

**0903537 [2009] RRTA 851 (31 July 2009)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0903537

**DIAC REFERENCE(S):** CLF2008/162335

**COUNTRY OF REFERENCE:** Iran

**TRIBUNAL MEMBER:** Don Smyth

**DATE:** 31 July 2009

**PLACE OF DECISION:** Brisbane

**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 second named applicant satisfies s.36(2)(b)(i) of the Migration Act, being a member of the same family unit as the first named applicant.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. 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).
2. The applicants claim to be citizens of Iran. The first named applicant first arrived in Australia [in] May 2006. She entered most recently [in] September 2007. The second named applicant last entered Australia [in] September 2008. The applicants applied to the Department of Immigration and Citizenship (the Department) for Protection (Class XA) visas [in] December 2008. The delegate decided to refuse to grant the visas [in] April 2009 and notified the applicants of the decision and their review rights by letter dated [in] April 2009.
3. The delegate refused the visa application on the basis the first named applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicants applied to the Tribunal [in] May 2009 for review of the delegate's decisions.
5. 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**

6. 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.
7. 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).
8. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Migration Regulations 1994 for the purposes of the definition.
9. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

## Definition of 'refugee'

10. 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.
11. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379 (*Chan*), *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.
12. 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.
13. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
14. 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.
15. 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.
16. 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.

17. 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.
18. 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.
19. 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**

20. The Tribunal has before it the Department's file relating to the applicants. The Tribunal has also had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
21. The applicants appeared before the Tribunal [in] July 2009 to give evidence and present arguments. The Tribunal hearing was conducted in part with the assistance of an interpreter in the Persian and English languages.
22. Only the first named applicant has made substantive claims against the Convention. For convenience, the Tribunal will refer to the first named applicant as "the applicant" and the second named applicant as "the applicant husband".
23. The applicants were represented in relation to the review by their registered migration agent.

#### *Protection Visa Application*

24. According to information provided in her protection visa application, the applicant was born in Babol. She speaks, reads and writes Persian and English. The applicant describes her religion as Muslim.
25. The applicant gave a single address in Babol for the period from her birth until January 2006. She indicated that she had then lived at a new address in Babol from January 2006 to May 2006. She has been living in Brisbane, Australia since May 2006.
26. The applicant indicated that she had received 16 years' education in Iran. Most recently, she completed a Bachelor of Midwifery at [education provider deleted: s.431(2)]. She was employed as a student trainer in midwifery at [education provider deleted: s.431(2)] from November 2004 to December 2005. The applicant indicated that she was a midwife prior to coming to Australia. At the time of the application, she was working at [organisation deleted: s.431(2)] in Brisbane. She has been employed in a number of positions in Australia.

27. The applicant and applicant husband married in Babol [in] October 2003. A copy of their marriage certificate was produced to the Department.
28. The applicant husband was born in Tehran. He too describes himself as a Muslim. He indicated that he studied at the Business Faculty of [education provider deleted: s.431(2)] from September 1997 to September 1999, although he did not complete his qualification. He described his occupation in Iran as accountant and indicated that he had been working in [business deleted: s.431(2)], a shop in Babol.
29. The applicant travelled to Australia on an Iranian passport issued [in] July 2005, while the applicant husband travelled on an Iranian passport issued [in] July 2006. The applicant entered Australia on a Holiday and Work visa. She did not have any difficulties obtaining a passport and departed Iran legally. She stated that she returned to Iran in August/September 2007 to visit her parents and her husband. She produced to the Department a copy of extracts from her passport. These show that she was issued with subclass 462 visas for Australia [in] April 2006, [in] June 2007 and [in] June 2008. She entered Australia [in] May 2006, departed again [in] August 2007 and re-entered [in] September 2007.
30. The applicant husband indicated that he had visited the applicant in Australia in June/July 2006 and September 2007. He provided a copy of extracts from his Iranian passport, showing entries to Australia [in] October 2006, [in] September 2007 and [in] September 2008, and departures [in] December 2006 and [in] December 2007.
31. At the time of the application, the applicant's parents, sister, two brothers, father-in-law, mother-in-law, brother-in-law and sister-in-law were all resident in Iran. The applicant was in contact with relatives by telephone.
32. The applicant indicated that she feared harm at the hands of the state authorities and "religious police". She referred to "the usual treatment of women". She indicated that she did not think the authorities could and would protect her. She stated that Iran was an Islamic state and that it was from this that the discrimination arose.
33. The applicant made the following statutory declaration in support of her application:
  1. I am an Iranian woman, born on [date] 1980 in Babel, Iran. I am a Muslim by religion, but am not devout. I hold no citizenship other than that of Iran.
  2. I am married to [name]. He is an Iranian citizen and holds no other citizenship.
  3. I am presently living in Australia and hold a sub-class 462 visa. I arrived in Australia in May, 2006. My husband does not reside in Australia, but visits me as often as he can.
  4. My husband is working as an accountant at a shop in Babol, Iran which is owned by his father.
  5. As a woman, I found living in Iran to be intolerable. It is a society in which women do not have realistic freedom and it is a society that actively oppresses women. National legislation limiting women's rights to less than those of men exists.
  6. I attended university in Iran and graduated in 2003 as a midwife. In Iran, after graduation as a midwife, it is required that you then do two years of internship before becoming fully qualified. I put my name down for selection and the consultant who

took my particulars told me that I was the second in line and that I should be able to commence work in one or two months time. I waited for 13 months and had not heard from them, so I contacted them and they told me that others in line behind me had been given positions because they had lost fathers or brothers in the war with Iraq and were given preference. Soon after this, I was given a position at the [university]. When I began there, I was directed not to wear any makeup and to cover my hair; this is the usual standard imposed by the Muslim authorities on women in Iran. As my position involved teaching some classes which included males, I was told not to joke with them or smile at them and not to talk with them except in class. This position lasted 13 months, during that period I had heard that there was the possibility of continued employment so went to the human resources officer to enquire, he said that there was no further employment available to me after my internship was over and that any vacancies would only be available to women who had lost a family member in the Iraq/Iran war, or to women who wore fuller cover, especially whole body. I think that the fact that I did not cover myself as fully was an element in this.

7. As well as the ordinary police force in Iran there is also a religious police force whose duty is to enforce the religious standards imposed upon the population. I have had encounters with the religious police: the first of these was in September 2002. I was then in a boyfriend/girlfriend relationship with [name], who is now my husband. We had to keep our relationship a secret, because it is against the religious laws in Iran. We had met at University. We spoke to each other on the telephone each day, but rarely met. One day we decided to go out for an evening meal at a cafe; he picked me up in his car and on the way to the cafe the religious police stopped our car and told us to get out. We did so and they then separated us. There were two police, both men. The policeman with me asked many questions about our relationship and said that we looked too young and couldn't be a couple, but I said that we were. The policemen both became very aggressive and the policeman with me swore at me. I complained to him about this and he then said that I deserved to be sworn at because my behaviour was against Islam as [name] was not my husband. He then hit my hand to try to get my handbag from me. I told him I did not want him going through my bag and my personal belongings and that it was illegal to do so. He said it was not illegal for them, because they have enough power and authority to do everything they wanted to do because we had committed an offence against Islam. He then took my bag and went through it. [Name] argued with them, but they said that they were going to take us to their station and get our parents to come over and then they would flog us and fine us. They then asked for a bribe to let us go. We paid them a bribe and they then let us go.

8. The next encounter with the religious police was in 2004. By then we had married. We had been to the beach at Babolsar, a town near Babol. Suddenly, the religious police came up to us and asked our relationship and we told them we were husband and wife. They did not believe us and asked us to show identification to prove who we were. We had not brought any identification with us; this made them angry and further suspicious. They said they would take us to their police station and ask us further questions and check our story there. We said we did not want to go to the police station and they then asked us for a bribe to let us go. As we did not have enough cash, my husband gave them his business card, (he runs a [type] shop in Babol), and said that they could come there and choose free [goods]. They did this and then let us go.

9. Many men in Iran victimize women because of their inferior status, knowing that they can get away with it. One day in July 2005 when I was at work, I became ill; it was about 1.30 p.m. I was so ill that I left work to go home. I did not have a car and travelled on public transport. There was a five minute walk from the bus-stop to our

house. As I was walking from the busstop to home, I passed a site where some men were doing building work. In Iran, between 1 p.m. and 4 p.m. most people are indoors resting and the streets are very empty and quiet with very few people using them. As I passed the site where the men were working, they began to say rude things to me, calling me a prostitute and making rude suggestions. I was shocked and started to cry and ran home. This is not the only time that something like this has happened to me. Several times I have complained to the civil police about this, but they said they could do nothing and blamed me for being on the street at that time. My husband operates his shop until 10 o'clock at night and is not able to leave it to pick me up or drive me when I need to go anywhere, or to come home from work.

