

**0908471 [2009] RRTA 1151 (17 December 2009)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0908471

**DIAC REFERENCE(S):** CLF2009/84995

**COUNTRY OF REFERENCE:** Iran

**TRIBUNAL MEMBER:** Jane Marquard

**DATE:** 17 December 2009

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Iran, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights by letter.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
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 applicant has 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. 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'**

9. 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.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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.
15. 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.
16. 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.

17. 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.
18. 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**

19. The documentary evidence in this matter is contained in the Department and Tribunal files, and relevant extracts are set out below.

### *Application to the Department*

20. The applicant was born in Esfahan, Iran. She speaks, reads and writes Farsi and English. She is "Muslim born". She has never been married.
21. The applicant had eleven years of schooling and then studied at university for three years. She states that she worked as an "interior manager" before coming to Australia.
22. She has an Iranian passport issued in Esfahan. She travelled to [country deleted: s.431(2)] on a holiday.
23. The applicant states that she is the youngest in her family Her mother lives in Iran and her father died in 1999. She has siblings in Australia. Her other siblings, live in Iran. She said that one of her siblings, is in hiding from the government authorities.
24. She states that her parents and their siblings did not support the former Shah nor the Islamic Revolutionary Council. She said most of the members of her family have for many years supported the mojahedin-e-khalg movement, which is a left-wing movement opposed to Islamic fundamentalism.
25. She said that her father's sister, was one of the active members of mojahedin and she was executed in the 1980's. Her name is in the book of martyrs.
26. She said that when she was about ten or twelve the authorities attacked their house to arrest her father. They took her father away but spared him after several days. She said that she used to hear that her father was a human rights advocate, talking at length about the political situation in Iran. She said he would talk at length about how the fundamentalists were wrong in their interpretation of the Koran, and as a result had destroyed ideas of freedom and democracy.
27. She said that in high school she felt the injustice and discrimination in society. She said she lived in fear about her appearance because guards were hard on girls who were different.
28. She said she was a top student but did not get into university as the entrance procedures were corrupt. She was admitted to University but was bitter because it was far away from Esfahan and she felt it was a "clear injustice".

29. She said that she searched for the National Council of Resistance and contacted them via the internet in 2003. They asked her to listen to Simay-Azadi channel. She listened one night and was impressed by the speech of Maryam Rajavi about women. She decided to leave university and connect to the mojahedin in [Iraq]. She sent them an email and asked if she could join but they told her to be active in Iran and explained the situation in [Iraq] for her.
30. She said she was involved in activities such as contact via the internet, burning the Masood and Maryam speeches on CDs and distributing them secretly. She took photographs and movies of torture and arrests in the street and sent them to Simay-Azadi via email. She also distributed the Universal Declaration of Human Rights.
31. She said she was asked to find out information about the nuclear weapons program. She said she was unable to find out any information.
32. She said that on [date deleted: s.431(2)] women gathered in a park near the university to celebrate the universal women's day. They had asked for permission and received no answer until 10 days before [the date]. They prepared banners and slogans relating to women's and men's rights and the freedom of political prisoners. The gathering increased from 20 to 50 people and the university guards took their banners and tried to separate them. They protested and sat in a corner. Within 30 minutes the authorities (pasdar) and the basij persons arrived, attacked and insulted them and dragged them to a minibus. The applicant said that she asked two women who were dragging her, what she had done wrong, and one punched her with a big ring and with foul language "made her silent" and said "you will understand your sin" She said they were taken to a security centre and searched. She was taken to a room and questioned about who had organised the protest. She said they were all released except for three persons.
33. She said that after the occupation of Iraq in 2003, the American army promised to support the mojahedin. On 1 January 2009 the Americans handed the protection of Ashraf city to the Iraq army so they did not act in accordance with their promise. She said "maybe they deported mojahedin to Iran so the mojahedin supporters are anxious about this so I inform the people in Iran about this." She said she continued her activities even after she graduated from university in [year deleted: s.431(2)]
34. She said that she was employed in [company name deleted: s.431(2)] in June 2008 and had a part-time job in [company name deleted: s.431(2)]. She said that all managers of this company are related to the ruling regime including her boss.
35. She stated that in December 2008 the mojahedin asked her to distribute the speech of Maryam in the European parliament, about violation of human rights. The applicant said she told the mojahedin she was busy with work but they asked her to burn the CDs and somebody would call her with a particular name. She said two hours later someone called her and they made an appointment for two days later at 3.30, half an hour before her part-time job began. She waited until 4pm but no-one turned up, so she took the CDs with her to work.
36. She said that the next day her manager called her in and said "who are you?" He took one of the CDs from his desk. He also showed her a picture of her giving the CDs to a person. The applicant said she told him the CDs were not hers and she did not know what they were about, that she had just been asked to give them to a friend. She begged

him not to tell the government. He said that she could be executed if he told the government. He told her to do “temporary marriage” with him and he would keep it secret. She said that she needed to think. He then locked the door and attacked her and raped her. He said he would strangle her if she moved. She said she had handprints on her neck for several days which she had to hide from her mother. She said that was the “story of the first time that I was chosen as his slave”. The night after the attack she told a friend she was unwell and slept there.

37. She said from that time every moment he wanted she had to “put herself at his service”. She suffered depression and panic attacks but could not speak to anyone. She thought about suicide. She said her only hope was to flee the country.
38. She said her mother had applied for a visa for her some years previously to assist her to visit her sibling in Australia. Her mother had had an operation and wanted the applicant with her while she was travelling.
39. She said until she left Iran she had to go to a house and one hour later this man arrived and raped her.
40. She said that if she returned to Iran she would be arrested and serve many years in gaol or be executed because of political views attributed to her. She said very many mojahedin supporters had been severely persecuted.
41. The applicant provided to the Department some documents including some of her “activities samples” while she was in Iran. This included a list of websites and an article from [www.erc.org.au](http://www.erc.org.au) about the disappearance of two Iranian brothers who were deported from Australia to Iran. There was also a printout from [www.Maryam-rajavi.com](http://www.Maryam-rajavi.com) of Maryam Rajavis’s words and thoughts, and a number of articles about her, and other issues concerning Iran.
42. She also provided the “list of names and particulars of 14028 victims of the Khomeini regime’s executions”, highlighting her aunt’s name. [Information deleted: s.431(2)]. The Tribunal searched the website of the People’s Mujahadin Organisation of Iran (PMOI) and found the identical list, including the aunt’s name, on the website. Submission of the applicant to the Tribunal dated 4 December 2009.
43. The applicant through her adviser and in a statutory declaration, made a detailed written submission to the Tribunal. The submission included the following:
  - Her family was actively involved with the MKO. Her father used to talk about how fundamentalists were wrong in their interpretation of the Koran and had destroyed ideas of freedom and democracy.
  - She became involved in 2003 following incidents which made her aware of the injustices, discrimination and bad behaviour observed by women in Iranian society. She said that she wanted to learn more about MKO, the organization her family had belonged to for many years so she secretly contacted them via the internet. They asked her to watch the Siday-Azadi channel. She watched and was inspired by the speeches of Maryam Rajavi. She sent them another email asking them to guide her about how she could support them. They suggested she be involved in Iran and not Ashraf. They asked her to send them news.

