

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 25 January 2006

Promulgated  
On 27 April 2006  
.....

Before

**SENIOR IMMIGRATION JUDGE LANE  
SENIOR IMMIGRATION JUDGE ROBERTS  
IMMIGRATION JUDGE I. MACDONALD**

Between

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R De Mello, counsel, instructed by the Immigration Advisory Services (Leeds)

For the Respondent: Mrs R Petterson, Home Office Presenting Officer

**DETERMINATION AND REASONS**

*(1) An Iranian Baha'i is not as such at real risk of persecution in Iran*

*(2) Such a person will, however, be able to demonstrate a well-founded fear of persecution if, on the facts of the case, he or she is reasonably likely to be targeted by the Iranian authorities (or their agents) for religious reasons. Evidence of past persecution will be of particular relevance in this regard. It is doubtful if a person who has not previously come to the serious adverse attention of the authorities, by reason of his or her teaching or particular organisational or other activities on behalf of the Baha'i community in Iran, will be able, even in the current climate, to show that he or she will be at real risk on return.*

1. The appellant, a citizen of Iran born on 29 August 1953, entered the United Kingdom on 23 April 2005 using a twelve-month visitor's multi-visa, which was valid

from 14 February 2005 to 14 February 2006. He was accompanied by his wife. On 10 October 2005, the appellant claimed asylum. On 16 November 2005 the respondent decided (i) to vary the appellant's leave to enter the United Kingdom, so as to terminate that leave, and (ii) that the appellant should be removed to Iran by way of directions. The appellant appealed against that decision on the grounds that his removal from the United Kingdom in consequence of it would breach the United Kingdom's obligations under the Refugee Convention and would be unlawful under section 6 of the Human Rights Act 1998 as being incompatible with the appellant's rights under the ECHR.

2. The burden of proof is on the appellant to show that, if returned to Iran, he would be at real risk of persecution for a Refugee Convention reason, or of treatment that would violate the ECHR. The Tribunal has applied that standard of proof in the present case. It has reached its findings having regard to the evidence as a whole, examining that evidence in the round.
3. The appellant's documentary evidence comprises three written statements by him, a written statement of his wife, the oral evidence of the appellant and his wife and the oral and written evidence of Mr Barnabus Leith, Mr Daniel Wheatley, and Dr Nazila Ghanea-Hercock. The Tribunal also had before it the respondent's bundle of documents, including records of interviews with the appellant and his wife, university and medical certificates relating to the appellant's wife, and the letter of refusal addressed to the appellant dated 16 November 2005.

### **The appellant's claim**

4. The appellant claims to fear persecution in Iran by reason of his Baha'i faith. The appellant qualified as a doctor in Iran in 1979, the same year in which his father in law was compelled to flee to the United Kingdom as a result of difficulties arising from his Baha'i faith. The appellant married in 1981. Both the appellant and his wife encountered difficulties in pursuing their profession as doctors, on account of their faith. The appellant was arrested in 1983 on charges relating to his activities as a Baha'i, and sentenced to ten years imprisonment by the Revolutionary Court. Whilst in prison, the appellant was beaten and kept from time to time in solitary confinement. Together with other Baha'is, he was released in 1989, having served some five years eight months of his sentence.
5. After his release, the appellant and his wife struggled to practise as doctors. They were hampered by government restrictions, which they considered were placed on them by reason of their being Baha'is. The appellant sought redress by writing on approximately twenty occasions to persons in the Iranian government. On one occasion when the appellant visited the offices of the Prime Minister the appellant was told by the officials there that he was a spy for Israel.
6. The appellant's house was confiscated by the authorities in 1994, for the reason that it had been given to them by the appellant's father-in-law, a prominent Baha'i. In that year, the appellant and his wife finally secured passports, after attempting to do so for some fifteen years. They travelled to the United Kingdom and subsequently returned to Iran.

7. In 1998 the appellant was arrested in connection with his activities as a lecturer at the Baha'i Institute of Higher Education. The appellant was sentenced to ten years imprisonment by the Revolutionary Court. This time, however, he was not beaten whilst in prison, although he was compelled to have his head shaved and was placed in an overcrowded cell. After fourteen months and fourteen days, the appellant was released by the Court of Appeal, which the appellant ascribed in part to international pressure on Iran to improve the treatment of Baha'is.
8. After his second release, the appellant went to work in the surgery which his wife was running in Isfahan. The couple experienced financial difficulties as a result of the fact that patients with medical insurance could not recoup from their insurers the costs of being treated by Baha'i doctors.
9. In 2000, the appellant again travelled to the United Kingdom and also the USA. On return to Iran, the appellant and his wife were roughly handled by the authorities, who interrogated them about the trip.
10. In July 2004 the appellant was arrested at home whilst hosting a devotional meeting involving a form of Baha'i teaching developed by that organisation known as the Ruhy Institute. Ruhy teaching enables non-Baha'i people to become familiar with the Baha'i faith. One of those present on 12 July 2004 at the devotional meeting was a Muslim who had informally converted to the Baha'i faith. The appellant's wife was also arrested and accused of converting Muslims to that faith. The appellant was released on bail after two nights in detention.
11. The appellant and his wife entered the United Kingdom on 23 April 2005 as visitors. Their purpose was to visit the parents of the appellant's wife and to attend certain medical events in this country.
12. On 5 October 2005, the appellant's wife received a telephone call from a relative in Iran who told her that she and the appellant should not return to that country. The brother-in-law rang again on 10 October when he spoke to the appellant. The brother in law told the appellant that the latter would be arrested at the airport on arrival in Iran and that there was an arrest warrant out for him. The appellant inferred that the decision to make the telephone call had been taken by the Baha'i community in Isfahan. An Iranian friend of the appellant who was in the United Kingdom returned to Iran, where he met the appellant's brother-in-law on 20 October 2005. The friend was informed that hard-liners who were in the Iranian security service regretted the fact that the appellant had been released on bail in 2004. That particular information was said to have been given to the appellant's brother-in-law by a Baha'i from the appellant's community.
13. As a result of the first telephone conversation on 5 October, the appellant and his wife decided that they would be in danger if they were returned to Iran and the appellant accordingly claimed asylum.

### **The Baha'i faith**

14. The Home Office Science and Research Group's October 2005 Report on Iran contains (at paragraphs 6.80 and 6.81) a brief description of the Baha'i faith.

Founded in the mid-nineteenth century in southern Iran as an offshoot of Shi'a Islam, it has since developed into a separate religious faith. For the Baha'is, God is completely transcendent and unknowable, although divine manifestations occur throughout history in the form of prophets such as Adam, Moses, Jesus, Mohammed and Zoroaster. The founder of the Baha'i faith, Baha'ullah, was such a manifestation. Although all prophetic religions are considered to be true, Baha'is consider that theirs is the most suitable to the present age. Mohammed is not regarded by Baha'is as the 'seal' of prophets. The Baha'i faith has no priesthood but there is instead an administrative hierarchy of elected local and national Spiritual Assemblies. The highest organ of administration is the Universal House of Justice in Haifa, Israel.