10. When I attended university, women were not allowed to wear makeup and had to cover up and observe Islamist dress requirements. The university I attended was an Islamic one; most universities are.

11. Being young and not particularly religious, I like to wear makeup and do not want to comply with the Islamic dress rules. In Iran, many women feel this way, but are unable to express themselves freely.

12. Because of my unsatisfactory employment experience and even though I loved my husband I felt that I had to leave Iran so that I would get work. I decided to come to Australia to do this. It was really hard to leave my husband, but because conditions were intolerable for me in Iran and also because the money I earned would be helpful to us, I felt that I really had no choice.

13. In August/September 2007 I visited Iran for about 4 weeks to see my husband and also visit my parents and family. One day during this visit I had arranged a day's shopping with a friend of mine, I was waiting for her outside our home when I was approached by the religious police and asked what I was doing, I told them I was waiting for my friend, they said your scarf is not properly on and to adjust it properly, and to remove my lipstick. I did these things as I did not want any problems.

34. The statutory declaration was also accompanied by a written submission. The submission noted that Iran was an Islamic republic and was effectively ruled by Islamic clerics. It was submitted that to be female in Iran is at best to be a second class citizen. The civil and human rights of women in Iran "are virtually non-existent by any civilised standard". Reference was made to various articles of the Iranian constitution.

35. It was submitted that the Penal Code also contained "various barbaric provisions". In this regard, the submission stated as follows:

Article 83, called the Law of Hodoud, stipulates that the penalty for fornication is flogging, that is, 100 strokes of the lash for unmarried male and female offenders.

Article 102 states that married offenders, (adulterers), are liable to stoning, regardless of their gender, but the method laid down for a man stipulates he be buried up to his waist and a woman up to her neck.

Article 300 states that the "Deyeh" of a Muslim woman is half of the "Deyeh" of a Muslim man. By law, the life of a woman has half the value of that of a man in Islamic criminal law in Iran.

36. It was submitted that, in 1998, Iran's Parliament had rejected a bill on "same inheritance rights for man and women" on the basis that the proposal was contrary to Islamic law. Iran's Parliament had adopted a law in April 1998 to fully segregate the health care system for

women and girls. It was submitted that this law had seriously compromised women's health because there were not enough trained female physicians and health care professionals to meet the needs of all the women and girls in Iran. It was submitted that women's rights could only be discussed by religious male figures in Iran. Further, family courts did not provide women with any protection from abusive husbands.

37. It was submitted that the Civil Code also contained several discriminatory provisions. Reference was made, for instance, to provisions in relation to the stoning of men and women.
38. The submission referred to information from the "Women's Forum against Fundamentalism in Iran" (WFAFI). The Department was provided with two reports from WFAFI. The first of these referred in particular to the various legal provisions outlined in the submission. It also referred to cases of execution of women and the arrest and torture of women who opposed the regime. It also highlighted cases of sexual slavery. A further report from WFAFI referred to cases of violence against women, including instances involving flogging, imprisonment, the death sentence or stoning. It referred to discrimination against females in education and to the relatively high suicide rate amongst Iranian women. With regard to employment, it stated that 65 per cent of women and girls who graduated from colleges and universities did not find any jobs. This report too referred to various forms of legal discrimination, including in relation to the legal age for marriage. It stated that women were not allowed to leave home or travel without their husbands' permission, and that husbands could prevent their wives from working outside. Husbands could divorce their wives when they wished. A woman's testimony was worth only half that of a man and a woman's inheritance was only half that of a man. Women did not have the right to enter sport stadiums.
39. The submission referred to the US Department of State's *Country Reports on Human Rights Practices for 2007*. A copy of the report was attached. Highlighted in particular was a passage referring to the death in custody of a physician arrested with her fiancé on charges of having an "illegal relationship". The report also referred to the 1998 law mandating the segregation of the sexes in medical care and the rejection in 2003 of a bill that would have required Iran to adopt a UN convention ending discrimination against women. It referred to action taken by the authorities against women's rights activists and members of a banned teachers' association.
40. It was submitted that, in addition to the official police force, a special religious police force operated in Iran. This force had the power to arrest and inflict punishment on its victims. It was submitted that the United Nations had expressed "deep concern" about the arrest of women's rights proponents in April 2007.
41. The submission argued that the evidence showed "the extent of the severe limitations to a woman's human and civil rights that exists in Iran". It was submitted that this was government sponsored. The government offered almost no protection to its female citizens, but was itself the persecutor in many instances.
42. The applicant was described as a member of the particular social group constituted by "Iranian Muslim women". It was submitted that she could not be properly protected in Iran.
43. The submission was accompanied by numerous reports on the position of women in Iran. These included several reports from Human Rights Watch and Amnesty International, as well as a press release from the United Nations. A number of reports described the arrest and



jailing of political and rights activists, including activists campaigning for women's rights such as Parvin Ardalan.

#### *Departmental Interview*

44. The applicant attended an interview with an officer of the Department [in] March 2009. An electronic recording of this interview is contained in the Department's file.
45. The applicant stated at the interview that, if a person was fully covered, they could get a job. She stated that she had also tried getting work in Tehran. If a person had a good relation with someone in the government they could get a job. A person had two choices, to be fully covered or to have someone in the government.
46. The applicant stated that she was unemployed for 13 or 14 months after graduating in 2003. She had to spend two years doing an internship in order to get a qualification. The applicant stated that she put her name for the internship. Her name was the second one but they did not choose her so she was unemployed for 13 or 14 months. They told her that some of the people behind her were from families that lost someone in the Iran/Iraq war. They were from really religious families. To present a good face in society and to be good people for the government, they had to be fully covered.
47. The applicant stated that all women had to wear a scarf and long pants. They could not wear make-up. She said that fully covered meant wearing a black scarf from head to foot without even showing one's hands. She said that in Tehran half the women would just put on their scarf but show their hands. But it was against the law to have nail polish. If you said you wanted to do that, they would take you to the police station and make you pay or put you in jail. The religious police would get people who did not have enough cover or who had nail polish.
48. The applicant stated that she was not really a religious person. She wanted to select her own style. She never had any friends who were fully covered. They were like her. Her family were normal people. They were not really religious. They were not fully covered. The applicant said that her mother was a housewife and did not work but she had to cover herself when she went out because that was the law.
49. The applicant stated that her husband was working in his father's shop in Babol. She met him at university. In Iran a girl and boy should not be together or go out together if they were not husband and wife. The applicant stated that she had problems because she was so young and their families did not want them to get married. They loved each other but could not see each other. They talked on the phone. They would sometimes go secretly to a restaurant. They had many small problems. Also the religious police stopped them when they were going to a restaurant. The police told them they were breaking the law. The police took them from the car, separated them and asked them questions. One of the police was very rude. He did not care because they had so much power. The policeman hit her hand. He wanted to check her handbag. She said that they were her personal things. He said that he could do what he wanted and pushed her hand. After a couple of hours they were arguing with the police because the police wanted to take them to the police station to flog them and fine them and report them to their parents. The applicant said that this thing was very normal in Iran. Boys and girls who were not married were not allowed to be together. They had to pay a bribe to get rid of the police. Otherwise, they could be jailed or fined or flogged because it was against Islam.