- After that she secretly distributed anti-government and human rights material to the public, and provided MKO with information and pictures of human rights abuses.
- The applicant was employed at [company name deleted: s.431(2)] and had a part-time job at a company called [name deleted: s.431(2)]. All the managers of this company were related to the regime. In Iran someone who has spent time in the corps or war receives special treatment and this company had received loans from the government. Her own manager was involved in the war and a member of the Basij and an ardent supporter of the regime.
- Her fear of serious harm arose when her manager found a CD containing anti-government material, in her locker at work, and took a photograph of her giving CDs to another woman. The MKO contact had not turned up when expected to pick up the CDs and as the applicant was late to work, she hid them in her work locker. Later the MKO lady called her and told her to meet her at 7.30 the next day, that she would be wearing a blue manto and a black scarf and that she would be in a [make of car deleted: s.431(2)]. When she got into work her manager called her in and took the CD out from his desk and asked her what was going on. He then locked the door and raped her. Out of fear of being exposed, she was forced to become subject to regular sexual assault, otherwise he would reveal her political activities.
- Since arriving in Australia, her manager has informed the authorities of her involvement with MKO. Her sibling's and uncle's houses have been raided. A computer and photo albums have been taken. Her uncle's wife had a heart attack and has since passed away. Her uncle is in hiding.
- It was plausible that the applicant did not have an adverse profile with the authorities until she left Iran. She took precautions to act secretly. She created a number of email addresses for communicating with MKO. CDs and pamphlets were distributed during quiet times such as in the evenings after prayer.
- She would suffer serious harm if she returned because of her political views. She distributed and possessed highly political and sensitive material, conduct that would be viewed as acts against national security, spreading propaganda against the state, distributing public opinion and sympathizing with an outlawed group (country information provided).
- She holds a genuine fear of persecution, and this is supported by country information.
- She was able to obtain a passport in 2006 as she did not have an adverse political profile then.
- In relation to the claims of sexual assault the following letters were provided:
  1. A letter from [name deleted: s.431(2)] of the asylum seekers centre [date] identifying that [name deleted: s.431(2)] had been providing the applicant with mental health support since June 2009, shortly after her arriving in Australia and that she referred her to the transcultural support centre;
  2. Letter from [name deleted: s.431(2)] a Mental Health Clinician, [dated] stating that the applicant was "*experiencing serious ongoing anxiety reaction due to her recent traumatic experiences*".
  3. [Letter from] Transcultural Mental Health, [dated], in which she diagnoses the applicant with Post Traumatic Stress, Mixed Anxiety and Depression Disorder. Medication was prescribed.
  4. Report of [name deleted: s.431(2)] Psychologist/Sexual Assault Counsellor of [area] Sexual Assault Service observing that the applicant had "*clear symptoms consistent and very typical of sexual assault victims*"

5. Report of [doctor's name deleted: s.431(2)] Psychiatry Registrar of Acute Assessment Mental Health Team [dated] diagnosing the applicant with major depressive disorder due to sexual assault and fear of reprisal, and post traumatic stress disorder.

- It is not reasonable to expect the applicant to relocate to another part of Iran and live discretely. In any event she would most likely be arrested upon arrival.
- Attached was a letter from [name deleted: s.431(2)] of the Association to Defend Freedom and Human Rights in Iran – Australia This Association is an independent group focusing on the rights of Iranian refugees who are victims of torture and executions. They said that they met the applicant at protests outside the Red Cross and the Iraqi Consulate in mid [month deleted: s.431(2)]. The protests related to the treatment of Iranian political activists, members of People's Mojahedin Organisation of Iran. They stated that news from Iran indicates that many students have been arrested and tortured since the fraudulent national elections of June 12 2009 and some have been killed in custody or on the streets during protests.

They report that the United Nations General Assembly and its Third Committee have passed over 55 resolutions against the Tehran government because of serious violation of human rights in Iran. They say that in the past few months the government has increased the harassment and intimidation of family members of political activists.

They confirm their belief that the applicant has a well-founded fear of persecution for her advocacy of democratic rights in Iran.

- A petition signed by Iranian-Australian opponents of the regime in Iran declared their belief that the applicant was a supporter of the National Council of Resistance and the Mojahedin, and was a human rights and freedom activist. They say that more than 120 000 Mojahedin supporters have been tortured, jailed and killed.

#### *Independent country information*

#### **National Council of Resistance.**

44. The National Council of Resistance (NCRI) was formed in 1981, in Paris, as an off-shoot of the Iranian Mujahadin-e Khalq organization (MEK).<sup>1</sup> This is also referred to as MOK and MKO. The MEK, which advocates the violent overthrow of the Iranian government, attempted to topple the newly installed Islamic regime by launching a bombing campaign in Iran in 1981. This campaign included an attack against the head office of the Islamic Republic Party and the Prime Minister's office, which killed some 70 high-ranking Iranian officials, including Chief Justice Ayatollah Mohammad Beheshti, President Mohammad-Ali Rajaei, and Prime Minister Mohammad-Javad Bahonar. These attacks resulted in a popular uprising against the MEK and an expanded Iranian government crackdown, which forced MEK leaders to flee to France. In Paris, the MEK formed what has been termed the political wing of the MEK under the name of the National Council of Resistance. The NCRI has a global support

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<sup>1</sup> Department of the Parliamentary Library, Research Note No. 43, 16 June 2003, Behind the Mujahideen-e-Khalq (MEK)- Accessed 2 December 2009 <http://www.aph.gov.au/library/Pubs/RN/2002-03/03rn43.pdf>

network with active lobbying and propaganda efforts in major Western capitals. NCRI also has a well-developed media communications strategy.<sup>2</sup>