### **The appellant's oral evidence**

15. At the hearing the appellant gave evidence with the assistance of an interpreter in the Farsi language. The appellant was, however, able to communicate to a significant extent in English, and did so when he so chose. The appellant adopted the written statements, from which the above summary of his account is largely taken. Mr De Mello asked the appellant why he had not claimed asylum during one of his earlier visits to the United Kingdom or, indeed, when he last arrived in this country in April 2005. The appellant said that despite the difficulties he and his wife had encountered, they remained committed to their Baha'i community in Iran. The telephone conversations in October 2005, however, had persuaded the appellant that he would be in serious danger if he were now to return. He would, nevertheless, continue to practise as a Baha'i, if given the opportunity in Iran.
16. In cross-examination, the appellant was asked about the letters that he had written to various people in Iran, complaining about the difficulties he and his wife were encountering as doctors. He said that some ten to fifteen letters had been written but each one had been copied to a number of individuals. As a result of one such letter, the appellant's wife had finally been enabled to work in private practice.
17. The appellant explained in more detail the problems that he and his wife had encountered in working as doctors. In Iran, under the regulations in force at the time, a newly qualified doctor was not permitted to engage in private practice unless and until he or she had completed a period of time working on behalf of the government in what the appellant described as poor areas. Owing to the Iranian government's dislike of Baha'is, however, doctors of that faith were not allowed to work for the government and thus could not fulfil the preconditions of working in private practice. Married women were said by the appellant to be exempt from the relevant requirement but the difficulties faced by the appellant's wife, at least for a time, was that her marriage as a Baha'i was not officially recognised. From 1989, however, the appellant acknowledged that both he and his wife had been able to work in private surgeries.
18. The appellant was asked about his answers at his Home Office interview concerning the Baha'i Institute of Higher Education. The appellant confirmed what he had there said, namely, that after his second release from imprisonment, the Baha'i community had decided that the appellant should no longer be involved in the Institute.

19. It was put to the appellant that his evidence regarding the visit to Iran in October 2005 of an Iranian friend had not occurred in his earlier statements. Nor had it been mentioned in his Home Office interview. The appellant said that he was unsure whether the friend had returned from Iran at the time of the interview on 4 November 2005. It had also been necessary to ask the friend for his permission to refer to him. No question about the friend had been put to the appellant at the interview. The appellant confirmed that his brother-in-law had informed him about the warrant for the arrest of the appellant. The appellant was asked again about the involvement of the friend and said that he had found out about what the friend had been told in Iran only after the Home Office interview. The appellant therefore agreed that the interviewing officer could not be criticised for failing to ask about the matter.
20. As for how the Baha'i community had found out about the views of the Iranian secret service towards the appellant, the latter said that the community had certain trusted people who liaised with government departments including the Ministry of Intelligence. The appellant presumed that it was such a Baha'i who had passed on the relevant information concerning the appellant. These Baha'is representatives were trusted by the Baha'i community and regarded by the Iranian authorities as trustworthy.
21. The appellant said that the person who had been chairing the meeting at home in 2004, which had been raided by the authorities, was a former Muslim who had declared an interest in the Baha'i faith but had not yet been recognised as such. Asked if it was normal for such a person to be in charge of devotional meetings, the appellant said that it was the case with the Ruhy Institute training.
22. The appellant said that when he last left Iran, the authorities had checked on the computer to see if he was prohibited from leaving and had discovered that he was not.
23. In re-examination, the appellant said that after his release in 1994, he and his wife had encountered difficulties in practicing medicine because insurance companies would not reimburse the medical expenses of people who had consulted Baha'i physicians.
24. The appellant confirmed that he believed that his home had been kept under surveillance whilst he was carrying out teaching activities there. The Ruhy teaching involved a different person being appointed to lead the group on each occasion that there was a meeting. Asked if he would continue with such prayer meetings, if he were to be returned, the appellant said that certain limitations were being imposed upon the Ruhy Institute but that he would pursue it 'but not so openly'.

#### **Evidence of the appellant's wife**

25. The appellant's wife gave evidence. She adopted her written statement. Like the appellant, she spoke with the assistance of a Farsi interpreter but often preferred to answer in English.

26. In her statement, the appellant's wife described how her parents had fled Iran because of religious persecution and that she had studied medicine at Shiraz University. Although able to complete her course, six months after her graduation, those Baha'i students still at the university had been dismissed from it. This had also happened in other Iranian universities. In 1981, the appellant's wife visited in prison certain of her Baha'i friends who had been sentenced to death. They were executed shortly thereafter. The statement went on to describe the first sentence of imprisonment of the appellant and how the appellant's wife had difficulty in making visits to the prison where he was held. Even after the appellant's wife was able to open a surgery in 1984, she experienced harassment and other difficulties from the authorities. These included spurious official inspections of the premises and, and on one occasion, the appropriation of the surgery of the appellant and his wife in Evaz by a covetous doctor. The statement also dealt with the difficulties that arose from the attitude of the health insurance companies. As for the 1984 prayer meeting incident, the statement recorded that the appellant's wife was arrested and then told to go to the Revolutionary Court because the appellant would be appearing there. The appellant was released on bail with the assistance of a Baha'i friend. The statement ended by describing how the appellant's wife spoke on the telephone in October 2004 to her cousin (her husband's brother-in-law) who warned her that it was dangerous for the couple to return to Iran.
27. In examination-in-chief, the appellant's wife adopted her statement. She said that she had harboured an ambition to specialise in dermatology but had been prevented from pursuing this in Iran, as she was a Baha'i. She had hoped to have been able to undertake courses in this subject whilst in the United Kingdom.
28. Cross-examined, the appellant's wife confirmed that she had believed that their house was under surveillance continuously after her husband had been released from detention in 2004. Asked why, therefore, she had not claimed asylum when she arrived in the United Kingdom in 2005, the appellant's wife said that she and her husband arrived as visitors and their intention then was to return to Iran. They had intended to remain in Iran, despite the difficulties, with which they had coped. However, following the Presidential election and the telephone call from the appellant's brother-in-law, she and the appellant realised that it would be 'suicidal' to return to Iran. Her husband's life was now at risk. Asked why she and the appellant had not claimed asylum after the appellant's second imprisonment, the appellant's wife again said that they had wished to remain committed to their Baha'i friends, despite the difficulties.
29. In answer to questions from the Tribunal, the witness explained the nature of the copy certificates set out at Annex C1 to 4 of the Home Office bundle. These documents were confirmation of her university qualifications and permits to practise medicine privately in Iran.

**Evidence of the Hon. Barnabas Leith, Secretary for External Affairs, National Spiritual Assembly of the Baha'is of the United Kingdom**

30. Mr Leith spoke to his written report. That report included a brief history of the Baha'is, with which we shall deal later in this determination. The witness said that an important part of his duties as the Secretary for External Affairs of the National

Spiritual Assembly was to defend the human rights of Baha'is in Iran. The National Spiritual Assembly of the Baha'is of the United Kingdom is affiliated to the Baha'i International Community, a non-governmental organisation with United Nations offices in New York and Geneva. The BIC endeavours to maintain contact with Baha'is in Iran. The witness said that care was taken to ensure that the evidence obtained from Iran was verified, before being presented to national governments. Mr Leith said that the Foreign and Commonwealth Office trusted the information supplied to them and acted upon it without the need for further verification. The witness had also met with the team leader of the Immigration and Nationality Directorate of the Home Office and assisted the Home Office in establishing whether claims by Iranians to be Baha'is were genuine. The requirement to tell the truth was central to Baha'i ethics.