50. The applicant stated that her family were against the marriage because they were so young. Her father preferred that she continue her studies instead of getting married. Even her husband's family would rather get a girl from their family. Her family did not want to have a love marriage. They would have preferred a traditional marriage. She met her husband when she was 18 or 19 but they married when they were 23. Most families wanted their children to do a traditional marriage because a love marriage was against the Islamic rules. The applicant said that the government just wanted people to get married. They wanted the permission of the parents for the couple to get married.
51. With regard to women's rights, the applicant said that if a married woman cheated on her husband she would be stoned to death. After marriage women were required to get permission from their husband to do anything. If her husband did not allow her to go to work she could not do that. The government said that was the law. Women had to get their husband's permission in relation to work, going anywhere or where they lived. A woman could not get divorced. The applicant indicated that she had not been involved in any groups in Iran. If women wanted to be involved in any group, there would be big trouble. The government would fight them and put them in jail. The applicant stated that she did not want to do that because she wanted to get out of Iran and could not do so if she was in jail. She decided to get out of the country because she knew she could not fight the government. Women like her could not do anything because they did not have enough power in Iran. That was why she decided to be quiet and to just get out of the country. Without any realistic freedom in Iran and without any future, that was the best thing.
52. The applicant said that one of her friends at university was involved in a human rights groups. This person had problems. The government's people took her out of the university. Then the applicant did not see her.
53. The applicant stated that the religious police asked people to cover themselves properly. Otherwise they would take you to the police station and fine you and flog you. The applicant stated that this happened many of times, not just for her but for other people in Iran She referred to an occasion in high school when she and her friends decided to go to the movies. She stated that they did not have any make-up. They did not put their hair properly in their scarf. The religious police took her friend to the police station. The religious police told them to cover themselves properly and to go home. The religious police thought going to the movies was a bad place. The applicant stated that many times when she was walking to go shopping with her sister it happened they told her to cover herself properly.
54. The applicant stated that the religious police were always asking women to do certain things. They never asked men anything. It was discrimination between women and men. She said that she did not have enough freedom in Iran. She did not have any future. She could not fight with the government. She would have to stay at home because she could not get employment. The applicant stated that she had been living in Australia for nearly three years. When they found someone who had been living out of Iran, they would think that she probably did not have enough cover outside Iran and that she was not a good person for the country. They would not want to provide any opportunities for these sort of people. They knew that she had lived out of Iran for three years. Even when she was in Iran, she did not have any job after her internship. She would not have any future or enough freedom. Her husband would have to go to work. The applicant stated that most men in Iran really wanted to harm women. If they saw a woman walking around, they would think that she was a prostitute and say rude things. Women could not complain anywhere. She would be stuck in her home. The applicant stated that she wanted to work and enjoy her life. It would be a nightmare to have to go back to Iran.

55. The applicant stated that she was unemployed for 13 or 14 months after her graduation. After 14 months, she obtained a position in [education provider deleted: s.431(2)]. She was teaching a practical course. She was employed for 14 or 15 months. She found that they wanted to give someone permanent employment. She went to the human resources office and asked the officer how she could get permanent employment. The officer said they could not get her because she was not fully covered and wore make-up, and she had not lost anyone in the Iran/Iraq war. Even if she had said that she would cover herself fully, they would say that she had not done so in the past. They would go around to your area to ask all the neighbours.
56. The applicant stated that she was unable to get employment in Tehran or Babol. She left her husband for two years and left her family because she had no future there.
57. The applicant's representative made further submissions in an e-mail to the Department [in] March 2009. The submission addressed in particular the issue of whether the discrimination that the applicant might face in Iran would amount to persecution.
58. It was submitted that the applicant and all women in Iran were subject to discriminatory provisions contained in various legislative enactments. They were also subject to "extreme religiously imposed discrimination". This amounted to "a denial of fundamental human and civil rights to women in Iran" It was submitted that reports that had been provided to the Department showed that women's rights activists in Iran were harassed and jailed by the authorities for daring to enunciate claims to equal rights. It was submitted that "the systematic approach of the Iranian government and the religious authorities in Iran towards women" constituted persecution.

#### *Review Application*

59. The applicant's representative made a further submission in support of the review application. It was submitted that the applicant's case "is based on the legally entrenched discrimination against women in Iran as exemplified by various legislative enactments, and also is based on the activities of the religious police in Iran". It was submitted that the discrimination the applicant had suffered amounted to persecution, persecution which was systematic and entrenched in Iran.
60. Also submitted in support of the application was a statutory declaration from the applicant husband. He stated that he and the applicant began their relationship in 2000 after meeting at university. They had to keep their relationship a secret because association between unrelated males and females in Iran was prohibited. He described incidents in 2002 and 2004 when he and the applicant were stopped and questioned by religious police. His evidence in this regard was in accord with that of the applicant.
61. The applicant husband described Iran as "a very restrictive and intolerant society". He stated that they were not free to live their own lives. The government was influenced to a very high degree by the Islamic clergy. The police, both the ordinary police and the religious police, were very harsh.

#### *Tribunal Hearing [in] July 2009*

62. At the hearing, the applicant confirmed that she was born in Babol. She indicated that, while her husband had been born in Tehran, he moved to Babol as a child.

63. The applicant described both herself and her husband as Muslims. She said they had no choice. She described Babol as a small town and a religious place. She said that when she was born they said she was Muslim. The applicant said that she was not a religious person and that she never attended the mosque. She said that she did not want to be a restricted and religious person. She just wanted to be a normal person. She said that her husband was the same as her and did not attend the mosque.
64. The Tribunal discussed with the applicant her and her husband's addresses in Iran. She indicated that the address in [address deleted: s.431(2)] was her father-in-law's house. She said that they had lived there for the last four or five months before they came to Australia. She indicated that the address she had given in her application for the period prior to January 2006 was her father's address. She stated that she and her husband rented a house for a while. Sometimes she was at her father's house. Most of the time she was at her father-in-law's house. Her husband did not go to her father's house because he had a fight with her father.
65. The applicant stated that she had two brothers and one sister in Babol. She said that her sister, like her, had graduated in midwifery but had been unable to obtain a job. She said that her husband had a brother and a sister. His sister was studying something to do with computers.
66. The applicant stated that she first arrived in Australia [in] May 2006. She returned to Iran for one month in August/September 2007. Her husband came to Australia for three months at the end of 2006. He came again in 2007 but went back to Iran because he could not get a longer stay. He returned to Australia on a tourist visa [in] September 2008.
67. The applicant said that her husband had been happy for her to come to Australia. Life in Iran was intolerable. She had no future and no job. The only choice they had was for her to come to Australia.
68. The applicant described her study in Iran. She confirmed that she had studied for 16 years and received a Bachelor of Midwifery. The Tribunal questioned whether she had suffered discrimination amounting to persecution. The applicant said that anyone could go to university. She passed the entry exam and studied for four years. But after graduation there were no opportunities for women. When she wanted to get a job, the employer and human resources asked whether she had lost anyone in the Iran/Iraq war. They said that she did not wear the chador. The applicant stated that when she graduated she filled out a form and gave it in at the office. When she went to the office to put her name down, they said that she was number two on the list. It normally took one month but they did not call her to start her internship. Her husband talked to an officer and asked what was going on. The officer said that priority was given to people who had lost someone in the Iran/Iraq war. The second thing was that, because it was a public university, it was necessary to wear the chador and have no make-up in order to get a job.
69. The applicant stated that she finally got an internship at the end of 2004, having graduated in September 2003. When asked how she had supported herself in the meantime, the applicant stated that she was married and that her husband supported her. She indicated that her husband worked in his father's shop as an accountant. She said that his father had closed the shop but then indicated that her father-in-law had another shop that continued to operate. The Tribunal questioned whether any discrimination in relation to her employment constituted persecution. The applicant stated that her husband's income was not enough for their lives. She could not get a job because she was not fully covered. Rent was expensive and they

could not afford it. They decided to go to her father-in-law's house for a while before she came to Australia.

70. The applicant stated that she was denied a permanent job. When she heard that they wanted people for a permanent job, she asked the human resources person. He refused to give her an application form because she had not lost anyone in the Iran/Iraq war and did not wear proper Islamic cover. The applicant stated that she did not wear the chador when she was teaching students. She had never worn it. The Tribunal asked the applicant how she had been able to get an internship if her dress was unacceptable. The applicant stated that that was compulsory and only for two years. She covered her hair. To get a permanent job, it was necessary to wear the chador.
71. When asked whether she had completed her internship, the applicant said that she found after 18 months that she would have no chance to get a job. She confirmed that she chose not to finish the internship. She decided to get out of the country. The Tribunal asked her whether she had looked for employment anywhere else. The applicant said that she always checked with the newspapers. She confirmed that only women were able to work as midwives. The Tribunal put to her that it did not seem that women faced discrimination when it came to employment as midwives. It put to her that it might have been difficult for her to get a job because she had not finished her internship. The applicant stated that it was possible for a person who had not finished the internship to get a job. They did not want to give her a job because of her cover. The person in human resources made the decisions in relation to midwives in the whole of Babol. She also checked in Tehran but could not get any work. The applicant claimed that the reason for the discrimination against her was because of religion. It was because she was not a real Muslim woman and did not lose anyone in the Iran/Iraq war.
72. The applicant stated that the matter of her marriage was also really annoying. Her husband had no contact with her father. Her father did not want her to have a love marriage because he did not believe that this was what an Islamic woman should do. She fought for years to marry a husband. The applicant claimed that this was persecution. The Tribunal put to the applicant that she had married the man of her choice and expressed doubt that she had suffered persecution in this regard. The applicant stated that most women could not select to have a love marriage. This was harm. She suffered emotionally and this was persecution. She stated that boys could have a love marriage. Girls were restricted.
73. The applicant stated that she and her husband started their relationship in 1999/2000, three or four years prior to their marriage. They had to try and keep it a secret. Boys and girls could not have a relationship outside marriage. The Tribunal put to the applicant that this appeared to be a law of general application rather than persecution under the Convention. The applicant stated that it was not fair. It was a stupid law.
74. The applicant described the event in 2002 in which she and her husband were stopped while going to a restaurant. Her evidence in this regard was consistent with her earlier evidence to the Department. She again described being hit on the hand when one of the policemen went to grab her handbag. The applicant stated that she did not suffer any injury but that they were very rude. The Tribunal questioned whether the incident amounted to persecution. The applicant replied that it was harm and meant she did not have enough freedom. She said that the life of a woman was persecution. She stated that she had wanted to be involved in women's rights at university but found that it was dangerous. She referred to a friend who disappeared after involving herself in women's rights. She named this person. The applicant