45. The NCRI is led by Mrs. Mayram Rajavi, the wife of MEK founder Massoud Rajavi, who remains in hiding – possibly in Iraq. Mrs. Rajavi is an active leader, delivering numerous speeches and organising events and rallies in support of the organization, using offices located in several European capitals. Mrs. Rajavi is named to assume the position of temporary head of a new secular government in Iran, should the NCRI and MEK succeed in overthrowing the current regime.<sup>3</sup>

## **Mojahedin-e-Khalk**

46. The U.S. State Department Country Reports on Terrorism provides an overview of the MEK, as follows:

The Mujahadin-e Khalq Organization (MEK) advocates the violent overthrow of the Iranian government. The MEK is known by various names and aliases, including; MKO; Mujahadin-e Khalq (Iranian government name for group); Muslim Iranian Students' Society; National Council of Resistance; NCR; Organization of the People's Holy Warriors of Iran; the National Liberation Army of Iran; NLA; People's Mujahadin Organization of Iran; PMOI; National Council of Resistance of Iran; NCRI; Sazeman-e Mujahadin-e Khalq-e Iran.

The MEK emerged in the 1960s as one of the more violent political movements opposed to the Pahlavi dynasty and its close relationship with the United States. MEK ideology has gone through several iterations and blends elements of Marxism, Islam, and feminism. The group has planned and executed terrorist operations against the Iranian government for nearly three decades from its European and Iraqi bases of operations. Additionally, it has expanded its fundraising base, further developed its paramilitary skills, and aggressively worked to expand its European ranks. In addition to its terrorist credentials, the MEK has also displayed cult-like characteristics.

In 1981, MEK leadership attempted to overthrow the newly installed Islamic regime; Iranian security forces subsequently initiated a crackdown on the group, resulting in MEK leaders fleeing to France. In Paris the MEK formed what has been termed the political wing of the MEK under the name of the National Council of Resistance. For five years, the MEK continued to wage its campaign from its Paris headquarters. Expelled by France in 1986, MEK leaders turned to Saddam Hussein's regime for basing, financial support, and training. Near the end of the 1980-1988 Iran-Iraq War, Baghdad armed the MEK with heavy military equipment and deployed thousands of MEK fighters in suicidal, mass wave attacks against Iranian forces.

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<sup>2</sup> See various sources: People's Mujahiddin of Iran (PMOI) or Mujahiddin e Khalq (MEK): An update Standard Note: SN/IA/05020 Last updated: 23 March 2009 Author: Stephen Jones Section International Affairs and Defence Section, Library House of Commons. <http://www.parliament.uk/commons/lib/research/briefings/sn-ia-05020.pdf> – Accessed 2 December 2009, and UK Border Agency 2009, 'Country of origin information report: Iran', UK Home Office website, 21 April <http://www.homeoffice.gov.uk/rds/pdfs09/iran-220409.doc> - Accessed 23 April 2009

<sup>3</sup> Fletcher, H. 2008, 'Backgrounder Mujahadeen-e-Khalq (MEK) (aka People's Mujahedin of Iran or PMOI)', Council on Foreign Relations, April 18 <http://www.cfr.org/publication/9158/%7C> – Accessed 7 December 2009

The MEK's relationship with the former Iraqi regime continued through the 1990s. In 1991, the group reportedly assisted the Iraqi Republican Guard's bloody crackdown on Iraqi Shia and Kurds who rose up against Saddam Hussein's regime. In April 1992, the MEK conducted near-simultaneous attacks on Iranian embassies and installations in 13 countries, demonstrating the group's ability to mount large-scale operations overseas. In April 1999, the MEK targeted key Iranian military officers and assassinated the deputy chief of the Iranian Armed Forces General Staff, Brigadier General Ali Sayyaad Shirazi.

In April 2000, the MEK attempted to assassinate the commander of the Nasr Headquarters, Tehran's interagency board responsible for coordinating policies on Iraq. The pace of anti-Iranian operations increased during "Operation Great Bahman" in February 2000, when the group launched a dozen attacks against Iran. One attack included a mortar attack against a major Iranian leadership complex in Tehran that housed the offices of the Supreme Leader and the President. In 2000 and 2001, the MEK was involved in regular mortar attacks and hit-and-run raids against Iranian military and law enforcement personnel, as well as government buildings near the Iran-Iraq border. Following an initial Coalition bombardment of the MEK's facilities in Iraq at the outset of Operation Iraqi Freedom, MEK leadership negotiated a cease-fire with Coalition Forces and voluntarily surrendered their heavy-arms to Coalition control. Since 2003, roughly 3,400 MEK members have been encamped at Ashraf in Iraq.

In 2003, French authorities arrested 160 MEK members at operational bases they believed the MEK was using to coordinate financing and planning for terrorist attacks. Upon the arrest of MEK leader Maryam Rajavi, MEK members took to Paris' streets and engaged in self-immolation. French authorities eventually released Rajavi. Although currently in hiding, Rajavi has made "motivational" appearances via video-satellite to MEK-sponsored conferences across the globe.

**Strength:** Estimates place MEK's worldwide membership at between 5,000 and 10,000 members, with large pockets in Paris and other major European capitals. In Iraq, roughly 3,400 MEK members are gathered at Camp Ashraf, the MEK's main compound north of Baghdad. As a condition of the 2003 cease-fire agreement, the MEK relinquished more than 2,000 tanks, armored personnel carriers, and heavy artillery. Between 2003–2006, a significant number of MEK personnel have voluntarily left Ashraf, and an additional several hundred individuals have renounced ties to the MEK and been voluntarily repatriated to Iran.

**Location/Area of Operation:** The MEK maintains its main headquarters in Paris and has concentrations of members across Europe, in addition to the large concentration of MEK located at Camp Ashraf in Iraq. The MEK's global support structure remains in place, with associates and supporters scattered throughout Europe and North America. MEK's political arm, the National Council of Resistance of Iran (NCRI), has a global support network with active lobbying and propaganda efforts in major Western capitals. NCRI also has a well-developed media communications strategy.

