1 June, CX95639).

Exiting Iran

DFAT have advised:

A married woman would not be able to leave Iran with her children without obtaining her husband's permission. If a married woman applies for an Iranian passport and includes children under 18 on the application, her husband must state on the application form whether he permits his wife and children to leave Iran. This permission can be granted for a single journey or for multiple journeys during the life of the passport, and can be withdrawn at any time.

If a man does not give his consent for his wife and children to travel, the passport office will refuse to issue them a passport. If a man wishes to withdraw his consent after his wife and children have been issued a passport, he can inform the passport office and their names will be included on a warning list. This warning list is checked by the authorities at all exit points from Iran.

If a woman presents a valid passport at an exit point, and her and her children's names do not appear on the warning list, the authorities will be satisfied they are permitted to leave Iran. No other documentation will be required (2002, DFAT, E-mail to RRT Country Research, *DFAT Report 198*, 16 January).

In 2002 the U.K. Home Office observed that violence against women in the family was recognised, with "blood money" only awarded if the aggrieved party was a man. In addition, families of female victims of violent crimes had to pay for an assailant's court costs. Little detail was known of the degree of domestic violence in Iran, with no official statistics on abuse within the family. There was "a lack of legislative provision to regulate actions against women" A prominent Iranian scholar had spoken out in favour of the revision of laws, which were "discriminating between men and women" (2002, "Human Rights: Specific Groups", U.K. Home Office Country Report, paras. 5.127-128, October, CX76575).

In March 2001 an Iranian Research Sociologist advised this Tribunal that her fieldwork in Iran had shown that the mere existence of Islamic laws which granted tremendous privileges to men (in matters of divorce, polygyny, guardianship of children after divorce etc.) inflicted permanent violence on women because they felt threatened in relation to being divorced by their husbands, losing their children after divorce, their husbands getting married to a second

wife and so on. To her knowledge, there were no official structures to help battered wives, to provide them with housing, psychological help or security. Women's magazines had published reports on battered women who were finally killed by their husbands because they did not know where to go (Kian-Thiebaut, Azadeh 2001, *Brief Paper*, 7 March at Refugee Review Tribunal 2001, *Iran Seminar*, 20 March, Melbourne).

In 1997 it was observed that, although Iranian women were doing well in comparison with Muslim women in neighbouring countries, women who offended against Iran's Islamic mores could be subject to "vile treatment". The regime's "protective eye on its women", whether modestly clad or not, could "occasionally extort terrible punishment" The law was not on women's side. Some Islamic laws were open to modern-day interpretation; others were not. The standard Iranian marriage contract contained a series of bleakly practical clauses about marital breakdown and divorce. The clauses suggested that wronged women could get redress, but according to Iranian lawyers the contract's translation into legal practice was that when a woman tried to implement a clause in it, she was "likely to find the judge's sympathies on her husband's side" He would demand an unreasonable standard of proof of his bad and her good behaviour. (1997, "Behind the chador", *The Economist*, Vol. 342, No. 8000 p.9-10, (CIS #9684), 18 January, CX23066). Another 1997 report noted that in circumstances where a woman could provide "solid evidence" that "her life would be in danger" by returning to her former husband (presumably unwillingly), a court "might rule" that the couple should not remarry. The source added that such a procedure would be "difficult" and the woman would require a "substantial" amount of evidence to convince the court (1997, DIRB, IRN26308.E, 2 April).

As to how the Iranian authorities might respond to a complaint by a husband about the behaviour of his wife, the Tribunal has regard to the following observations. Although they do not relate to the precise issue in this case, they provide some guide to the possible official response. A professor of sociology in Montreal, who specializes in Iranian women's issues, told the IRB that a simple telephone tip could be sufficient for the authorities to launch an investigation of "immorality" against a woman, adding that there had been cases in which women accused of "immoral behaviour" had been detained without even having been questioned. This was corroborated by a professor of political science, who said that there was no fixed procedure for accusing a woman of "immoral behavior." Unfortunately, this could be done by a "jealous husband, neighbour, relative or friend". The burden of proof was on the accused (1998, IRN29543.E, 1998/07/00e, IRB, 2 July).

## **FINDINGS AND REASONS**

I am satisfied based on the passports cited by the Tribunal that the applicants are nationals of Iran.

The applicant has advised the Tribunal that for many years she was in a difficult and loveless marriage. Her estranged husband successfully applied for a visa in what appeared to be on the basis of [stated purpose]. The family, the applicant, her husband and their children arrived in Australia in Year 1 on visas that entitled them to stay in Australia for a stated period of time. The applicant's estranged husband returned to Iran a number of times in Year 1 his last departure being in late Year 1. He never returned to Australia. The applicant and her children returned to Iran in Year 2 to see their relatives and for the applicant's children to visit with their father, whom the applicant believed had been in Iran in relation to the [stated purpose] She described the visit as fraught with difficulty as she and her husband constantly argued and in the car on route to the airport for her departure back to Australia it became

apparent that the marriage was at an end. The Tribunal sought evidence as to why the applicant returned to Australia, and she advised that she had a valid visa, her children were in school and she thought her husband would return and comply with his undertakings with regard to the conditions precedent to the grant of the visa. This did not transpire. The applicant remained in Australia and in about mid Year 3 she began communicating with an Iranian national who was hoping to be granted a visa to Australia. They met within days of his arrival in Australia in later Year 3 and a relationship developed very quickly and the applicant and her current partner hope to marry in the future.