stated that she wanted to involve herself in women's rights issues but found that she would have a lot of problems if she did so. She decided to give up.

75. The Tribunal asked the applicant whether she had involved herself in any activities in Australia. She referred to the problems in Iran in the wake of the presidential elections. She said that she had had trouble contacting her family. [Details in relation to protest deleted: s.431(2)]. They wanted to tell the world that what was going on was not right. The applicant stated that they found out about the protest through Iranian radio. She and her husband attended the protest. There were a lot of photographs and videos of this. [Details in relation to protest deleted: s.431(2)].
76. The applicant stated that she was also a member of the [community group deleted: s.431(2)] and that this group involved itself in human rights issues. The applicant stated that she had been part of the section that involved itself in women's issues and women's rights. They had some contact with women active in Iran. The applicant referred to the "1 million signature campaign" in Iran. She said that her group talked about human rights problems in Iran She attended meetings once a month. She named a person who she said was a leader on the group.
77. The Tribunal explained to the applicant the significance of s.91R(3) of the Act and asked her why she had involved herself in such activities in Australia. The applicant stated that she had started attending meetings before applying for a protection visa. She did not do this just to get a visa. She did not have any contacts in the Iranian community when she first came to Australia. After more than a year she heard at an Iranian concert about an Iranian program on the radio. She found out how to be involved in the Iranian community. She decided that it was free in Australia The applicant stated that she wanted to be involved in the demonstration as a woman and as a human. She wanted to be involved as part of the Iranian people because she was hurt like that in Iran. With regard to the elections, she said that she had seen the pictures of people being killed. She asked how she could settle down without any reaction.
78. The applicant stated that she wanted to say that what was happening in Iran was wrong. She realised that there had been videos posted on YouTube and that there were many Iranian secret agents. She said that she had heard from friends that there might be spies. She noticed some people at the demonstration who looked suspicious and disagreed with what they were saying. The Tribunal expressed doubt that such people were spies. The applicant said that she had heard on Voice of America that those people who were involved might be identified. She had heard that students involved in protests had been jailed in Iran.
79. The applicant described the incident in 2004 in which religious police asked her and her husband whether they were married. The Tribunal queried whether this constituted persecution. The applicant stated that they had done nothing wrong. It happened when they were married. The religious police could do what they wanted and this limited their freedom
80. The applicant referred to her return to Iran in August/September 2007. She stated that she had to change her dress before boarding an Iranian plane in Malaysia At the airport in Iran she was told to clean her make-up and cover herself properly. She tried to do everything perfectly while she was there. One day she and a friend were stopped by the religious police. They asked the applicant to remove her make-up. They said her dress was not good because she was wearing sandals without socks. She had to go home and change. The applicant stated that a similar thing had happened to her sister. She said that this happened to all women in Iran. The Tribunal put to the applicant that it did not appear that she had ever been beaten or flogged or imprisoned or fined by the religious police. The applicant said that she did not

want that. She knew that if she was taken to the police station it could be a reason to stop her from traveling. She was not taken to the police station because she changed when they told her to.

81. The Tribunal questioned whether the applicant had suffered Convention-related persecution with regard to the dress code. The applicant stated that she had seen reports on YouTube and elsewhere of women being beaten up. The applicant stated that she wanted to be free. If she wanted to fight with the authorities, there would be lots of trouble for her husband and her family. If she wanted to argue, they would put her in jail.
82. The Tribunal put to the applicant that independent information indicated that both men and women in Iran were subject to a dress code. The applicant stated that men just had to have pants. Women were restricted in everything. They could not even talk to another man in the office. This was because it was an Islamic country. They had to cover everything.
83. The Tribunal asked the applicant about her claim that women in Iran were victimised. She stated that it had happened many times. Women did not have any security. She referred to the incident when she was passing a building site and said that the men suggested many rude things. It happened many times. The police asked her what she was doing on the street at that time and blamed her. They told her to cover herself properly. The applicant stated that her husband had to work until 10pm. She would go shopping or travel without her husband.
84. The Tribunal noted that there were various forms of legal discrimination in Iran in relation to matters such as marriage and giving evidence in court. However, it put to the applicant that many of these things had not affected her directly. The applicant stated that marriage was not easy. Her father opposed her marrying the man of her choice. She fought with her father a lot. This was because she was a girl. Her brother did not have the same problem.
85. The Tribunal put to the applicant independent country information referring to women as “exceptionally self-confident members of Iranian society”. The applicant stated that most of the population were women. If the government ignored women, they would lose. However, after graduation a woman could not get a job.
86. The applicant stated that she had lived in Australia for three years. She stated that she would have no job if she returned to Iran They would ask where she had been. She said that she had been involved in human rights activities and in a protest. She did not use any cover in Australia. The applicant stated that she wanted freedom from the government. If she wanted to say something, they would put her in jail. If she could not say something, she would have to leave. She could not tolerate it. She had no future and no freedom in Iran She could not get a job because she had to do extra things as a real Muslim woman.
87. The applicant husband gave brief evidence to the Tribunal. He indicated that he did not have anything to add to the evidence of his wife and his earlier written statement. He stated that the people in Australia were nice and kind. He said that he was happy that his child would be born in Australia in about a month.
88. The applicant husband confirmed that he and the applicant had attended a demonstration in [details deleted: s.431(2)]. He said that this was in solidarity with what was going on in Iran and the killing of a girl in the street. He stated that Iran was a country where a person could not have their vote counted and there was no freedom. They wanted to protest against that.

### *Post-Hearing Submissions*

89. Additional information was submitted to the Tribunal following the hearing. This material included a CD containing video footage and photographs of a protest march [details deleted: s.431(2)]. The applicant and applicant husband are clearly visible in this material. The submission stated that the applicant and her husband were also quite clearly visible in footage on YouTube.
90. Further written submissions were made, referring in particular to a Guidance Note from the UK Home Office. It was submitted that it was apparent that the applicant was a supporter of women's rights and of human rights in general. She had not been able to actively support those beliefs while living in Iran.
91. The submission argued that the publication of the material on YouTube was also relevant to the applicant safety if she were to return to Iran.
92. Attached to the submission was a statutory declaration from [name deleted: s.431(2)], a resident of Brisbane. This statement described the applicant as a person who believed in freedom of choice and in women's rights. It stated that they were both members of [community groups deleted: s.431(2)]. [Name deleted: s.431(2)] stated that both she and the applicant attended most of the meetings. She provided a description of the meetings. She also indicated that she had attended the march [date deleted: s.431(2)] and had seen the applicant and her husband at this event. She described life in Iran as intolerable for a woman who believed in personal freedom.