31. Mr De Mello asked the witness about paragraph 32 of his report, in which it was stated that the appellant was firm in his Baha'i beliefs and had chosen to accept imprisonment and physical violence rather than cease manifesting those beliefs in private and in public. The witness said that he was familiar with the appellant and had met him on previous visits to the United Kingdom. The appellant's name was familiar to the witness as a person who had been imprisoned in Iran.
32. The witness was also asked about paragraph 33 of the report in which it is stated that the Baha'i community in Iran has continued to manifest its faith in private and in public 'continuing to pray and study and educate their children and young people, drawing on whatever resources they are able to muster, meeting in Baha'i homes, despite continuing intimidation by state actors as well as by non-state actors, including members of the Hojjatiehj Society'. The witness said that, because of pressure upon them, Baha'is found it difficult to rent halls for their meetings and they also did not want to be seen to be stirring up trouble. Accordingly, meetings at home had become their *modus operandi*.
33. The witness said that the Ruhya Institute originated in Colombia. What it produced was essentially a set of training materials, comprising at present seven books. The materials were intended both for existing Baha'is to study and for those interested in the faith.
34. Mr Leith said that the Hojjatiehj Society had been founded in 1953 by a Shi'ite seminarian who had studied the Baha'is and conceived a hatred of them. The society grew in size and influence and had been behind actions to disrupt the Baha'i and their meetings. The Society had also managed to infiltrate the Baha'i community. During the time of Ayatollah Khomeni, the Society's activities had been restricted since Khomeni had not approved of it. Now, however, it was enjoying something of a renaissance. Indeed, it was believed that the new President, Ahmadinejad, had been a member of the society and that its activities met with his approval, in that they would foster chaos in society, in preparation for the coming of the twelfth Imam (for whose reappearance the Shi'ias are waiting).
35. Mr Leith said that in the experience of the National Spiritual Assembly, the Iranian judiciary were reluctant to put anything in writing as regards warrants, charges and convictions of Baha'is, in case such a document found its way to the Baha'i International Community and, thereafter, to the United Nations or one of its member

states. Although sentences had originally been in writing, for the last four or five years, as far as the Baha'is could discern, this had changed. Some sixty-two Baha'is were accordingly awaiting trial but without knowing the charges against them.

36. The witness was asked about paragraph 21 of his report, in which he stated that the situation for Baha'is in Iran had markedly deteriorated over the course of 2005 and was now judged to be at its most serious since 1998, the year of the last execution of a Baha'i. In December 2005, Dhadihu'llah Mahrami, a Baha'i serving a life sentence for apostasy, died in his cell in Yazd prison. Mr Mahrami was said to have no known health concerns and it had been reported that he had been threatened with death several times by various officials.
37. Mr Leith said that the deterioration in the situation followed the writing of an open letter in November 2004 to the then President Khatami, by what was understood to be an informal grouping of Baha'is. The letter drew attention to what was said to be the continued persecution of Baha'is in Iran but did so in moderate terms. The letter requested the President to rectify the situation and to enable the Baha'is to practise their religion freely. As for the death of Mr Mahrami, the witness said that there were suspicions as to how he might have died, given his apparently healthy state, and the fact that no cause of death had been given by the Iranian authorities.
38. Cross-examined, Mr Leith said that he was fairly certain that he had met the appellant in the United Kingdom in 2001. As for the Hojjatiehj Society, there had been a number of articles about this organisation in the United Kingdom press. Asked about the appellant's evidence that, after his second imprisonment, he had severed his links with the Institute of Higher Education, the witness said that once a person had been perceived by the Iranian authorities as high profile, his movements and activities would thereafter be monitored. The appellant had never been reluctant about his activities in the Baha'i community and had been a prominent Baha'i as far as the Iranian authorities were concerned.
39. Asked about the appellant's evidence regarding the contacts between the Iranian secret services and certain Baha'i representatives, Mr Leith said that he had read information to that effect but could not give Mrs Petterson any details.
40. The witness was asked about paragraph 25 of his report. This reads as follows:
  - '25. There are believed to be 300,000-350,000 Baha'is in Iran. We clearly do not expect the Iranian authorities to prosecute all of them. While interrogating one of the Baha'is arrested in 2005, an intelligence agent stated: "We have learned how to confront [the Baha'is]. We no longer pursue ordinary [Baha'is]; we will paralyse your inner core". This comment seems to define the current strategy of the Iranian authorities in their latest attempt to undermine the long-term viability of the Baha'i community. This new policy is characterised by identifying and targeting a group of Baha'is who play an ad hoc but vital role in providing communal activity and leadership for the wider community'.



41. Mr Leith was asked where this comment had come from. He said that it would have been obtained as part of the process of acquiring and validating information from Iran, described in paragraphs 3 to 6 of his report.
42. Those paragraphs describe how the BIC maintains contact with Baha'is in Iran, despite the difficulties of communication, given that the authorities are believed to monitor telephone calls and e-mails. Although there is no formal Baha'i administration in Iran, there is an informal administrative committee known as The Friends in Iran. These convey information to the BIC about actions taken against the Baha'is by state and non-state actors and about other developments relating to the deprivations of human and civil rights suffered by Baha'i. The BIC is said to insist that this information is checked and double-checked before it is conveyed to some or all of the National Spiritual Assembly to share with their governments. Accuracy is said to be regarded as more important than speed.
43. The witness said that the comments recorded in paragraph 25 of his report would have come from a Baha'i who had had this said to him or her. The aim of the speaker would have been to create fear within the Baha'i community.
44. The witness said that it seemed highly unlikely that a Muslim would have been asked to lead a devotional meeting. The appellant had not contacted the witness from Iraq.
45. In re-examination, Mr Leith was asked to expand upon paragraph 25. He said that the BIC had seen a concerted attempt on the part of the authorities to detain at national and local level those Baha'is perceived to act as coordinators within their community. One such a person had been pursued whilst taking a bus trip and then arrested. Such coordinators and also educators, such as the Baha'i Institute for Higher Education, had been targeted.

**Evidence of Mr Daniel Wheatley, National Spiritual Assembly of the Baha'is of the United Kingdom**

46. Mr Daniel Wheatley spoke to his report. This further described the deterioration in the situation for Baha'is in Iran during 2005. Those Baha'is who had been assaulted, detained or imprisoned were said to have played a role in the efforts of the Baha'i community to preserve its communal identity and to educate their young. Two specific trends in the worsening situation for Baha'is in the period 2003-2005 were identified. In spring 2002 the United Nations Commission on Human Rights had discontinued its international scrutiny of Iran, after eighteen years of continuous monitoring. In November 2004, the BIC reported the first incidents in what with hindsight were said to be seen as a major national crackdown on leading Baha'i activists, which increased throughout 2005.
47. The witness said that he believed there had been an attempt by the authorities to use those Baha'is detained in the initial round of detentions in order to obtain greater information about what he described as the 'inner core' of the Baha'i community. He believed that the Iranian's current policy was to target the leaders of that community and those promoting education within it. The election of

President Ahmadinejad had produced an even stronger commitment on the part of the government to the suppression of the Baha'is. Although there was no actual evidence to link the new President with the Hojjatiehj Society, it had been widely reported that such links existed. In this regard, the witness referred to footnote 39 to paragraph 40 of his report, which was a reference to an article entitled 'A Cowardly Flight'. That article had been obtained from Iran very recently.