The evidence indicates that the applicant's estranged husband was informed of the relationship between the applicant and her partner by one of the children and that he became upset and stated that if the applicant ever returned to Iran he would hand her over to the Iranian authorities so that she could be dealt with by the state for her infidelity and immorality. He refused to divorce her. He also wished to obtain full custody of the children of the marriage and deny his wife access to them.

As a consequence I accept that if the applicant returns to Iran she will be subject to persecution at the hands of the state due to her infidelity and the convention nexus is as a member of a social group ie 'woman who have been immoral'.

The meaning of the expression "for reasons of ... membership of a particular social group" was considered by the High Court in *Applicant A's* case and also in *Applicant S*. In *Applicant S* Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [36]:

... First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group". ...

Whether a supposed group is a "particular social group" in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. However it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person's membership of the particular social group. The particular social group to which the applicant belongs has the distinct characteristic that they refuse to conform to prescribed gender roles of the broader society in Iran, thus setting them apart from the rest of society. This uniting characteristic has an appreciable social impact or affect that is self-evident – by refusing to conform to prescribed gender roles, women such as the applicant, are challenging these roles and as such contributing to social change. There is nothing in the evidence which indicates that before the applicant left Iran, she refused to conform to prescribed gender roles, or that she was perceived to have done so. However the evidence indicates that since the time of her departure from Iran and her abandonment by her husband she has formed a new and serious relationship with an Iranian man temporarily resident in Australia. The applicant claims that her husband intends to make, allegations to the authorities that she is a "bad" or "immoral" woman.

The evidence indicates that Iranian women do enjoy certain rights, and a few have risen to positions of influence, however they undoubtedly face discrimination in a number of areas of

life. Despite popular support for reform, the clerical conservatives in Iran hold the reins of power through the office of the Leader and hold dominance over the Council of Guardians, the judiciary and the security and para-military forces. I also note that the Council of Guardians has used its dominance to repeatedly block bills passed by any reformist-dominated Parliament to improve the situation of women (UNHCR reports of 2001).

I consider reliable the evidence of “a lack of legislative provision to regulate actions against women” (U.K. Home Office 2002). I also rely on evidence (DFAT 1996) that the position of women in Iran has been constrained both by traditional Islamic values which conflict with universal notions of human rights and by “deliberate state action to reinforce such values”. The official reluctance at the most powerful levels in Iran to define what forms discrimination against women and to act to end that discrimination, coupled with an apparent unwillingness to condemn violence against women (RFE/RL 28 July 2003), also reflects the view by the conservative leadership that some women are less deserving of protection than other citizens. Illustrating the vulnerability of women about whom allegations of immoral behaviour are made, I consider reliable the U.K. Home Office evidence (2002) that the position of a woman could be “fraught” if accusations of “immoral behaviour” and possible “adultery” were brought to the authorities’ attention. This would suggest that ordinary members of the police force would be unwilling to prevent her from being harmed by her husband if he were to make serious allegations about her “immorality”, an assessment of her character which, the evidence indicates, many police officers would probably uncritically adopt.

It is possible that her husband may make allegations about the applicants “immorality” where necessary to ensure that she is unable to get protection from the authorities from his violence. The Tribunal is confident that the police are likely to favour his assertions over hers (as is consistent with the independent evidence above) and is also generally conscious that he enjoys rights which she does not. These circumstances give rise to a real chance that the authorities would not protect her. I am satisfied that such a failure to protect her should be characterised as “discriminative inaction”, rather than “mere inaction”. While there may well be other factors contributing to their failure to do so (such as incompetence or lack of training of officers, or a perception that her problems with her husband are a private matter), I am satisfied that the essential and significant reason for the failure to protect her from serious harm would be that she is a woman perceived to be “immoral”

For the above reasons I find that the chance is not remote that her husband will seriously assault or attempt to assault her for reasons unrelated to the Convention. I also find that, for a Convention reason, that is, her membership of a particular social group being “Iranian women about whom allegations of immoral behaviour have been made”, the authorities will not act to protect her from this harm.

I have considered whether the applicant could reasonably be expected to relocate within Iran to avoid harm by her husband or at the hands of the state. If it is not reasonable for a person who has a well founded fear in part of a country to relocate to another part, then the person’s fear of persecution in relation to the country as a whole is well founded (*Randhawa v MILGEA* (1994) 52 FCR 437 at 443). In the present case, the applicant faces obstacles to relocating. There is the possibility that her husband has already lodged a complaint with the police in relation to her actions in Australia so that upon her return to Iran her re-entry to the country may be brought to his attention and that of the authorities. If her husband has not made an official report to the police the evidence indicates that he intends to report her immoral behaviour. The country information suggests that such a report will lead to the



applicant facing persecution at the hands of the state due to her immoral behaviour. The Tribunal finds that the applicant would not be able to effectively relocate within Iran due to her being the target of her husband and the target of the Iranian authorities.

For the above reasons the Tribunal is satisfied that the applicant has a well-founded fear of Convention-related persecution.

## CONCLUSION

The Tribunal is satisfied that applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Therefore she satisfies the criterion set out in s.36(2)(a) of the Act for a protection visa and will be entitled to such a visa, provided she satisfies the remaining criteria.

No specific Convention claims were made by or on behalf of the applicant children. The fate of their applications are contingent upon the outcome of the applicants application. The children will be entitled to a protection visa provided they satisfy the criterion set out in s.36(2)(b) of the Act and the remaining criteria for the visa.

## DECISION

The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the dependant applicants satisfy s.36(2)(b)(i) of the Migration Act, being the dependants of the first named applicant.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act* 1958.

Sealing Officers ID: PRRTIR