### **INDEPENDENT COUNTRY INFORMATION**

#### *Human Rights in Iran*

93. Independent information indicates that Iran's overall human rights record is poor. In its report on human rights in Iran for 2008, the US Department of State provided the following summary:

The government's poor human rights record worsened, and it continued to commit numerous serious abuses. The government severely limited citizens' right to change their government peacefully through free and fair elections. The government executed numerous persons for criminal convictions as juveniles and after unfair trials. Security forces were implicated in custodial deaths and committed other acts of politically motivated violence, including torture. The government administered severe officially sanctioned punishments, including death by stoning, amputation, and flogging. Vigilante groups with ties to the government committed acts of violence. Prison conditions remained poor. Security forces arbitrarily arrested and detained individuals, often holding them incommunicado. Authorities held political prisoners and intensified a crackdown against women's rights reformers, ethnic minority rights activists, student activists, and religious minorities. There was a lack of judicial independence and fair public trials. The government severely restricted civil liberties, including freedoms of speech, expression, assembly, association, movement, and privacy, and it placed severe restrictions on freedom of religion. Official corruption and a lack of government transparency persisted. Violence and legal and societal discrimination against women, ethnic and religious minorities, and homosexuals; trafficking in persons; and incitement to anti-Semitism remained problems. The government severely restricted workers' rights, including freedom of association and the right to organize and bargain collectively, and arrested numerous union



organizers. Child labor remained a serious problem. On December 18, for the sixth consecutive year, the UN General Assembly (UNGA) adopted a resolution on Iran expressing "deep concern at ongoing systematic violations of human rights." (US Department of State 2009, *2008 Human Rights Report: Iran*, 25 February)

### *Situation of Women in Iran*

94. The State Department and other sources confirm that women are subject to various forms of discrimination under Iranian law. The following extract from a UK Home Office report provides a useful summary:

23.10 The USSD report for 2007 states that:

“The constitution says 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.

“Nonetheless, provisions in the Islamic civil and penal codes, in particular those sections dealing with family and property law, discriminate against women. Shortly after the 1979 revolution, the government repealed the 1967 Family Protection Law that provided women with increased rights in the home and workplace and replaced it with a legal system based largely on Shari’a practices. In 1998 the Majles passed legislation that mandated segregation of the sexes in the provision of medical care. In 2003 the Council of Guardians rejected a bill that would require the country to adopt a UN convention ending discrimination against women.” [4t] (Section 5)...

23.12 According to the Berlin European COI Information Seminar Report 2001, women suffer discrimination in the legal code, [3c] (p102) particularly in family and property matters. This is the area that affects women most badly. It is difficult for many women, particularly those living outside large cities, to obtain legal redress. According to a UN report of 1998, under the legal system, women are denied equal rights of testimony and inheritance. [10j] (p3) The law provides women preference in custody for children up to seven years of age; thereafter, the father is entitled to custody. After the age of seven, in disputed cases custody of the child was to be determined by the court. (USSD, 11 March 2008) [4t] (Section 5) A woman’s testimony is worth less than that of a man’s, making it difficult for a woman to prove a case against a male defendant. (AI, 25 January 2008) [9aad] (p6)

23.13 The report of the Secretary-General to the United Nations on the situation of human rights in the Islamic Republic of Iran, dated 1 October 2008, mentions a draft family protection bill which would reverse the rights of women in the family. [10a] (p13) A campaign by around 100 women leaders and activists from women’s groups including the One Million Signatures Campaign, Meydaan Zanan and Kanoon Zanan Irani, along with Shirin Ebadi and Simin Behbahani met with members of the majles and expressed their opposition to the bill, leading to the removal of “the two most contested articles of this bill, Articles 23 and 25 and postponing the bill’s floor discussion indefinitely. In addition, Iran’s parliament will send the bill back to the Parliamentary Judicial Committee for further revisions.” (Women News Network, 23 September 2008) [136a] Article 23 authorises “polygamous marriages contingent upon the financial capacity of the man”, without the need for consent from the first wife and “Article 25 imposes a tax on the Mehr (dowry) paid to the wife.” (See Mehriyeh section). (Women’s Learning Partnership, 1 September 2008) [137a]

23.14 According to the Berlin European COI Information Seminar Report 2001, the question of passport issuance still requires the husband’s permission...

23.15 In addition to the position of women regarding evidence of witness, inheritance, retribution and judgement in civil and penal codes, the continued arranged marriages of young girls by fathers and grandfathers was noted. (UN, 28 January 1998) ...

23.16 Amnesty International, in a news update of 23 August 2007 reported that:

“Women in Iran face widespread discrimination under the law. They are excluded from key areas of political participation and do not have equal rights with men in marriage, divorce, child custody and inheritance.” (UK Home Office 2009, *Country of Origin Information Report: Iran*, 21 April)

95. Independent information also indicates that the Iranian government targets human rights and women’s rights activists, including those associated with the “one million signatures campaign”. The UK Home Office report on Iran includes the following information in this regard:

23.21 Radio Free Europe / Radio Liberty reported on 3 September 2008 that:

“Campaigners say close to 50 [women’s rights activists] have been detained since the [One Million Signatures campaign] began in 2006, in what Western diplomats see as part of a wider crackdown on dissent. Most were freed within days.” [42c]

23.22 Human Rights Watch, in an article dated 28 October 2008, said that:

“... the Judiciary has prosecuted more than 100 women’s rights activists over the past three years and continues to detain, intimidate, and prohibit from traveling a number of other women’s rights activists, particularly those involved in the One Million Signatures Campaign for Equality. The grassroots campaign aims to raise awareness of Iranian laws that sanction discrimination against women, by collecting 1 million signatures throughout the country in an effort to repeal them.”

23.23 In an article dated 19 September 2008, the International Federation for Human Rights stated:

“On September 2, 2008, the Tehran Revolutionary Tribunal sentenced Ms. Parvin Ardalan, Ms. Nahid Keshavarz, Ms. Jelveh Javaheri, arrested on December 1, 2007 and since detained at Evin Prison and Ms. Maryam Hosseinkhah, arrested on November 18, 2007 and since detained at Evin Prison, to six months’ imprisonment for ‘publishing information against the State’, for having written articles for two online newspapers that defend women’s rights in Iran: *Zanestan* and *Tanir Bary Barbary*. They have been released on bail after having appealed their sentences.” (ibid.)

96. A report in *The Guardian* of 2 January 2008 painted a mixed picture for women in Iran, noting women’s participation in employment and other activities:

Katajun Amirpur, Islamic expert at the University of Cologne, points out that Iran is still a society "in which girls can be married at the age of nine, where women can be punished for having pre-marital sex, where they cannot become judges or presidents, they are banned from football stadiums, and where the wearing of the chador is obligatory.

"At the same time, a third of the work force is female, two-thirds of students are women, there are female MPs, doctors, mayors, policewomen, taxi drivers. Karate is

the most popular female sport, and 97% of women can read and write. The reality is that women are exceptionally self-confident members of Iranian society."

Despite an active political movement, led by President Mahmoud Ahmadinejad, which would like to keep Iranian women suppressed, Amirpur argues that they now play too significant a part in Iranian society to be "brought back to the stove". (Connolly, K. 2008, "The secret lives of us", *The Guardian*, 2 January, <http://www.guardian.co.uk/world/2008/jan/02/iran.kateconnolly>, accessed 9/7/09)

97. The UK Home Office report referred to Iran's progress in relation to women's education and health. It noted an October 2008 report to the Secretary-General of the United Nations, which stated:

The Islamic Republic of Iran is reported to have made important achievements in women's education and health since 1990 ... For instance, the female-to-male literacy ratio in the 15-to-24 age group has increased from 87.9 per cent to 98.6 per cent. The girls' primary, secondary and tertiary education enrolment ratio has markedly increased, from 79.2 per cent to 94.3 per cent, with female students constituting 64 per cent of all college students. Access to health care, including reproductive health care, has become nearly universal. As noted previously, maternal and infant mortality rates have also declined sharply. (UK Home Office 2009, *Country of Origin Information Report: Iran*, 21 April)

#### *Dress Code*

98. Independent information indicates that both men and women in Iran are subject to a dress code. For instance, the UK Home Office report states:

23.32 "Women in Iran are required by Iranian penal law to maintain 'Islamic dress in public' (US 14 Sept. 2007; Denmark Apr. 2005, 12) and therefore must cover their hair and neck completely and wear clothing that does not reveal the shape of the body (ibid.; Reuters 18 Apr. 2006). Men cannot wear shorts and women cannot reveal their hair or ankles (RFE/RL 19 Apr. 2006). Sources describe violations of the dress code to include wearing colourful scarves or tight coats, men sporting 'Western' hairstyles (RFE/RL 2 May 2007), women wearing loose-fitting scarves or shortened trousers which expose skin (The Guardian 20 Apr. 2006; BBC 21 Apr. 2006) and women wearing makeup (US 6 Mar. 2007, Sec. 1.c)." (CIRB, 10 January 2008)

99. The UK Home Office refers to enforcement of the dress code, as follows:

23.34 "While the Danish Immigration Service states that the Director for the consular office in the Iranian foreign ministry 'reported that the clothing rules were no longer rigorously enforced', a number of other sources describe the enforcement of rules regarding Islamic appearance since April 2006 as being 'harsher' than in previous years. Some sources indicate that a crackdown in advance of summer weather is common but in slight contrast, recent reports indicate that the crackdown has continued into winter months. Reports indicate that police in Tehran are targeting 'winter fashions deemed immodest' and that authorities have 'launched a winter crackdown' enforcing the dress code." (CIRB, 10 January 2008) [2ag]

23.35 The CIRB information request, dated 10 January 2008, continued:

"Enforcement includes punishing taxi agencies and drivers who transport 'women dressed 'inappropriately'' (The Guardian 20 Apr. 2006), stores which sell certain kinds of clothing (RFE/RL 2 May 2007) and hairdressers who offer 'western hair

cuts', who tattoo eyebrows and pluck men's eyebrows (The Guardian 25 Aug. 2007; Reuters 20 May 2007).