48. The witness said that the second cycle or phase involved the removal of the inner core of Baha'is. Paragraph 32 of Mr Wheatley's report described the arrest of two Baha'is on 26 July 2005, one of whom was detained incommunicado by the Revolutionary Court. The witness said that the person concerned had been carrying out teaching work, an activity which the Iranians were trying to stop. The Baha'i community had been told to cease its teaching activities and this had been accompanied by a threat to remove protection from the Baha'is if they did not comply.
49. The witness said that in 1998 there were 500 raids on Baha'i homes and the appellant's detention had occurred during this campaign.
50. Mr Wheatley considered that the appellant would be one of those targeted by the authorities on the basis of his involvement in the teaching of the Baha'i faith. The incident in July 2004 was significant in that a Muslim was present who had decided to embrace the Baha'i faith. The last Baha'i to be executed in Iran had been killed because he had converted an individual, although the appellant's situation was, if anything, worse in that the person said to have been converted in the other case had asserted that she came from a Baha'i background. The witness said that the case in question was described in paragraph 12 of his report, where we find that the executed Baha'i was a man known as Rohani, who died on 21 July 1998. No document informing him of his death sentence was ever issued. Overall, the witness considered that the situation for Baha'is in Iran had deteriorated in recent times and that Baha'is lacked protection. Thus, Baha'i property could be confiscated or seized, whilst a Baha'i who had been killed in a road accident could be denied financial compensation in the courts. Mr Wheatley also considered that Baha'is could be killed with impunity.
51. Cross-examined, the witness confirmed that the appellant would certainly be considered as a part of the 'inner core' of Baha'is in Iran. Asked why this would be, if he had been told after 1999 that he should not take part in the Institute of Higher Education's teaching activities, Mr Wheatley said that it was up to an individual Baha'i as to how to manifest his religion and that it was a core principle of the faith that a Baha'i should share it with others. The witness said that he was not aware that the appellant had ceased activities with the Baha'i Institute of Higher Education. In any event, Mr Wheatley contended that the appellant's detention following the prayer meeting in July 2004 was something that would prove worse for the appellant than the activities he has undertaken with the Institute. As for leaving Iran, notwithstanding being on bail in connection with that incident, the witness said that a person in Iran could be re-arrested and that there was a level of arbitrariness involved. Certain Baha'is had been allowed to travel to a conference in Berlin but had then been arrested on return to Iran.

52. Mr Wheatley said that the information received in the United Kingdom regarding the Iranian authorities' attitude to the 'inner core' of Baha'is had arrived very recently, in January 2006. Asked what was meant in the last sentence of paragraph 41 of his report by 'communal' activity, the witness said that it included such things as the Ruhy programme, prayer meetings and classes for children.

**Evidence of Dr Nazila Ghanea, Senior Lecturer in International Law in Human Rights, University of London, Institute of Commonwealth Studies**

53. Dr Ghanea spoke to her report. In it, Dr Ghanea set out her reasons for considering that the election of President Mahmoud Ahmadinejad is likely to have a deleterious effect on what is already difficult position of Baha'is in Iran. The report then considered the respondent's letter of refusal in the context of imprisonment of Baha'is and the criminal justice system in Iran.
54. Dr Ghanea was asked about paragraph 17 of the letter of refusal and paragraph 8 of her report, where she commented on the respondent's view that a person of interest to the authorities would not be allowed to leave Iran. The witness said that there was no connection between being allowed to leave the country and state interest in a person. Annex II to her report had been taken from the website of the office of the Supreme Leader, Sayyid Ali Khamenei. It set out a fatwa on Baha'is, issued by the Supreme Leader. Dr Ghanea did not know when the fatwa had originally been issued. A person could be accused of apostasy even many years after the conversion in question. So, too, could the person who had brought about the conversion.
55. The witness said that the appellant had served some seven years of the twenty year total imprisonment in respect of which he had been sentenced, and accordingly could find himself subject to a further thirteen years in prison. Any re-arrest of the appellant upon return to Iran could lead to him serving the remainder of the sentences. Furthermore, the fatwa was in effect an invitation to anybody in Iran to attack the appellant. The new president was unlikely to be moved by international pressure on behalf of the Baha'is. Dr Ghanea considered that he saw himself as ushering in the age of the twelfth Imam.
56. Cross-examined, the witness confirmed that the fatwa in Annex II would have been issued in recent years. Asked why the appellant had been released in 2004, notwithstanding the allegation of apostasy, Dr Ghanea said that the authorities might have wished to keep him under surveillance. It was put to her that, in respect of the second ten year sentence, the appellant had appealed to the Appeal Court and he said that they had declared him innocent. She was asked how it could be that the appellant might be required to serve the remainder of that sentence. Dr Ghanea said that she did not know whether what the Appeal Court had done was the same as overturning the sentence. She also said that the Iranian authorities had, to her own knowledge, a deep and thorough interest in Baha'is. She had discovered this when an ambassador to Iran had spoken to her at the United Nations about a book she had published on the Baha'is and it was plain from their conversation that he was thoroughly familiar with its details.

57. Asked about the appellant's evidence that certain Baha'i representatives had contact with the Iranian security services, the witness said that she considered it was plausible that Baha'is might learn through such contacts about possible future risks, since the regime has opponents working within it at many levels. Human Rights Watch had reported that there had recently been a substantial change in government key personnel and that all the signs were that 2006 could herald a return to the situation experienced in Iran in the 1980s.
58. Re-examined, Dr Ghanea said that in July 2004, when the appellant was detained for a third time, reformists had still been within the Iranian government but that was no longer the position.

### **The situation of Baha'is in Iran**

#### *Home Office science and research group – Iran Country Report October 2005*

59. Having described the nature of the Baha'i faith (see paragraph 14 above) the Iran Country Report of October 2005 contains the following information about the situation of Baha'is in Iran.

'6.82 According to the UNHCR and also a statement to the UN by the Baha'i International Community of 1998, the Baha'i community in Iran is said to number 300,000 – 350,000. It is the largest religious minority in the country and traditionally has suffered discrimination. Ayatollah Mohammed Yazdi, who resigned as head of the judiciary in August 2000, stated in 1996 that the Baha'i faith was an espionage organisation. According to the USSD report 2002 trials against Baha'is have reflected this view. Their religion is not acknowledged as a separate faith by Iranian Muslims, but is regarded as a heretical sect. Anti-Baha'i sentiment is rooted in the theological disapproval of the religious establishment; the perception that they cooperated with the Shah regime and opposed the revolution; and the belief that they are agents of espionage activities, Zionism and imperialism. The Baha'i World Centre is in Haifa, Israel, and even before 1979 many Baha'is made remittances and pilgrimages to Israel. Baha'i links with an area which is now in Israel lies in Baha'ullahj's death in exile in what was at that time Ottoman Palestine. Participation in party politics is not permitted among Baha'is and anyone breaking this rule is liable to expulsion. There is no evidence of Baha'is being involved in partisan politics, in Iran or elsewhere.

6.83 According to various reports from UNHCR and the USSD not being one of the protected religious minorities in Iran, Baha'is experience discrimination including extrajudicial executions, arbitrary detention, dismissal from employment

and confiscation of properties. Many have reportedly been denied retirement pensions and work permits, unemployment benefits, business and commercial licences. Some Baha'is dismissed from public sector jobs were required to return the salaries and pensions received while they were working, and Baha'i farmers can be denied access to farm cooperatives, which deprives them of their only access to credits, seeds and fertilisers. Although Baha'is do have access to the courts and have used them on occasion to attempt to reverse specific decisions, almost invariably the court rules against them. Baha'is are refused entry to universities. An FIDH report of 2002 illustrates that the application form has four boxes for different religions, none of which is Baha'i.