**External Aid:** Before Operation Iraqi Freedom began in 2003, the MEK received all of its military assistance and most of its financial support from Saddam Hussein. The fall of Saddam's regime has led MEK increasingly to rely on front organizations to solicit contributions from expatriate Iranian communities.<sup>4</sup>

47. A UK Home office report referencing a Radio Free Europe / Radio Liberty report dated 26 January 2009 noted the EU no longer considers the MEK a proscribed terrorist organization, possibly allowing the MEK to pursue new political agendas in Europe:

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<sup>4</sup> U.S. Department of State 2009, 'Country Reports on Terrorism 2008', <http://www.state.gov/s/ct/rls/crt/2008/index.htm> – Accessed 27 November 2009

“... the European Union has decided to remove the Mujahedin-e Khalq Organization ( MKO) from its list of terrorist organizations. The decision marks the first time the EU has ‘de-listed’ an organization from its terrorist index, and could free the MKO, also known as the People’s Mujahedin Organization of Iran, to expand its activities in Europe.  
„<sup>5</sup>

### **Treatment by the authorities of activists of mojahedin**

48. There are many current reports of anti-government activists being detained and mistreated by authorities and security forces. Anti-government activists strenuously avoid revealing any public affiliation specifically with the MEK, as this would engender harsher treatment.
49. The government has broad authority under security legislation contained in Iran’s Islamic Penal Code to arrest individuals without warrants, to deny due process to detainees, conduct interrogations, confine detainees in solitary, and to generally suppress any political dissent on the grounds of protecting national security. MEK sympathizers and supporters are even more likely to be subjected to stringent treatment under the Ahmadinejad administration, which has used security legislation to accuse political groups of espionage when there are perceived ties to foreign organizations providing guidance and funding from abroad. MEK members specifically linked, or implicated in criminal acts such as bombings, even risk being sentenced to death. <sup>6</sup>
50. The U.S. Department of State 2008 Human Rights Report that political activists, including MEK supporters, have been subjected to repeated arrests, extended prison sentences, and torture:

Authorities occasionally gave political prisoners suspended sentences or released them for short or extended furloughs prior to completion of their sentences, but they could be ordered back to prison at any time. These suspended sentences often were used to silence and intimidate individuals. The government also controlled political activists by holding a file in the courts that could be opened at any time and attempted to intimidate the activists by calling them in repeatedly for questioning. Numerous observers considered Tehran public prosecutor Saeed Mortazavi the most notorious persecutor of political dissidents and critics.

Authorities routinely held political prisoners in solitary confinement for extended periods of time and denied them due process and access to legal representation. Political prisoners were also at greater risk of torture and abuse while in detention. The government did not permit access to political prisoners by international humanitarian organizations.

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<sup>5</sup>UK Border Agency 2009, ‘Country of origin information report: Iran’, UK Home Office 21 April <http://www.homeoffice.gov.uk/rds/pdfs09/iran-220409.doc> - Accessed 23 April 2009

<sup>6</sup> Amnesty International 2006, Public Statement News Service No: 049 ‘Iran: Worrying trends in use of death penalty’ 27 February <http://www.amnesty.org/en/library/asset/MDE13/020/2006/en/ec1b28dc-fa0b-11dd-b1b0-c961f7df9c35/mde130202006en.pdf> – Accessed 8 December 2009

The government reportedly held some persons in prison for years under charges of sympathizing with outlawed groups, such as the terrorist organization Mujahedin-e-Khalq (MEK).<sup>7</sup>

51. Human Rights Watch reports, that in 2008, over a hundred student activists were arrested and detained. Some were tortured and others were held without notification to families:

The Ahmadinejad government shows no tolerance for peaceful protests and gatherings. Security forces arrested over a hundred student activists in 2008, often without informing their families of the arrests. According to some of the imprisoned students and their families, security forces subjected these students to mistreatment and abuse during their detention.<sup>8</sup>

Specific articles of the Security Laws with the Islamic Penal Code addressing these wide ranging powers to stifle dissent, such as any activities by MEK members, are well summarized in an article by Human Rights Watch:

“The provisions of the Security Laws prohibit various forms of speech, assembly, and expression, allowing the state arbitrarily and subjectively to judge them as being “against” the nation or its security. Article 498 of the Security Laws criminalizes the establishment of any groups that aim to “disrupt national security.” Article 500 sets a sentence of three months to one year of imprisonment for anyone found guilty of “in any way advertising against the order of the Islamic Republic of Iran or advertising for the benefit of groups or institutions against the order.” Article 610 designates “gathering or colluding against the domestic or international security of the nation or commissioning such acts” as a crime punishable by two to five years of imprisonment. Article 618 criminalizes “disrupting the order and comfort and calm of the general public or preventing people from work.” In the words of an activist and law student in Iran who spoke to Human Rights Watch, “The articles on security are so general that you can detain anyone for anything and give him a prison sentence.”<sup>9</sup>

52. A November 2008 Freedom House report warns that students openly discussing human rights risk beatings, intimidation by security organizations, torture, and imprisonment:

Open discussions at universities as well as gatherings at concerts and other cultural events are frequently attacked by the Basij or Ansar-i Hezbollah. Protesters, especially students and ethnic minorities demanding human rights, risk public beatings and humiliation as well as routine surveillance, intimidation, prolonged interrogation sessions, torture, and imprisonment, including solitary confinement in cramped, unsafe conditions.<sup>10</sup>

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<sup>7</sup> U.S. Department of State 2009, ‘Country Report on Human Rights Practices Iran 2008’, 25 February

<sup>8</sup> Human Rights Watch 2009, ‘World Report 2009’, HRW website, January <http://www.hrw.org/world-report-2009> – Accessed 30 November 2009

<sup>9</sup> Human Rights Watch 2007, “You Can Detain Anyone for Anything”: Iran’s broadening clampdown on independent Activism’, HRW website, January, p. 6 <http://hrw.org/reports/2008/iran0108/iran0108webwcover.pdf> – Accessed 4 December 2009

<sup>10</sup> Freedom House 2008, *Freedom of Association Under Threat – Iran, 21 November*. – Accessed 3 December 2009 <http://www.unhcr.org/refworld/publisher,FREEHOU,COUNTRYREP,,492a7518c,0.html> – Accessed 3 December 2009

Former MEK members are also likely to experience informal pressures and harassment in their environment emanating from a perception that the MEK supported traitors against Iran by fighting on the Iraqi side during the 1980-1988 Iran-Iraq War. Current government policies allow former MEK members to publicly renounce their affiliation with the MEK as part of a repatriation program, but societal distrust remains, as reported in a Danish Immigration Service Fact-finding report in April:

The MKO has conducted several bombing campaigns and other violent attacks in Iran and other countries and fought on Iraq's side in the 1980-1988 Iran-Iraq war, where MKO fighters were used in suicidal, mass wave attacks against Iranian forces. Even though the activities of many individual MKO members may be minor, MKO members are considered traitors by many Iranians.<sup>11</sup>

53. In October of this year, the first death penalty sentence was handed down to a defendant accused of involvement in mass anti-government protests surrounding the disputed re-election of president Ahmadinejad. The defendant, Mohammad Reza Ali-Zamani confessed to working for a little known exile group, Iran Monarchy Committee (IMC), labelled a terrorist organization by the Iranian government. What is notable is that Ali-Zamani is not a well known activist and he is alleged to have joined the organization at a grass roots, activist, level similar to the applicant:

“Unlike many others in detention, Ali-Zamani is not well known. His indictment said he had joined the Iran Monarchy Committee after hearing about it on a television satellite channel. His activities are said to have included distributing anti-regime CDs and propaganda, as well as copies of the Satanic Verse”<sup>12</sup>.

Prosecutors alleged that the defendant was meeting with Americans, passing information, and plotting assassinations of Iranian officials in support of IMC goals. The IMC denounces these claims and alleges a confession was coerced from Ali-Zamani. Amnesty International is concerned that this trial paves the way for further death penalty trials for political activists.

### **Corruption.**

54. Corruption is pervasive in Iranian society and likely extends to the university system. Human Rights Watch reports university students have been denied admission for politically sensitive activities:

The government has fired dissident university professors or forced them into early retirement, a trend that intensified in 2008. State universities also recently began banning some politically

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<sup>11</sup> Danish Refugee Council, Danish Immigration Service 2009, *Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc. Fact finding mission to Iran 24th August – 2nd September 2008*, Danish Immigration Service website, April, p.16

[http://www.nyidanmark.dk/NR/rdonlyres/90D772D5-F2DA-45BE-9DBB-87E00CD0EB83/0/iran\\_report\\_final.pdf](http://www.nyidanmark.dk/NR/rdonlyres/90D772D5-F2DA-45BE-9DBB-87E00CD0EB83/0/iran_report_final.pdf) – Accessed 27 November 2009

<sup>12</sup> Tait, R, 2009, ‘Iran activist sentenced to death for election protests’, Guardian, 8 October. <http://www.guardian.co.uk/world/2009/oct/08/mohammad-reza-ali-amani-death> – Accessed 8 December 2009

active students from registering for their next semester, putting pressure on student associations and their supporters to not criticize the government.<sup>13</sup>

55. Transparency International, which published the 2009 annual Corruption Perception Index, ranks Iran in the bottom 10 nations of the world, at number 161. This ranking is worse than the previous year when Iran ranked 141<sup>st</sup><sup>14</sup>. The newspaper *The Independent* commented on this ranking, characterizing Iran as “one of the world’s most crookedly run countries,” and attributes the fall in rankings to negative international perceptions over the recent elections, and widespread allegations of election rigging.<sup>15</sup>

### **Distribution of Maryam speeches**

56. Activities supporting Maryam’s goals, the MEK, or supporting anti-regime organizations, is against the law and vigorously suppressed by government authorities. A 2008 Danish fact finding mission reports that criminal laws specify up to ten years imprisonment for handing out MEK propaganda.<sup>16</sup> Iranian government controls are not able to block internet access to all MEK materials, including Maryam speeches, and supporters risk fines and other penalties for possessing these items.
57. Speeches by PMOI leader Maryam are widely available on the web through numerous sites. These sites include pro-MEK sites, biographical sites, news organizations, blogs, video clips, etc. Many pro-MEK websites report frequent harassment of reformists, human rights workers, and political activists by security forces in Iran. Many websites allege that heavy-handed Iranian government crackdowns during the 2009 elections included mock trials, arbitrary arrests and detentions, disappearances, and several death sentences handed down for MEK supporters and other political opposition activists.
58. The Iranian government filters, blocks, and otherwise limits citizen access to thousands, and possibly millions, of web sites containing material advocating political reform or challenging the current regime. The government employs an extensive body of laws, licensing agreements, and other regulatory mechanisms to restrict access to any sites deemed to be anti-government, anti-Islamic, and immoral. Pro-MEK websites, Maryam speech material, and political activist websites are vigorously blocked and filtered

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<sup>13</sup> Human Rights Watch 2009, ‘World Report 2009’, HRW website, January <http://www.hrw.org/world-report-2009> – Accessed 30 November 2009

<sup>14</sup> ‘Corruption Perceptions Index 2009’ Transparency International website, – Accessed 30 November 2009  
[http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009/cpi\\_2009\\_table](http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table) – Accessed 27 November 2009

<sup>15</sup> Bland, A. 2009, Iran drops in corruption list amid calls for new urgency in the West’, *The Independent World*, 18 November- <http://www.independent.co.uk/news/world/middle-east/iran-drops-in-corruption-list-amid-calls-for-new-urgency-in-the-west-1822418.html> – Accessed 1 December 2009

<sup>16</sup> Danish Refugee Council, Danish Immigration Service 2009, *Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc. Fact finding mission to Iran 24th August – 2nd September 2008*, Danish Immigration Service website, April, p.16  
[http://www.nyidanmark.dk/NR/rdonlyres/90D772D5-F2DA-45BE-9DBB-87E00CD0EB83/0/iran\\_report\\_final.pdf](http://www.nyidanmark.dk/NR/rdonlyres/90D772D5-F2DA-45BE-9DBB-87E00CD0EB83/0/iran_report_final.pdf) – Accessed 27 November 2009

though it is not possible to block all user access. Individuals accessing prohibited sites and content risk investigation by government authorities.<sup>17</sup>

### **Failed asylum seekers returning to Iran**

59. While some failed asylum seekers have reportedly returned to Iran without experiencing significant problems, the treatment of returnees is unpredictable. Citizens who have a personal grievance against a returnee are also considered capable of engaging authorities and using security apparatus to harass and prosecute returnees. In a 2008 fact-finding mission to Iran, the Danish Refugee Council reports:

Several sources explained that while sympathisers and even former members of the MKO in many cases can return to Iran without facing problems, as many will be covered by the amnesty announced by President Khatami in 2003, it is not possible to conclude that all returnees will not face problems. Many sources pointed to the fact that prosecution and persecution of returnees does not depend solely on the acts committed by the returnee. The arbitrariness in the Iranian judicial system and the need of private people to settle personal scores leaves no room for certainty as to the safety of the returnee.<sup>18</sup>

60. It is important to note that the amnesty program does not apply to high profile MEK members, the program was announced prior to President Ahmadinejad's term and he does not recognize the program, and the amnesty is not codified in any law or regulation,<sup>19</sup> leaving former members vulnerable to many vagaries.
61. Former MEK members, even if they have renounced their prior activities, still face a sense of distrust and sometimes outright disdain from other citizens and authorities for their association with a group considered by some to be violent and engaged in treasonous acts. Human Rights Watch reported in 2007:

Even though the MKO has a worldwide network of members and supporters, it is an unpopular organisation among many Iranians because of its armed struggle against Iran during the past 30 years. This struggle has led to the losses of many official and civilian lives. The MKO has conducted several bombing campaigns and other violent attacks in Iran and other countries and fought on Iraq's side in the 1980-1988 Iran-Iraq war, where MKO fighters were used in suicidal, mass wave attacks against Iranian forces. Even though the activities of many individual MKO members may be minor, MKO members are considered traitors by many Iranians.<sup>20</sup>

62. The UK Home Office's April 2009 'Country of Origin Information report – Iran', notes that in most cases there is no evidence that returned asylum seekers or failed claimants,

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<sup>17</sup> RRT Research & Information 2008, Research Response IRN33389, 29 May

<sup>18</sup> Danish Refugee Council, Danish Immigration Service 2009, *Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc. Fact finding mission to Iran 24th August – 2nd September 2008*, Danish Immigration Service website, April, p.16

[http://www.nyidanmark.dk/NR/rdonlyres/90D772D5-F2DA-45BE-9DBB-87E00CD0EB83/0/iran\\_report\\_final.pdf](http://www.nyidanmark.dk/NR/rdonlyres/90D772D5-F2DA-45BE-9DBB-87E00CD0EB83/0/iran_report_final.pdf) – Accessed 27 November 2009.

<sup>19</sup> Ibid, p. 17.

<sup>20</sup> Human Rights Watch 2007, 'Iran: Activists Barred From Traveling Abroad', Human Rights Watch website, 8 February. <http://hrw.org/english/docs/2007/02/08/iran15283.htm> – Accessed 27 April 2007

who have exited Iran illegally, face any significant problems upon return to Iran. However, high-profile activists and those advocating the violent overthrow of the government, such as MEK members, may face undefined difficulties:

The only exception to this, he 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.

### *Hearing*

63. The applicant appeared before the Tribunal [in] December 2009 to give evidence and present arguments. The applicant was represented and her adviser was present at the hearing. The Tribunal also received evidence from [name deleted: s.431(2)] The hearing was conducted with the assistance of an interpreter in the Persian and English languages.
64. The applicant confirmed that she is [age] and was born in Esfahan, Iran, where she lived until coming to Australia.
65. The applicant confirmed that her father is deceased and her mother is currently in Australia and has applied for a parent visa. She said her sibling in Iran is in hiding and she does not know where. She had siblings living in Australia.
66. The applicant said that after primary and high school she attended university for four years studying business management.
67. She said that she worked as an interior manager prior to coming to Australia. She had a second job as an assistant manager.
68. She was asked why her sibling is in hiding in Iran. She said her sibling went into hiding 9 years ago in the Persian calendar. She was asked what led her sibling going into hiding. She said that her whole family is politically active. Following an incident when the authorities raided their house her sibling went into hiding. She was asked if she is in contact with her sibling She said that every now and then her sibling called their mother briefly For two years they have heard nothing. She said her sibling was actively involved in MKO.
69. She was asked about her father's sister and why she was executed in the 1980's. She said her aunt was a member of MKO.
70. She was asked if her mother and father were involved in MKO. She said that her father was involved but her mother, although she opposes the government, is not politically active. She said her father worked as a mechanic and owned a [description deleted: s.431(2)] business. She said that her father was sympathetic with MKO quietly, and later the authorities discovered this. Her father and uncle were in gaol for three years in the 1980s. The authorities could not find anything to charge him with, but accused him because his sister had been an MKO member.

71. She was asked when she herself became politically aware She said that from her childhood, her father talked to her about political matters. When she grew up she tried to discover things herself. When she saw everything with her own eyes from 2003 she became politically active.
72. She was asked what she meant that at high school she lived in fear of her appearance because the guards were hard on girls who were different. She said that one of things that is disturbing in Iran is that the government wishes to get involved in personal matters. If you are walking in the street you can get attacked by a basij woman from behind, and told to cover your head. This caused worries all the time that you may be persecuted for your appearance. This was a time when she was 18 and in high school and had her own views. Later, appearance was not that important. She felt upset about the discrimination against women and injustice, more than the issue of appearance.
73. She was asked what she meant that the entrance procedures for university were corrupt. She said that a top student should be able to get into any university. But in Iran if you are related to the government or have a contact, then you have an advantage. This happened to her, she was a good student but friends could get into top courses because they had government contacts in their families. This disturbed her because it was discrimination. She wanted her society to be free of discrimination.
74. She was asked why she searched for the National Council of Resistance. She said that she did her own research into different political groups. She had some information about the NCRI and MKO from her father. She noticed that she believed in the same things as they did, such as democracy, freedom and equality between men and women. The MKO also said that if in power there would be no persecution. She was asked whether other people she knew were involved in these organisations. She said her friends were involved politically. But in Iran people do not talk about it because it was dangerous. So people operate secretly. She was asked why she considered moving to Iraq. She said that MOK has a station in Ashraf in Iraq and she thought that she would go and fight for freedom there. At the same time, in 2002, the USA invaded Iraq and the situation was not stable. The NCRI told her to be active and to do political activity from Iran.
75. She said that she contacted the NCRI through the internet and later a lady called her. She was asked why the NCRI trusted her. She said their aim is to fight for what they believe. She said they realised she had the same aims that they did.
76. She said at the time she was distributing the Universal Declaration of Human Rights and so they knew she supported them.
77. She said she recorded torture in the streets and sent them records. This made them trust her. She saw a very disturbing event in the street in which the guards assaulted someone. Another time a person was lashed in the street. This was a person who had drunk some alcohol. About one and a half years ago they heard someone screaming, it was a young person, about 16 years old. Basij women were punishing a young girl for not wearing a hijab. They had a bucket and told the girl they were going to put her in the bucket filled with cockroaches.
78. She was asked what the NCR told her and how they suggested she become involved. She said that they asked her to send them images of these events and she did. She told

them she was watching their channel, Simay-Azadi They encouraged her to listen to the channel. Later on they suggested that she send them images and provide news to them, because this would help them. She was asked if she continued to study. She said she was.