"According to two sources, new police officers have been assigned to enforce the dress code (RFE/RL 19 Apr. 2006; BBC 21 Apr. 2006). HRW reports that the Basij militia [a government volunteer paramilitary force] are involved in enforcing the 'morality' campaign' (17 May 2007). The Guardian reports that Amaken-e Omoomi 'a police body for regulating businesses' is responsible for closing down barbers and hairdressers (25 Aug. 2007)." (UK Home Office 2009, *Country of Origin Information Report: Iran*, 21 April)

100. With regard to punishment for violation of the dress code, a September 2008 *Reuters* report stated that violators of the dress code "can receive lashes, fines or imprisonment, although most usually receive a stern warning by street patrols" ("Iran steps up policing of Islamic dress – report" 2008, *Reuters*, 24 September).
101. There is evidence that a person's observance of the dress code may affect their employment prospects. For instance, a 2003 article on the website of the Iran Chamber Society noted that "in the area of employment, an individual's preferences and abilities are often ignored in favor of a test of the candidate's loyalty to the regime" and examination of the candidate's private life may extend to "the kind of hejab of the women of the candidate's family" ((Kar, M. 2003, "The invasion of the private sphere in Iran: individual, family, community and state", Iran Chamber Society website [http://www.iranchamber.com/society/articles/iinvasion\\_private\\_sphere\\_iranphp](http://www.iranchamber.com/society/articles/iinvasion_private_sphere_iranphp), accessed 24 January 2009).
102. The Tribunal also notes that the available information indicates that, although the law in Iran does not require women to wear the full chador, the chador is enforced in mosques, judiciary buildings and other public spaces, including on some university campuses (Khatam, A. 2009, "Iran: The Islamic Republic's failed quest for the spotless city", *Middle East Report Online*, Spring).

#### *2009 Presidential Elections*

103. In the wake of the June 12 presidential elections, there were large street protests in Iran, as described in the following extract from a BBC report:

Street protests, which have drawn the largest crowds since the Iranian Revolution in 1979, followed the announcement of the 12 June presidential election result.

The result, after a strong turnout and a campaign that seemed to energise many young voters, was expected to be much closer, and the poll was perhaps expected to go to a second round.

According to the official result Mahmoud Ahmadinejad received 62.6% of the vote, Mir Hossein Mousavi 33.8%, Mohsen Rezai 1.7% and Mehdi Karroubi 0.9%. Turnout was 85% with just under 40 million Iranians voting.

Millions of Iranian simply did not believe the result. The main demand of the protesters has been an annulment of the result and an election re-run.

Iran's Spiritual Leader Ayatollah Ali Khamenei has since insisted there was no election fraud and has demanded an end to the protests. ("Q&A: Iran election

aftermath” 2009, *BBC News*, 22 June,  
[http://news.bbc.co.uk/2/hi/middle\\_east/8101621.stm](http://news.bbc.co.uk/2/hi/middle_east/8101621.stm), accessed 15/7/09)

104. In a backlash against the protests, the Iranian authorities employed militia groups known as basiji, as described in the following report from the *Guardian* newspaper:

The official death toll from that backlash is less than 20 but, according to a Tehran doctor who has given his account to the *Guardian*, the actual number is much higher – 38 in the first week at his hospital alone. He said the basiji covered up the deaths and pressured doctors not to talk. (Borger, J. 2009, “Khamenei’s son takes control of Iran’s anti-protest militia”, *The Guardian*, 8 July,  
<http://www.guardian.co.uk/world/2009/jul/08/khamenei-son-controls-iran-militia>, accessed 9/7/09)

105. Large numbers of opposition supporters have been arrested. In a report of 7 July 2009, the BBC stated that more than 1,000 opposition supporters and prominent reformists had been arrested in the aftermath of the election, and that it was possible hundreds remained in prison. Those detained included a local employee from the British Embassy, who had been charged with “acting against national security”. The BBC report referred to criticisms by Iranian opposition leaders of what they described as the “security state” imposed in Iran after the June elections. It was also reported that Supreme Leader Ayatollah Ali Khamenei had issued a warning to Western nations not to meddle in Iran’s internal affairs. (“Iran ‘security state’ lambasted” 2009, *BBC News*, 7 July,  
[http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/middle\\_east/8137718.stm?ad=1](http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/middle_east/8137718.stm?ad=1), accessed 9/7/09)

106. In a recent interview, Isobel Coleman, Senior Fellow for US Foreign Policy at the Council on Foreign Relations drew a connection between the reform movement and the women’s movement in Iran, stating:

The reform movement and the women’s movement in Iran are definitely and clearly interrelated. The women have been a key component of the reform movement since its very beginning. There have been women who have focused their reform effort specifically on improving legal rights for women and day-to-day livability for women. But they have worked alongside reformers who are focused on big-picture issues of democracy and human rights. Over time the two have merged. You’ve seen leading reformers going back to the 1990s taking on women’s issues as part of their discourse, just as women have taken on human rights and democracy as part of their discourse. The two have really been intermingled over the past twenty years. (“Reform and Women’s Rights Movements Intertwined in Iran” 2009, Council on Foreign Relations, 24 June,  
[http://www.cfr.org/publication/19694/reform\\_and\\_womens\\_rights\\_movements\\_intertwined\\_in\\_iran.html](http://www.cfr.org/publication/19694/reform_and_womens_rights_movements_intertwined_in_iran.html), accessed 9/7/09)

107. Isobel Coleman also made the following observations:

If the status quo remains and Ahmadinejad remains president, does this have a direct impact on women?

It will have a direct impact in that you’ll see a much more restricted Iran--more than what we’ve seen in the past few years. To squash what has happened in the last couple of weeks will take force and a very heavy hand. This will ultimately fall heavily on women, but it won’t stop them. They’ve been through this before. What has changed now, so dramatically, is that the regime has no moral authority anymore. In the past, when women demonstrated, they were labeled as Zionist spies, American stooges,

and enthralled to Western secular liberalism and feminism. Those sneers no longer work. These are traditional, conservative women who are saying this is enough. They will not be stopped, and their demands won't be silenced for more justice. This is why the regime fears them so much. (ibid.)

108. In a recent article, Anne Applebaum observed that Iranian clerics regarded women as posing “a profound threat to their authority”. She stated that “the regime would not bother to use brutal forms of repression against dissidents unless it feared them deeply” (Applebaum, A. 2009, “Woman Power: Regimes that repress the civil and human rights of half their population are inherently unstable”, *Slate*, 22 June, <http://www.slate.com/id/2221033>, accessed 9/7/09).

#### *Treatment of Returnees to Iran*

109. The UK Home Office has provided the following information on the treatment of returnees:

27.08 According to the USSD report for 2007:

“Citizens returning from abroad occasionally were subjected to searches and extensive questioning by government authorities for evidence of anti-government activities abroad. Recorded and printed material, personal correspondence, and photographs were subject to confiscation.”

27.09 According to the European COI Seminar Berlin Report 2001, on the basis of the information Amnesty International receives, usually a person who returns will be asked why s/he was abroad. If the answer is along the lines of ‘I just tried to find a job’, they will most likely be allowed to go home to their families. Generally speaking, it does depend on what kind of documentation exists on the returnee and what the actual practice of the country is, in which the concerned individual applied for asylum...