6.84 According to the USSD report 2002, property rights of Baha'is are generally disregarded and both private and business properties may be confiscated. Blood money for Iranians killed is not enforceable where the victim is a Baha'i. A bill was passed by the Majlis early (2003) which equalised the "blood money" paid to the families of crime victims. Payvand News reported in 29 December 2003 that on 27 December 2003 the bill was approved by the Expediency Council. But since Baha'is were not a recognised religious minority, the change in the law does not apply to them. In 1996 the Head of Judiciary stated that Baha'ism was an espionage organisation and Baha'is have since been strictly forbidden to seek probate.

6.85 Freedom of movement out of the country can be difficult for Baha'is. They are generally denied identity cards and passports. According to a written statement to the UN by the Baha'i International Community of 1998, the freedom of Baha'is to travel outside or inside Iran is often impeded by Iranian authorities or even denied. Although 1997/98 witnessed an increase in the number of Iranian Baha'is given passports, this did not represent a change in policy on the part of the Iranian government. Registration of Baha'is is a police function.

6.86 It was stated in the USSD report 2001:

"However, it has become somewhat easier for Baha'is to obtain passports in order to travel abroad. In addition some Iranian embassies abroad do not require applicants to state a religious affiliation. In such cases, Baha'is more likely are able to renew passports."

6.87 According to the FCO Human Rights Annual Report 2003, no Baha'i was on death row. The latest FCO Human Rights Annual Report 2005 has no mention of any Baha'i being on death row.

6.88 According to the USSD report 2001:

“Over the past 2 years the government has taken some positive steps in recognising the rights of Baha'is, as well as other religious minorities. In November 1999, President Khatami publicly stated that no one in the country should be persecuted because of his or her religious beliefs. He added that he would defend the civil rights of all citizens, regardless of their beliefs or religion ... Subsequently the Expediency Council approved the “Right of Citizenship” bill, affirming the social and political rights of all citizens before the law. In February 2000, following approval of the bill, the head of judiciary issued a circular letter to all registry offices throughout the country, which permits any couple to be registered as husband and wife without being required to state their religious affiliation. This measure effectively permits the registration of Baha'i marriages in the country. Previously Baha'i marriages were not recognised by the government, leaving Baha'i women open to charges of prostitution. consequently children of Baha'i marriages were not recognised as legitimate and therefore were denied inheritance rights.”

However, according to a written statement submitted by the Baha'i International Community to the UN Commission on Human Rights on 12 March 2003 “... the relevant law has not been changed; neither Baha'i marriage nor Baha'i divorce is legally recognised in Iran.

6.89 According to the USSD report 2002:

“In September 2001 the Ministry of Justice issued a report that reiterated that government policy continued to aim at the eventual elimination of the Baha'is as a community. It stated in part that Baha'is would only be permitted to enrol in schools if they did not identify themselves as Baha'is, and that Baha'is preferably should be enrolled in schools that have a strong and imposing religious ideology”. The report also stated that all those identified as Baha'is must be expelled from

universities, either in the admission process or during the course of their studies whenever their identity as Baha'is becomes known.

The USSD report 2004 reported that :

“In July, for the first time, Baha'i applicants were permitted to take part in the nationwide exam for entrance into state-run colleges. However the word “Islam” was pre-printed in a slot listing a prospective student's religious affiliation. This action precluded Baha'i matriculation, since as a matter of faith, Baha'is do not deny their faith.

6.90 Members of the Baha'i community continued to be denied the right to participate in religious gatherings and faced official discrimination in education, employment, travel, and housing. According to the UN Human Rights Commission's Special Representative on Iran, seven Baha'is remained in jail in Iran during the year 2002 and according to the USSD report 2004:

“According to Baha'i sources outside the country, since 2002, 23 Baha'is from 18 different localities were arbitrarily arrested and detained for a short time because of their Baha'i faith. None of these persons was in prison at the end of the period covered by this report.’

6.91 According to the USSD report 2002:

‘In what appeared to be a hopeful development, in 2002 the government offered the Tehran community a piece of land for use as a cemetery. However, the land was in the desert with no access to water, making it impossible to perform Baha'i mourning rituals. In addition the government stipulated that no markers be put on individual graves and that no mortuary facilities be built on the site, making it impossible to perform a proper burial.

6.92 According to the USSD report 2003:

“Adherents of the Baha'i faith continued to face arbitrary arrest and detention. According to Baha'i sources, four Baha'is remained in prison for practicing their faith at year's end, one facing a life sentence, two facing sentences of 15 years, and the fourth a 4-year sentence. A small number of

Baha'is were and have been in detention at any given time. Sources claimed that such arrests were carried out to "terrorise" the community and to disrupt the lives of its members. Others were arrested, charged, and then quickly released. However, the charges against them often were not dropped, generating continued apprehension."

6.93 According to a FIDH report of July 2004:

"Baha'is in many different localities in Iran are still subjected to arbitrary arrest, short-term detention, and persistent harassment, intimidation and discrimination. All attempts to obtain redress are systematically denied as officials continue to confiscate Baha'i homes, deny them their rightfully earned pensions and inheritance, block their access to employment or impede their private business activities. The authorities also interfere with classes given to Baha'i youth in private houses and persist in banning the sacred institutions that perform, in the Baha'i Faith, most of the functions reserved to clergy in other religions.

6.94 A statement issued by the Baha'i International Community on 14 April 2005 stated that:

"The Baha'i International Community today expressed its dismay and disappointment at the failure of the UN Commission on Human Rights to even consider a resolution on human rights in Iran, given the worsening situation in that country and in particular the persecution of the Baha'is.

"In view of the sharp increase of human rights violations against the Baha'i community of Iran, it is nothing less than shocking that the Commission on Human Rights has for the third year in a row failed to renew international monitoring of the situation", said Bani Dugal, principal representative of the Baha'i International Community to the United Nations.

"Over the past year, two important Baha'i holy places have been destroyed, Baha'i student have been denied access to higher education, and, most recently, Baha'is in Yazd and Tehran have been swept up in a new wave of assaults, harassment and detentions"



60. The Home Office's Operational Guidance Note on Iran of 13 December 2005, makes the following comments about the Iranian elections that occurred in February 2004 (for the Majlis, the legislative assembly) and in June 2005 (for the presidency).

‘2.7 The Majlis elected on 20 February 2004, has a conservative majority. The Guardians Council disqualified several thousand candidates from standing in the elections, including over a quarter of the sitting deputies. Most of those disqualified were reformists. In protest over 600 candidates refused to take part in the elections. The net result was that in around half the seats there was effectively no alternative to conservative candidates. The conservatives succeeded in turning around the reformist majority in the parliament and now occupy well over half of the 290 seats.

2.8 In the Presidential elections in June 2005, Government figures showed more than 17 million votes for Mahmoud Ahmadinejad, 49, the blacksmith's son who has been mayor of Tehran since 2003, compared with around 10 million for Akbar Hashemi Rafsanjani, the former president and favourite throughout the campaign who had gained the reluctant backing of the beleaguered reformist movement. Charges of vote-rigging and other violations surfaced during the elections.’