79. She was asked what motivated her to risk her life and become involved with these organisations She said she always thought it was dangerous, but all the time she was very careful. She felt strongly about the issues so did not think of the danger. Even now those people in gaol knew that there were dangers, but they continued because of their political objectives. She said that Maryam said fighting for freedom is everyone's right. You should fight to get to your aim.
80. She was asked how often she watched the Simay-Azadi channel and how she accessed it. She said it is illegal in Iran and a satellite dish is required, which was often hidden. Most of the time she listened in her uncle's place.
81. She said she accessed Masood and Maryam speeches and pamphlets from the internet and satellite. She said these sites are filtered and she was able to decode the filters. There are CDs available explaining how to decode. There is also a channel called American Voice which explains how to get to the political channels. There was another problem that they were also filtering decoders. So they had to learn how to decode those.
82. She said she burnt the CDS at her own home and her uncle's house. She distributed these CDS. It took a long time because she had to be very careful and to take a lot of precautions. So she made sure she wore the correct dress so incorrect dress would not alert authorities to her actions.
83. She was asked who asked her to find out information about the nuclear weapons program. She said that the NCRI wish to inform people about the program because it is a danger for the world. [Information deleted: s.431(2)]. She was told that if she could find any information it would be helpful, but it was very difficult and she could not do it. She told the NCRI that she could do other missions. She said that the first people to inform the world about Iran's nuclear plans were the MOK. The Iranian government always say their nuclear activities are for electricity. She said she was asked to do this activity because of the [proximity to the] location, but she was probably not the only one asked.
84. The Tribunal asked her about the International Women's Day celebration in March [year deleted: s.431(2)]. She said that in 1857 a group of women complained about work conditions and they were attacked. Later workers decided to celebrate that day and in 1907 it became International women's day. She said she and her friends decided to have a gathering with banners to call for women's rights, but the university denied them permission. The government did not like any gatherings. They decided to hold the gathering in the university. The university security and police attacked them. They were all taken into the security centre and searched. They were questioned with stupid questions. They attacked some people but not her that much. Her hair was pulled but she was not hurt as much as some people. Three people disappeared. She said it was common for people to disappear.

85. She said she continued to work for the MOK after she started working, but it was more difficult as she had two jobs. Her second job was temporary. She was trying to earn money and then she could become more active.
86. She was asked if her family knew she was politically active. She said her mother was scared because of what had happened to her father and because she is old. So the applicant tried not to let her mother find out. Her mother knew that the applicant opposed the government but did not know the extent of her involvement. The applicant said she would never have told her Australian siblings as the authorities listen to telephones. Even when the lady from NCRI contacted her from Europe she used a special telephone card so she could not be traced.
87. She was asked why she was asked to distribute Maryam's speech from the European Parliament. She said it was a very important speech about human rights abuses and the third solution. She said everyone thought there were only two solutions to the problems in Iran, one is foreign forces, and the second is to accept the situation as it is and wait for gradual change. Maryam's third solution is to change through Iranian resistance. She said that the aim was democracy for Iran, separation of religion and politics, no compromises, and the value of human rights. She was asked to burn and distribute this important speech. She was very busy at the time with work and told the organisation she did not have the time but they still asked her to do it and that they would contact her when they were done.
88. She was asked why she took the risk of keeping the CDs in her work locker. She said she had an appointment with the contact at 3.30 and the lady did not turn up. Her job started at 4pm so she left the CDs in her work locker and locked it. She did not think her manager would check the locker.
89. The applicant became emotional and asked if the Tribunal would be asking her questions about the sexual assault by the manager. The Tribunal told the applicant that she had provided detailed written information so it would not be necessary to question her extensively about this aspect at the hearing.
90. The applicant said that the situation with her manager continued until she came to Australia. He sexually assaulted her until she came to Australia.
91. She said the manager did not find out that she was leaving the country. She went to work until the day before she left so as to deceive him.
92. She was asked if MOK continued to contact her after she arrived in Australia. She said they did and in Sydney she is their [position deleted: s.431(2)] She said she attends demonstrations and gatherings. She does interviews for them. On Saturdays they gather in [name deleted: s.431(2)] Park and she organises activities and reports on news. She said they try and co-operate with other groups. In Australia MOK do their activities through the Association to Defend Freedom and Human Rights in Iran-Australia. She arrived in May and became involved with these groups at the end of June.
93. She was asked if she told her mother or family members about the sexual assaults. She said she told no-one. She said because of the Iranian culture this could cause a lot of stress to her mother. She organised everything herself.

94. She was asked what she had heard about the raids on her family's homes since she has been in Australia. She said that she received information through her nephew who called her. About 20 days after she left the country, police went to her sibling's house. The applicant said she was emotionally disturbed when she first arrived in Australia, so her family did not tell her at first about these raids. She said her nephew said that three of the regime's officers attacked her sibling's house, seizing photographs and computers. They did nothing to her sibling who is suffering from epilepsy and has Alzheimer's disease. On the same day the officers raided her uncle's house. They broke the door and entered the house. Her uncle's wife had a heart attack and died. Her uncle was not at home and from that day no-one has heard from him. She said that what happened to uncle's wife had also happened to her father.
95. She was asked what she thought would happen to her if she returned. She said that when she thinks about it her whole body seizes up. She is sure she would be arrested at the airport, especially with the situation as it is at the moment. All political activists even from 20 years ago are being arrested. A few days ago there was an announcement from the United Nations about the lack of human rights in Iran. In the last 7 days 20 people have been tortured for attending a demonstration. She said "What will happen to me?"
96. The Tribunal also received oral evidence from [name deleted: s.431(2)], the political representative of NCRI and MOK in Australia.
97. [He] stated that he first met the applicant at a demonstration a few months ago in Martin Place calling for political change in Iran. She was involved in the demonstrations. He said she is often at the demonstrations and meetings calling for human rights in Iran. She has discussed with him her involvement with MOK in Iran.
98. He was asked about information the MOK has about asylum seekers returning to Iran. He said that there has been research conducted by the Edmond Rice Centre. The researcher went to Iran and was arrested herself briefly. He said that the centre examined about 6 cases of returnee asylum-seekers and found that 4 were dead and 2 were not located.
99. [He] is of the view that the applicant has a genuine commitment to human rights change in Iran. She has been very active in Iran and Australia, and has been working as a journalist in Australia, so will face danger and torture if she returns.