27.12 According to the FCO, in the case of returned asylum seekers it has been reported by observers that they had seen no evidence that failed claimants, persons who had illegally exited Iran, or deportees faced any significant problem upon return to Iran (although cases that gain a high profile may face difficulties). [26f] According to the CIRB in a July 1999 report:

“Several times in the recent past, senior government officials have declared that all Iranians living abroad are welcome to return home without fear of reprisal. ... and the Foreign Ministry’s Consular Department has confirmed that applying for asylum abroad is not an offence in Iran.”

27.13 In contrast to this opinion, it was also stated in the same source that:

“The only exception to this, he [a representative of the Centre for Arab and Iranian Studies (CAIS) in London, United Kingdom, who is an editor with *al-Moujez* an Iran, a political scientist by training, and a member of the Association of Iranian Writers in Exile] stated, might be persons who are extremely critical and/or advocate the overthrow of the government through the use of force; he named the Mujahedin-e-Khalq Organization as an example. The representative stated that family members of these persons could face difficulties leaving the country, but added that the son of Massoud Rajavi, the leader of the Mujahedin, lives in Iran and goes to university there. And also ...that relatives of high profile refugee claimants outside Iran could face some difficulties.” (UK Home Office 2009, cited above)

## FINDINGS AND REASONS

110. The applicant claims to be a national of Iran and travelled to Australia on an Iranian passport. For the purposes of the Convention, the Tribunal has therefore assessed her claims against Iran as her country of nationality.
111. The applicant claims to have suffered various forms of harm and discrimination in Iran in the past. She related this in particular to her status as a woman in Iran. She also suggested that there was a religious element to the difficulties that she faced.
112. The applicant presented as an honest and forthright witness. She did not seek to exaggerate her description of the various incidents she had experienced in the past such as her encounters with the religious police. The Tribunal accepts her description of her past experiences. Nevertheless, the Tribunal is not satisfied that the various difficulties the applicant has experienced in the past constituted persecution.
113. For instance, the Tribunal accepts that the applicant's father disapproved of the applicant's marriage and that she fought with her father over this. It accepts that this may have affected her relationship with her father. Independent information, such as that from the UK Home Office, indicates that arranged marriages continue to occur in Iran. The Tribunal accepts that the pressure from her father and the conflict with her father were distressing for the applicant. It also accepts that Iranian law does not provide women with equal rights in relation to matters such as marriage, divorce and custody. However, the applicant has now married the man of her choice and is with him in Australia. She has previously lived with him in Iran. The Tribunal does not accept that the applicant has suffered discrimination or harm amounting to persecution in relation to marriage or associated matters.
114. The Tribunal also accepts the applicant's account of difficulties she experienced in relation to her employment. As set out above, the independent information indicates that, in the area of employment, an individual's preferences and abilities are often ignored in favour of a test of the candidate's loyalty to the regime. An examination of the candidate's private life may extend to the kind of hejab worn by the women of the candidate's family. In this context, the Tribunal considers it entirely plausible that people seen as loyal to the regime, such as those who lost a family member in the Iran/Iraq war, were given preference in the granting of internships. The Tribunal accepts that the applicant suffered discrimination in this regard and was forced to wait for more than a year before obtaining an internship. The Tribunal also accepts that, when the applicant went to inquire about obtaining a permanent job, the human resources officer refused to give her an application form, indicating that she did not cover herself sufficiently. The Tribunal notes that the applicant was working in the [education provider deleted: s.431(2)]. The independent information, cited above, indicates that the chador is enforced in places such as judiciary buildings and on some university campuses. The Tribunal accepts that the applicant may have had some difficulty finding employment elsewhere, although the applicant was somewhat vague in relation to her efforts to find employment.
115. Although the Tribunal accepts that the applicant suffered discrimination in relation to her training and employment, the Tribunal does not accept that this was for reason of her gender. The applicant was trained as a midwife and indicated that she sought work in this area. Independent information indicates that health care is segregated in Iran. The applicant confirmed that only women can be midwives. Nevertheless, the Tribunal accepts that the applicant suffered discrimination because her dress was perceived as not complying

sufficiently with Islamic requirements. The Tribunal notes that the Federal Court has held that “if persons are persecuted because they do not hold religious beliefs, that is as much persecution for reasons of religion as if somebody were persecuting them for holding a religious belief” (*Prashar v MIMA* [2001] FCA 57 at [19]). A woman who suffers discrimination in employment for reason of not wearing the chador might be considered to have suffered harm based on a perception of lack of adherence to Islam.

116. However, even accepting that the applicant suffered discrimination in relation to her employment for reason of religion, the Tribunal does not accept that this constituted persecution. The applicant indicated that, during the period while she was waiting for an internship, she was supported by her husband. Her husband has worked in his father’s shop for a number of years. It is also apparent that the applicant and the applicant husband have received some assistance from the parents of the applicant’s husband. They were able to live with the applicant’s father-in-law at least in the period before the applicant came to Australia. It may be that the applicant’s economic circumstances are better in Australia and that rent was expensive in Iran. However, in all the circumstances, the Tribunal does not accept that the discrimination faced by the applicant caused her to suffer significant economic hardship that in any way threatened her capacity to subsist. The Tribunal understands that the applicant was concerned by what she saw as a lack of opportunity in Iran. It accepts that, although women are employed in a wide range of occupations in Iran, they may be more restricted in their employment opportunities than men. Nevertheless, the Tribunal does not accept in all the circumstances that the discrimination the applicant faced in relation to her training and employment constituted persecution.
117. The applicant has also referred to difficulties suffered at the hands of the religious police. The Tribunal accepts that unmarried couples may face harassment from the authorities if they associate in public places. It accepts that there were two occasions, in 2002 and 2004, when the applicant and the applicant husband were questioned about being together in public. On the second occasion, they were married but did not have with them any documentation which demonstrated this. The Tribunal has considered the applicant’s description of these incidents. It accepts that the applicant and applicant husband were rudely treated in both incidents. It accepts that they paid bribes on both occasions. It accepts that the applicant was hit on the hand in the first incident. However, the applicant and applicant husband were not detained on either occasion and did not suffer any serious physical harm. The Tribunal accepts that these incidents were upsetting for the applicant and the applicant husband but does not accept that the applicant suffered harm amounting to persecution for any Convention reason.
118. The independent country information indicates that Iranians generally are subject to a dress code. Women who are dressed inappropriately are subject to enforcement activities. While violators can receive punishments such as imprisonment, most receive a stern warning by street patrols. This appears consistent with the applicant’s experience. She has indicated that she and other people she knows have on various occasions been told that they were inappropriately dressed. Her evidence indicated that she was required to alter her dress. However, the evidence does not indicate that she was physically mistreated, fined or imprisoned. The applicant appeared to know of the physical mistreatment of women not through her own experience or that of her associates but through pictures on YouTube and in reports. The Tribunal accepts that the applicant may have been approached by religious police on a number of occasions in relation to perceived violations of the dress code but is not satisfied that her treatment at the hands of the religious police constituted persecution.



119. The applicant claimed that men in Iran victimise women. In this regard, she referred, for instance, to men making lewd comments when she passed a building site and to a lack of police response to such incidents. The Tribunal accepts that such experiences would have been distressing for a woman such as the applicant who was on the street on her own. However, it does not accept on the available evidence that this constituted serious harm.
120. Submissions made to the Tribunal referred to a range of discriminatory provisions in Iranian law. These related to such matters as marriage, divorce, child custody, the giving of evidence in court, domestic violence and punishment in cases of murder. Such provisions reflect the fact that women face discrimination in Iranian society. In these circumstances, the Tribunal accepts that women in Iran are an identifiable group, who share the common attribute of their gender, and who are distinguished from society at large through the possession of that attribute. It accepts that they constitute a particular social group. However, as the Tribunal put to the applicant at the hearing, she herself has not been directly affected by many of the discriminatory legal provisions to which the Tribunal has been referred. While the Tribunal has been referred to information suggesting that women need the permission of their husbands to do various things such as work or travel, the applicant has indicated that her husband was happy for her to come to Australia and to work here. The Tribunal does not consider that the applicant's husband seeks to limit the applicant's opportunity to engage in activities such as travel or employment. The Tribunal accepts that she has been affected by various forms of harm and discrimination in the past. However, it has considerable doubt that, even considered cumulatively, these amounted to persecution for reason of membership of the particular social group constituted by women in Iran or for any other Convention reason.
121. However, regardless of whether the applicant has suffered harm amounting to persecution in the past, the Tribunal accepts that the applicant now has a well-founded fear of suffering Convention-related persecution in Iran. A number of factors contribute to this conclusion. The Tribunal accepts that, although the applicant is nominally a Muslim, she does not regard herself as a religious person and does not attend the mosque or engage in other religious observance. The applicant has now been in Australia for approximately three years and has worked here. The Tribunal accepts that she has experienced considerably more freedom as a woman in Australia than she did as a woman in Iran. It accepts, for instance, that she does not cover her hair or dress in the way she would in Iran. Regardless of whether the difficulties the applicant has experienced in Iran in the past amounted to persecution, the Tribunal accepts that the applicant feels strongly about women's rights issues in Iran. It accepts that she believes that women should have more freedom and should be given greater opportunity. It accepts that she believes that legal discrimination against women should be removed. The applicant referred to these beliefs both in her written claims and at the hearing. In the Tribunal's view, she presented as having a genuine conviction. Particularly given that she has lived and worked in Australia for a number of years, it is entirely plausible that she should believe that women in Iran should be granted greater freedom and greater opportunity.
122. The Tribunal also accepts that the applicant and her husband have been affected by recent events in Iran. It accepts that they have been concerned about the conduct of the recent presidential elections and the regime's treatment of protesters in the wake of the elections. The imprisonment and mistreatment of protesters have been widely reported in the media. It is entirely plausible that, as young Iranians living in a Western country, the applicant and applicant husband should be disturbed by these events. Both the applicant and the applicant husband gave evidence that they had participated in protest activities in Australia, including a