61. At paragraph 2.9 of the same Note, it is recorded that there has been a disappointing ‘lack of progress’ on human rights issues in 2004 and 2005. Although ‘some positive legislative developments’ were noted as having occurred in 2004, it is in our view significant that the objective evidence of these – the harmonisation of ‘blood money’ paid to Muslims, on the one hand, and to Christians, Jews and Zoroastrians, on the other – specifically did not apply to Baha'is. Paragraph 2.12 of the Note has this to say about religious minorities:

‘2.12 While three religious minorities are recognised by the Constitution – Christian, Jewish and Zoroastrian – they remain vulnerable in a society governed by the laws of Islam. The Baha'i religion is not officially recognised, so members of the Baha'i community enjoy no constitutional freedoms. The Baha'is face frequent persecution; two of their sacred sites were demolished in 2004 and they still face considerable problems gaining access to education. In 2005 Baha'is have reported that they have faced arbitrary arrest and had property confiscated.’

62. Human Rights Watch, in its January 2006 report on Iran, considers that respect 'for basic human rights in Iran' deteriorated considerably in 2005. Use of torture by the government is said to be routine and the judiciary are recorded as having been at the centre of many serious human rights violations. Reference is made to what Iranians call 'parallel institutions', that is to say paramilitary groups and plain clothes intelligence agents. Intelligence services are described as running illegal secret prisons and interrogation centres. Human Rights Watch has this to say about the new President:

'President Mahmoud Ahmadinejad, elected in June 2005, appointed a cabinet dominated by former members of the intelligence and security forces, some of whom are allegedly implicated in the most serious human rights violations since the Islamic Republic of Iran was established 26 years ago, such as the assassination of dissident intellectuals'.

63. According to Human Rights Watch, the Iranian judiciary issued an internal report in 2005 in which they admitted serious human rights violations, including the widespread use of torture, illegal detentions and coercive interrogation techniques. No safeguards to prevent such occurrences were, however, established. Nor is there any mechanism for monitoring and investigating human rights violations in Iran. Human Rights Watch believes that the 'closure of independent media in Iran has helped to perpetuate an atmosphere of impunity'.
64. Human Rights Watch states that 'Iran's ethnic and religious minorities are subject to discrimination and, in some cases, persecution. The Baha'i community continues to be denied permission to worship or engage in communal affairs in a public manner.'

*Human Rights Watch, 'Ministers of Murder: Iran's New Security Cabinet' (15/12/2005)*

65. In its report of 15 December 2005 entitled 'Ministers of Murder: Iran's new security cabinet' Human Rights Watch described the election in June 2005 of President Ahmadinejad as causing 'human rights defenders and activists in Iran to view his rise to power with great concern'. Such concerns are said to have grown with the nomination by the new President for posts in his cabinet of persons who 'hail from security and intelligence background' and who in some cases, at least, have been implicated in such things as the executions of 'thousands of political prisoners'.

*Radio Free Europe / Radio Liberty, 'Iran: Preparing for the next big vote' (01/12/2005)*

66. In an article written by Bill Samii (whose background and qualifications are not recorded), President Ahmadinejad and Ayatollah Mohammad Taqi Mesbah-Yazdi, said to be a 'hard-line cleric that Ahmadinejad follows', are described as allegedly backing 'a messianic interpretation of Islam, in which they hope that the twelfth Imam, known also as the Mahdi and who is in occultation, will return and restore justice to the world. According to the Islamic Republic News Agency, (IRMA), Ahmadinejad told a 16 November National Conference of Friday prayer leaders that 'our mission is paving the path for the glorious reappearance of Imam Mahdi'. This is followed by the statement that the replacement of state officials by Ahmadinejad appointees, 'has led to claims that Hojjatieh Society, which was banished in 1983, is enjoying a revival. This society espouses similar views on the return of the Hidden

Imam, and this would not be the first time that there are claims of a Hojjatieh comeback'.

*Amnesty International, Iran: 'Inquiry needed in the death of Baha'i prisoner conscience' (22/12/2005)*

67. Before the Tribunal, both Mr Leith and Mr Wheatley referred to the death in custody of a Baha'i in December 2005. The Amnesty International organisation's public statement of 22 December 2005 confirms that event. According to AI, Dhabihullah Mahrami, described as a Baha'i prisoner of conscience, was arrested in 1995 and sentenced to death for apostasy in 1996. His death sentence was commuted to life imprisonment in 1999. AI adopted him as a prisoner of conscience in 1996 and campaigned for his unconditional release. According to AI, Mr Mahrami was reportedly found dead in his cell in Yadz prison on 15 December 2005. His family were apparently informed that he had died of a heart attack and were given his body but Mr Mahrami was reported to be in good health prior to his death and was not known to be suffering from heart disease, though he had apparently been made to engage in strenuous physical labour while in prison, 'raising concern that this may have caused or contributed to his death. He is also said to have received death threats.'
68. Later in the same statement, AI make reference to a letter which they have written to the head of Iran's judiciary, urging an investigation into the death of Mr Mahrami and also criticising 'an apparently increasing pattern of harassment of the Baha'i community which had seen at least 66 Baha'is arrested since the beginning of 2005, apparently on account of their identity as Baha'is or their peaceful activities on behalf of the Baha'i community in Iran. Most have been released but at least nine reportedly remain in prison, including Mehram Kawsari and Bahram Mashhadi, respectively sentenced to three and one year prison terms in connection with a letter they addressed to former President Khatami demanding an end to human rights violations against Baha'is. Six of the seven others were arrested on 8 November 2005 but neither they nor the ninth man arrested are known to have been charged or tried. AI believes that they may be prisoners of conscience who should be released immediately and unconditionally.
69. The same statement contends that 'members of Iran's Baha'i community have reportedly been attacked by unidentified assailants in recent months and Baha'i cemeteries and holy sites have been vandalised and destroyed. Some Baha'is have had their homes confiscated by the authorities. Baha'is generally are subject to discriminatory laws and regulations which limit their access to employment and to benefits such as pensions, and for many years young people belonging to the Baha'i community have been denied access to higher education by an official requirement that applicants state their allegiance to Islam or one of the other recognised religions. ..In 2004, despite promises that this designation would be removed, only ten of the 800 Baha'i applicants who passed were eventually admitted [to higher education]. These ten 'refused to attend university in protest at the exclusion of their fellow Baha'is.'

*AAAS Human Rights Action Network, 'Baha'i educators sentenced' (27 April 1999)*

70. The American Association for the Advancement of Science published a complaint about the imprisonment of a number of Baha'i educators in April 1999. The source of the information came from the Baha'i international community. It is stated that four faculty members of the Baha'i Institute of Higher Education in Iran, who were among at least thirty-six such faculty members arrested between 30 September and 3 October 1998, had been sentenced to prison terms ranging from three to ten years. The Iranian authorities were said to have proclaimed that the involvement of these persons in the Institute constituted evidence of crimes against national security. One of those listed in the report is the appellant. He is named and is said to have been given a sentence of seven years imprisonment. The appellant's own evidence to the Tribunal was, as has been noted, that he received a sentence of ten years but that that was later overturned on appeal. According to the report, the faculty members who were arrested 'were asked to sign a document declaring that the BIHE had ceased to exist as of 29 September and that they would no longer cooperate with it. The detainees reportedly refused to sign the declaration. Many of them had been barred from teaching in the universities and schools.'