## **FINDINGS AND REASONS**

### **Country of Nationality**

100. The Tribunal accepts on the basis of her passport that the applicant is a citizen of Iran and is outside her country of nationality.

### **Well-founded fear**

101. The applicant claims to fear arrest, detention, physical harm or death if she returns to Iran in the reasonably foreseeable future. She claims that she grew up in a family which opposed the government and that she herself became an activist for the anti-regime organizations MOK and NCRI. She claims that she operated secretly for some time, but

that her activities were discovered by her manager at work, an ardent supporter of the regime. In exchange for not telling the authorities he forced her to provide him with sexual favours. Since leaving the country the applicant claims that the manager has told the authorities about her political activism and this has led to raids on her family's homes.

102. The Tribunal found the applicant's evidence to be credible, honest, brave and consistent. The Tribunal accepts her evidence about her political activism, her family's involvement, and the horrific sexual assaults which took place when her activism was discovered. The Tribunal also accepts that her family has been subject to harassment by the Iranian authorities since she has left the country. Her oral evidence in relation to her family's involvement was supported by documentary evidence (the Book of Martyrs, which was independently verified by the Tribunal).
103. The Tribunal was also persuaded by the fact that the applicant applied for her visa immediately after arriving in Australia which is often consistent with a person in genuine fear for her life and liberty.
104. In relation to the sexual assaults, the Tribunal gave weight to the fact that the applicant sought assistance in June 2009 shortly after arriving in Australia, and that there are a number of reports on file from clinicians and counselors who have reported she had symptoms consistent with and typical of sexual assault victims. Moreover the applicant, who it is reported was happy prior to the assaults, has had ongoing treatment for the stress and depression she encountered after the assaults. The Tribunal accepts her evidence about being forced to provide sexual favours in return for not being turned in to the authorities.
105. The Tribunal must disregard the applicant's conduct in Australia, when determining whether an applicant has a well-founded fear of persecution, unless the applicant satisfies the Tribunal that the conduct was engaged in otherwise than for the purpose of strengthening her refugee claim. In this case the applicant has satisfied the Tribunal that she became active in Iranian human rights activism in Australia, as an extension of her political activism in Iran and not for the purpose of strengthening her refugee claim. The Tribunal has been persuaded by the applicant's oral and written evidence that she is a person who believes strongly in fighting for justice and human rights and that these values have been instilled in her by her family, and further inspired by activists such as Maryam. The Tribunal has been persuaded by the fact that the applicant continued her work for MOK and for human rights in Iran very shortly after arriving in Australia. The Tribunal has accepted the evidence from the Association to Defend Freedom and Human Rights in Iran-Australia that she has been involved in a number of protests and demonstrations, as well as working [position deleted: s.431(2)] for MOK.
106. The evidence provided by the applicant about the MOK and NCRI and the government's responses to anti-regime activists is clearly consistent with independent country information available to the Tribunal and set out earlier in this decision. For example the country information confirms that the activities which the applicant undertook were illegal and that this would make her subject to the harsh security laws. Any activities supporting Maryam's goals, the MEK or supporting anti-regime authorities is vigorously suppressed by government authorities. Iranian government controls are not able to block internet access to all MEK materials, including Maryam speeches, and supporters risk penalties for possessing these items. The Security Laws

include wide-ranging powers to stifle dissent. The United States Department of State 2008 Human Rights Report report that political activists, including MEK supporters, have been subjected to repeated arrests, extended prison sentences and torture. The Tribunal notes that Iran's poor human rights record has deteriorated following the 2009 elections and that there has been an increase in violence against activists and in Basij activity.

107. Taking into account all of this evidence, the Tribunal finds that the applicant has a genuine fear founded upon a real chance of persecution. The Tribunal finds that the applicant has a well-founded fear of persecution.

### **Convention nexus**

108. The persecution which an applicant fears must be for one of the reasons enumerated in the Convention definition. In this case, the persecution feared is for the reasons of the applicant's political opinion, her opposition to the Iranian regime. She fears that she would be arrested at the airport, detained, tortured and possibly executed because the authorities have discovered her political activism in the past.
109. The Tribunal finds that the essential and significant reason for the harm feared is the applicant's political opinion.

### **Serious harm**

110. Under section 91(R) (b) of the Act, persecution must involve "serious harm" to the applicant. The expression includes threat to life and liberty and significant physical harassment or ill-treatment. Country information clearly indicates that persons in the position of the applicant, political activists returning to Iran, will face threats to their life and liberty as well as the possibility of torture.
111. The Tribunal finds therefore that the persecution the applicant fears involves "serious harm".
112. Under section 91R(c) of the Act, persecution must involve "systematic and discriminatory conduct". The applicant faces serious harm because the authorities know of her support and activism for MOK, and according to country information, deliberately harass, detain and in some cases, execute, MOK supporters. The persecution by the authorities of anti-regime activists is deliberate and pre-meditated.
113. The Tribunal finds therefore that the persecution the applicant fears involves "systematic and discriminatory conduct".

### **Relocation**

114. The Tribunal has considered whether it may be reasonable for the applicant to relocate in Iran to a region where, objectively, there is no appreciable risk of the occurrence of the feared persecution.
115. The Tribunal accepts the applicant's evidence, as supported by country information, that there is a real chance of being arrested at the airport. Furthermore as her former manager is closely connected to the regime, it is possible she would be harassed and

detained no matter where she lived in Iran. The feared persecution is nation-wide and not localized.

116. In these circumstances the Tribunal does not consider that relocation is an option in this case.

### **Safe third country**

117. There is no information before the Tribunal to indicate that the applicant has the right to enter and reside in a safe third country.

### **CONCLUSIONS**

118. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

### **DECISION**

119. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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's I.D. prrt44