march and a candlelight vigil. The applicant has produced evidence of these activities, including CDs containing photographs which the Tribunal accepts show the applicant and the applicant husband at public protests [details deleted: s.431(2)]. The Tribunal accepts that they have participated in these activities as claimed. The Tribunal accepts that these activities were in opposition to the Iranian government and its actions.

123. The Tribunal has considered the application of s.91R(3) of the Act. This provision requires the Tribunal to disregard any conduct engaged in by the applicant in Australia unless it is satisfied that she engaged in the conduct other than for the purpose of strengthening her claim to be a refugee. The Tribunal accepts that both the applicant and the applicant husband are genuinely opposed to what has been happening in Iran in connection with the recent presidential elections. It accepts also that the applicant in particular is opposed to the government's treatment of women in Iran. The Tribunal accepts that these views provide a motivation for the applicant and her husband to involve themselves in activities connected with human rights and women's rights in Iran. The Tribunal is satisfied that the applicant's activities in Australia have been engaged in otherwise than for the purpose of strengthening her claims against the Convention.
124. The Tribunal accepts that coverage of the [details deleted: s.431(2)] protests is publicly available, including on YouTube. The Tribunal has found a number of relevant clips on YouTube. There are numerous clips, many of which are of poor quality. Nevertheless, the Tribunal was clearly able to identify the applicant husband in particular. It accepts that the applicant and the applicant husband took part in protest events, footage of which appears on YouTube, and that their participation might be identified from this. The Tribunal considers that the independent information indicates that the Iranian authorities take some interest in the activities of their citizens abroad. For instance, the US State Department has stated that citizens returning from abroad were occasionally subjected to searches and extensive questioning by government authorities for evidence of anti-government activities abroad. The Tribunal considers that this is a time of heightened tension in Iran as a result of the post-election protests referred to above. Iranian leaders have demonstrated sensitivity to the possibility of Western interference in Iranian affairs. The Tribunal considers that these conditions greatly increase the likelihood that the applicant would be questioned and subjected to scrutiny if she were to return to Iran from Australia.
125. In these circumstances, the Tribunal cannot dismiss as remote the chance that the applicant would come to attention on her return to Iran and that the Iranian authorities would take an interest in her involvement in anti-government protests in Australia. The authorities are known for a range of human rights abuses, as set out by the US Department of State and other independent sources. Particularly given the harsh response to recent protest activity in Iran and to women's rights activities, the Tribunal finds that there is a real chance that the applicant would suffer serious harm amounting to persecution in the form of detention, interrogation and serious physical mistreatment. The Tribunal finds that this would be for reason of the applicant's political opinion in opposition to the Iranian government and its actions towards reformists and women. The persecution the applicant fears involves systematic and discriminatory conduct, as required by s.91R(1)(c), in that it is deliberate or intentional and involves her selective harassment for the Convention reason of political opinion. In circumstances where the applicant fears harm at the hands of the Iranian state, the Tribunal finds that she would not be able to access state protection in relation to the harm she fears. Nor would she be able to avoid persecution by relocating within Iran.

126. The Tribunal has found that there is a real chance that the applicant would suffer persecution in Iran for reason of her activities in opposition to the Iranian regime. However, even if she were not to become known to the Iranian authorities, the Tribunal finds that there is nevertheless a real chance that she would suffer Convention-related persecution. The Tribunal accepts that the applicant holds genuine views in relation to women's rights in Iran in particular. It accepts that, if she were to express those views on return, she would face a real chance of suffering persecution. The independent information indicates that numerous women's rights activists have been targeted and imprisoned in Iran. The Tribunal accepts that the applicant wishes to express such views openly and would only be dissuaded from doing so by the threat of persecution in Iran. In this regard, the Tribunal notes the observations of Justices McHugh and Kirby in *Appellant S395/2002 v MIMA* (2003) 216 CLR 473 at [43]:

In cases where the applicant has modified his or her conduct, there is a natural tendency for the tribunal of fact to reason that, because the applicant has not been persecuted in the past, he or she will not be persecuted in the future. The fallacy underlying this approach is the assumption that the conduct of the applicant is uninfluenced by the conduct of the persecutor and that the relevant persecutory conduct is the *harm* that will be inflicted. In many – perhaps the majority of – cases, however, the applicant has acted in the way that he or she did only because of the *threat* of harm. In such cases, the well-founded fear of persecution held by the applicant is the fear that, unless that person acts to avoid the harmful conduct, he or she will suffer harm. It is the *threat* of serious harm with its menacing implications that constitutes the persecutory conduct. To determine the issue of real chance without determining whether the modified conduct was influenced by the threat of harm is to fail to consider that issue properly.

127. Their Honours also stated (at [40]):

The Convention would give no protection from persecution for reasons of religion or political opinion if it was a condition of protection that the person affected must take steps – reasonable or otherwise – to avoid offending the wishes of the persecutors. Nor would it give protection to membership of many a “particular social group” if it were a condition of protection that its members hide their membership or modify some attribute or characteristic of the group to avoid persecution. Similarly, it would often fail to give protection to people who are persecuted for reasons of race or nationality if it was a condition of protection that they should take steps to conceal their race or nationality.

128. In this case, if the applicant were to modify her behaviour by suppressing her own views and beliefs, she would be doing so only in the hope of avoiding persecution. Particularly given the human rights record of the Iranian authorities, the Tribunal considers that this is indeed a case in which “the threat of serious harm with its menacing implications” constitutes persecutory conduct. The Tribunal is satisfied that the applicant has a well-founded fear of serious harm amounting to persecution. It finds that such persecution would be related to the holding of views antithetical to the interests of the Iranian state. It finds that she has a well-founded fear of persecution for reason of her political opinion.

129. There is no material which indicates that the applicant has a legally enforceable right to enter and reside in any third country such that s.36(3) might apply to her circumstances.

130. The applicant husband has not made any substantive claims against the Convention. However, the Tribunal accepts that he is the spouse of the applicant. The Tribunal has been provided with a copy of the applicants' marriage certificate. In accordance with r.1.12, a person is a member of the same family unit as another person (called the “family head”) if the

person is a spouse of the family head. The Tribunal is satisfied that the applicant husband is the spouse of the applicant and, as such, a member of the same family unit as the applicant.

## CONCLUSIONS

131. The Tribunal is satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the first named applicant satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, provided she satisfies the remaining criteria.
132. The other applicant applied as a member of the same family unit as the first named applicant. The Tribunal is satisfied that he is the husband and is a member of the same family unit as the first named applicant for the purposes of s.36(2)(b)(i). The fate of his application depends on the outcome of the first named applicant's application. As the first named applicant satisfies the criterion set out in s.36(2)(a), it follows that the other applicant will be entitled to a protection visa provided he meets the criterion in s.36(2)(b)(ii) and the remaining criteria for the visa.

## DECISION

133. 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 second named applicant satisfies s.36(2)(b)(i) of the Migration Act, being a member of the same family unit as 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 Officer: PRMHSE