### **The Tribunal's assessment**

71. It is clear from the evidence before us that Baha'is in Iran face substantial discrimination, which extends beyond the purely religious field to such matters as education, work, ownership of property and access to justice. The evidence does not, however, show that the nature and prevalence of this discrimination is of such intensity and generality as to amount to persecution for the purposes of the Refugee Convention. It is significant that none of the outside observers who have had cause to consider the situation of Baha'is has formed the conclusion that a person is at real risk of persecution in Iran merely by reason of being a Baha'i. That includes Baha'is who practise their faith. Each of the witnesses who gave evidence on behalf of the appellant and his wife are Baha'is. In both their oral and written utterances, they refer to the Baha'is as being persecuted. Whilst the use of such language is understandable, it does not compel a conclusion on the part of this Tribunal that any Iranian Baha'i, practising or not, who makes his or her way to the United Kingdom, should without more be accorded international protection.
72. The account given by the appellant and his wife of their experiences in Iran confirms the conclusion the Tribunal has reached on this issue. The sentences of imprisonment which the appellant was given can be seen from his evidence to have been inspired by the fact that the appellant had family connections with prominent Baha'is and, more particularly, because of the appellant's own religious teaching activities within the Baha'i community. Putting that matter aside, both the appellant and his wife were able to study and become doctors and, albeit with difficulty, practise their profession in a variety of places in Iran. The confiscation of their home was, we find, most likely to have been an aspect of the authorities' adverse attention towards the appellant as a result for what they perceived to be his teaching and community activities. The appellants were able to travel abroad and return without significant difficulties. We say so, bearing in mind what the appellant and his wife described as an unpleasant incident at the airport when they returned to Iran in 2001.
73. In making these findings, the Tribunal is mindful of the present government in Iran; in particular, the presidency of Mahmoud Ahmadinejad, who was elected in June

2005 and who, it is clear from the evidence, is beginning to pursue a more conservative and uncompromising set of policies than those of his predecessor. The fact is, nevertheless, that according to the latest reports, relatively few Baha'is are being arrested and imprisoned, considering the overall size (300-350,000) of the Baha'i community in Iran. As we have already noted, even Human Rights Watch, in its 2006 report, goes no further than to opine that Iran's ethnic and religious minorities 'are subject to discrimination and, in some cases, persecution'. The express reference to the Baha'is, which follows this quotation, refers to the community continuing 'to be denied permission to worship or engage in communal affairs in a public manner'. That Baha'is are able to pursue their religious observances in domestic settings is clear. It is many years since they were last permitted in general to worship in public halls and the like. The evidence before us does not show such a flagrant denial of a Baha'i's freedom of religion as to amount to an effective denial for that right (*Ullah & Do [2004] UKHL 26*). Similarly, whilst Baha'is are on occasion deprived of their rights to property, the evidence before us does not show that any Baha'i, regardless of his or her circumstances, is at real risk of being deprived of his or her home or business. The evidence before us as to the Iranian state's attitude towards the recognition of Baha'i marriages is, we have to say, somewhat unclear. On the appellant's own account, and that of his wife, official attitudes appear to fluctuate. Overall, the Tribunal does not find that the evidence discloses such a state of affairs as, when combined with the other matters to which we have referred, can properly lead to the conclusion that a Baha'i is entitled to protection under the Refugee Convention or the ECHR should he or she make such a claim to the authorities in this country.

74. As a consequence of these findings, the Tribunal has considered whether the evidence shows that a particular description or category of Baha'i in Iran is currently at real risk of persecution or other serious ill-treatment or whether the undoubted persecution that certain Baha'is suffer, such as those imprisoned for their faith, is merely random or otherwise so unpredictable as to prevent any particular Baha'i being identified in advance as being at real risk. At the hearing, Mr De Mello, Mr Leith and Mr Wheatley sought to emphasise the importance of the information contained at paragraph 25 of Mr Leith's statement:

'25. There are believed to be 300,000-350,000 Baha'is in Iran. We clearly do not expect the Iranian authorities to prosecute all of them. While interrogating one of the Baha'is arrested 2005, an intelligence agent stated: 'We have learned how to confront (the Baha'is). We no longer pursue ordinary (Baha'is); we will paralyse your inner core.' The comment seems to define the current strategy of the Iranian authorities in their latest attempt to undermine the long-term viability of the Baha'i community. The new policy is characterised by identifying and targeting a group of Baha'is who play an ad hoc but vital role in providing communal activity and leadership for the wider community'.

75. Mr Leith and Mr Wheatley were of the view that the appellant would be considered to be in that category on the basis of his leadership role in the Baha'i Institute for

Higher Education and other areas of Baha'i activity. Taking the appellant's account at face value for the moment, he told us that he ceased to work on behalf of the Institute, at their suggestion, after he had been released from his second sentence of imprisonment. His evidence was, however, to the effect that he had nevertheless pursued the promotion of the Baha'i faith by means of the teaching system produced by the Ruhya Institute.

76. The Tribunal has adopted a cautious approach to what is said to have been the comments of the Iranian intelligence agent, as set out in paragraph 25 of Mr Leith's report. Although he possesses undoubted considerable knowledge of the position of Baha'is in Iran, Mr Leith is not (and no doubt would not claim to be) an impartial observer. His job is to foster the interests of his co-religionists in Iran. Furthermore, the comments of the intelligence agent are unsourced. Both Mr Leith and Mr Wheatley told us that they were received as part of the ongoing system of contacts and information-gathering operated by the external affairs office of the National Spiritual Assembly for the Baha'is in the United Kingdom.
77. On the other hand, we are mindful that the bodies which Mr Leith and Mr Wheatley represent are relied upon by the Home Office, the US State Department and others as sources of information about the position of Baha'is in Iran. The Tribunal has no reason to doubt that Mr Leith has, at paragraph 25 of his report, accurately described what he has been told was said to a Baha'i by someone operating within the intelligence community within Iran. The real question is whether the comments are reasonably likely to represent present Iranian government policy or, given the complex nature of the Iranian state security apparatus, the policy of some form of organisation that is sponsored or at least condoned by those in power and which is able to act against those Baha'is which are regarded as 'inner core'.
78. It cannot be denied that a policy along the lines of that described in paragraph 25 of the report would make sense, from the point of view of a regime that has for long regarded Baha'is as wholly inimical to a Shi'ite theocratic state. The targeting of Baha'i teachers in 1998 is sufficiently documented and the claimed policy could be said to be a development of this. Any religion which does not have formal preachers but which nevertheless needs to subsist and flourish through the efforts of those involved in its teaching and ad hoc organisation is likely to be weakened by the removal of those who have shown aptitude and inclination in such areas.
79. The evidence before the Tribunal also demonstrates that the forces of conservatism and reaction in Iran are gaining in strength, following the election in June 2005 of President Ahmadinejad. The reformist tendencies of former President Khatami, which encouraged Baha'is to write the open letter of 2004, are in retreat, in the opinion of outside objective observers. Paragraph 3 of Dr Ghanea's report refers to an expression of 'deep concern at the serious violations of human rights' in Iran, on the part of the European Union Council (November 2005), whilst in the following month the EU Presidency noted 'that the human rights situation in Iran has not improved in any significant respect in recent years, and in many respects has worsened'. The US Commission on International Religious Freedom considered, even before the election of the new President, that 'over the past year, the Iranian government's poor religious freedom record deteriorated, particularly for Baha'is,

evangelical Christians and Muslim dissidents, all of whom faced intensified harassment, detention, arrest and imprisonment.'

80. For these reasons the Tribunal is able to place some weight on the comment recorded in paragraph 25 of Mr Leith's statement. The fact remains, however, that as matters stand it is only a single comment, from an unnamed individual, whose alleged words have, it seems, not been passed directly to Mr Leith by the person to whom they were spoken. It would accordingly be going too far to use the statement as the basis of a conclusion that all Baha'is, who comprise, or are regarded by the Iranian state security apparatus as comprising, an "inner core" are as such at current real risk of persecution. On the other hand, we do not consider that the totality of the evidence in this appeal does no more than show that some Baha'is are randomly persecuted and the appellant is a person who happens to have been so persecuted. The appellant has been an active teacher and has suffered previous sentences of imprisonment for what were plainly religious reasons. That is essentially accepted by the respondent. The credibility of the appellant's claim to be in current well-founded fear was challenged by the respondent at the hearing on the basis that the alleged telephone conversation and other evidence of renewed adverse interest in the appellant by the authorities since he last left Iran were not believable. Whilst not accepting that there is evidence of a concerted policy to take out the inner core of the Baha'i community in Iran, we nevertheless find that, having regard to the current political situation, the background evidence and the evidence of Messrs Leith and Wheatley, shorn of its more rhetorical aspects, provide support for the appellant in assessing the credibility of that part of his claim which was challenged by Mrs Petterson (see paragraphs 82 to 85 below).
81. The Tribunal's conclusions may be summarised as follows:-
- (a) an Iranian Baha'i is not, as such, at real risk of persecution in Iran;
  - (b) such a person will, however, be able to demonstrate a well-founded fear if, on the particular facts of the case, he or she is reasonably likely to be targeted by the Iranian authorities (or their agents) for religious reasons. Evidence of past persecution will be of particular relevance in this regard. It is doubtful if a person who has not previously come to the serious adverse attention of the authorities, by reason of his or her teaching or particular organisational or other activities on behalf of the Baha'i community in Iran, will be able, even in the current climate, to show that he or she will be at real risk on return.

### **The credibility of the appellant**

82. Having had the opportunity of hearing the appellant and his wife give evidence, the Tribunal finds that both were credible witnesses. We have made that finding assessing all the evidence in the round. Whilst we are required by law to find that the appellant's failure to claim asylum when he last arrived in the United Kingdom damaged his credibility, in all the circumstances, we do not find that such damage is fundamental. Section 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 provides that that section applies to a failure by a claimant to make an asylum claim or a human rights claim before being notified of an immigration decision, unless the claim relies wholly on matters arising after the notification. In the present case the appellant was notified of an immigration decision when he was given leave to enter the United Kingdom as a visitor. That was several months

before he claimed asylum, in October 2005. The catalyst for that claim is said to be a telephone message from Iran, to the effect that the appellant should not return there. Plainly, on the appellant's own account, any current adverse interest in him on the part of the Iranian authorities must, to an extent at least, be referable to his history in Iran, prior to his arrival here. The fact is, however, that the appellant's evidence shows clearly that he has suffered imprisonment in the past for his Baha'i faith. Mrs Petterson did not seriously seek to challenge that part of his evidence; instead, she questioned the supposed telephone conversation of October 2005. There are aspects of the account of events in October 2005 that, quite apart from the statutory damage inflicted by section 8(5), make this part of the appellant's account somewhat problematic. The evidence regarding the Iranian friend's visit to Iran, and what he discovered there, has undoubtedly been mentioned by the appellant at a later stage than one would expect.

83. That said, the Tribunal was impressed by the detailed and measured account given by the appellant and his wife of their lives in Iran. There was no attempt at embellishment in relation to the couple's difficulties in pursuing their medical careers or, indeed, in relation to the appellant's past persecution by the Iranian authorities. It cannot seriously be doubted that, had the appellant claimed asylum upon arrival in the United Kingdom on one of his previous visits, the respondent would have had no justification for denying the appellant recognition as a refugee. We accept that the appellant and his wife, despite their difficulties, continued to wish to live within the Baha'i community in Iran.
84. The appellant's account of his experiences in Iran is not only detailed and consistent (he could, for example, from memory recount the precise number of years, months and days he had been in prison); it also fits precisely with the history set out in the objective evidence. Indeed, as we have already noted, the appellant features as an individual in that evidence. Although the information supplied in its report came from the Baha'i international community, we doubt whether the American Association for the Advancement of Science would have used that information and published it, if they were not reasonably satisfied of its reliability.
85. The Tribunal accordingly finds, notwithstanding the damaging elements to which we have referred, that the appellant is a witness of truth. We accept it is reasonably likely that the appellant claimed asylum in October 2005, after being informed from Iran that the authorities would act against him if he returned. Given what is known about Iran, the authorities would have little difficulty in proceeding against the appellant in relation to the prayer meeting in 2004, which they undoubtedly know about, having raided it.

### **Assessment of risk to appellant, if returned**

86. On the basis of the Tribunal's findings of fact, the appellant is at real risk if he were to be returned to Iran at the present time. He is a person with a known history of religious teaching. He has been targeted in the past. The fact that he had not for some time worked for the Institute for Higher Education is immaterial. He had as recently as 2004 been apprehended in the course of carrying out a teaching programme designed by the Ruhy Institute. The fact that, at the time of the raid, a Muslim quasi-convert to Baha'ism was leading the particular session increases the risk to the appellant. It is entirely believable that such a person would be given



encouragement by the appellant by being asked to participate in the meeting in that manner. Indeed, the fact that the Iranian authorities know that the appellant has been involved in what they would regard at the very least as an attempt to convert a Muslim is likely, in the current climate, to be a significant risk factor.

**Decision**

87. The appellant's appeal is allowed on asylum grounds.

The appellant's appeal is allowed on human rights grounds.

Senior Immigration Judge Lane

Date: 24 April 2006

## Annex

### REPORTS AND BACKGROUND MATERIALS BEFORE THE TRIBUNAL

Report of Barnabas Leith, with annex  
Report of Daniel Wheatley, with annex  
Report of Nazila Ghanea-Hercock, with annexes  
Home Office Science and Research Group: Iran Country Report (October 2005)  
IAS Research Analysis on Baha'is in Iran (January 2006)  
US Dept of State, International Religious Freedom Report 2005: Iran (November 2005)  
US Dept of State, Country Reports on Human Rights Practices 2004: Iran (February 2005) (excerpt)  
Immigration and Refugee Board of Canada: Iran: Update regarding the treatment of Baha'is, particularly with respect to military service and ability to obtain a passport (January 2001)  
Amnesty International: Iran: Inquiry needed in the death of Baha'i prisoner of conscience (December 2005)  
UNHCR: Written statement submitted by the Baha'i International Community (situation of the Baha'is in the Islamic Republic of Iran) (March 2004)  
House of Commons – Foreign Affairs Committee, Human Rights Annual Report 2004; Fourth Report of Session 2004-5 (March 2005) (excerpt)  
UNHCR: Ethnic and Religious Groups in the Islamic Republic of Iran (paper prepared by Nazalia Ghanea-Hercock) (May 2003) (extract)  
UNHCR: Written statement submitted by Baha'i International Community (Situation of Baha'is in the Islamic Republic of Iran) (March 2003)  
Home Office Immigration and Nationality Directorate: Operational Guidance Note: Iran (December 2005) (extract)  
Voice of America News: US Condemns Persecution of Iranian religious captive who died in prison (December 2005)  
Baha'i World News Service: UN calls on Iran to stop persecution of Baha'is (December 2005)  
Baha'i International Community (Switzerland): Situation of Baha'i children in the Islamic Republic of Iran (January 2005)  
International Federation for Human Rights: Discrimination against religious minorities in Iran (September 2003)  
UN Economic and Social Council, Commission on Human Rights: Question of the violation of human rights and fundamental freedoms in any part of the world; written statement submitted by the Baha'i International Community, a non-governmental organization in special consultative status (January 1999)  
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