

AT AUCKLAND

Appellant:	AL (Iran)
Before:	B Dingle (Chair) S Aitchison (Member)
Counsel for the Appellant:	D Mansouri-Rad
Counsel for the Department of Labour:	K England
Date of Hearing:	4, 5, 29 April & 4 May 2011
Date of Decision:	25 August 2011

DECISION

INTRODUCTION

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining to grant refugee status to the appellant, a citizen of Iran. On appeal to the Tribunal the appellant also seeks to have his protected person claim considered.

[2] The central questions in this appeal are whether the appellant's claim to have been arrested and detained in Iran as a result of being associated with anti-government activity is credible and whether he faces a risk of serious harm to the real chance level on return to Iran as a failed asylum seeker.

[3] Given that the same facts are relied upon in respect of the refugee appeal and the claim to be recognised as a protected person it is appropriate to record them first.

THE APPELLANT'S CASE

[4] The appellant's claim to have an adverse profile with Iranian authorities is based on events which he says occurred after his return to Iran in early 2009. His account of those events is summarised below. The credibility of his evidence is assessed later.

[5] Following completion of his secondary schooling and military service, the appellant departed Iran in 1994 and did not return until early 2009. From mid-1995, he lived continuously in Japan. Although he did not have a Japanese work permit, he worked from 1995 for a family-owned company.

[6] During his time in Japan, the appellant read books and discussed ideas which questioned the principles of the Islamic regime in Iran. The appellant came to the view that Islam, and in particular the theocratic regime in Iran, obstructed the progressive development of Iran.

[7] The appellant's income in Japan enabled him to save significant amounts of money and send it back to Iran where it was invested in various properties. He arranged for one of his brothers, AA, to exercise power of attorney so that legal and financial transactions could be completed on his behalf.

[8] In the mid-2000s, the appellant obtained a replacement Iranian passport from the Iranian Embassy in Japan.

[9] In early 2009, the appellant's mother became unwell and so he decided to return to Iran. He informed the Japanese immigration authorities that he was living in Japan with no current visa, and that he wanted to depart in the near future. They recorded his details and issued a temporary visa so that he could arrange his departure.

[10] On return to Iran, the appellant travelled directly to his mother's house and stayed with her there. His general intention was to settle in Iran for the foreseeable future and establish a business with his accumulated capital.

[11] During the first few weeks of his return, the appellant's relatives visited him at his mother's home. Some of them were strong supporters of the Iranian regime and had become wealthy through their connections with those in power. At times the appellant argued with his relatives about religion and politics and voiced his opinion that the Iranian regime was hindering progressive development. Because

of the tensions between the appellant and some of his more conservative relatives, his mother suggested that he should not express his views so openly. On some occasions she also suggested that he should not be present during the social visits.

[12] After a few weeks at home, in an effort to have some private space and avoid the relatives, the appellant spent time during the day at an apartment which he owned and returned to stay with his mother in the evenings.

[13] The appellant also continued to develop his relationship with an Iranian woman, BB, who is resident in New Zealand. While living in Japan he had been introduced to her by telephone through a mutual friend. After his return to Iran the appellant spoke to BB regularly and they became emotionally close. The appellant felt that BB understood his perspective on life in Iran and she could share his reflections and dissatisfaction with the restrictions in Iran.

[14] In mid-2009, the appellant travelled to Thailand because he was keen to have a holiday and he wanted to be outside Iran during the general election, to avoid compulsory voting requirements. According to the appellant, if an Iranian national fails to vote then this can cause problems later when dealing with government agencies in trying to obtain business licences or in relation to other bureaucratic processes. The appellant returned to Iran about a week after the election.

CC uses the appellant's apartment for political activities

[15] In late June 2009, the appellant was approached by a relative, CC, who asked to use the appellant's apartment with other university friends so that they could prepare anti-regime pamphlets in private. The appellant agreed because although he was not minded to become involved in the political opposition movement himself, he supported the opposition to President Ahmedinejad. The appellant provided CC with a key to the apartment so that the students could come and go as they pleased.

[16] By mid-2009, the appellant's relationship with BB had developed into a serious romantic relationship. In mid-July 2009 they met in Thailand for a holiday and to decide whether or not they should make plans to marry.

[17] Approximately four days after the appellant's departure, CC and his friends were arrested at the apartment and the anti-regime pamphlets they were preparing were discovered. A neighbouring tenant whom the appellant had introduced to CC immediately rang the appellant's brother, AA, and informed him what had happened. AA did not contact CC's parents until the next morning. CC's family were unable to locate him or the friends with whom he had been arrested.

[18] AA and the appellant's cousin, DD (a senior government official), were immediately aware of the serious implications of the arrests for the appellant and feared for his safety on return to Iran. They did not have a telephone contact for him in Thailand and were not able to alert him to the situation. However, they knew the flight details for the appellant's return because the bookings were made through the appellant's niece, a travel agent, and she was able to give them the details.

Detention of appellant on return to Iran

[19] On arrival back in Iran, in July 2009, the appellant was identified at passport control and taken to the *Herasat* office in the airport terminal building. Once there, he was questioned as to his personal details, his recent travel and the anti-regime activities that had taken place in the apartment. The appellant stated that he had given permission for CC to use the apartment for study but knew nothing of any other activities undertaken there. After approximately two hours of questions the appellant was asked to sign a statement summarising his responses.

[20] Immediately following the interview, the appellant was transported to another building. There he was questioned by two officers who, when the appellant denied knowing about the political activities in his apartment, slapped and hit him. The appellant was questioned intermittently over a period of 24 hours. During that time he was asked to sign a statement in which he claimed responsibility for the political activities and admitted having a sexual relationship with the neighbouring female tenant. The appellant did not sign.

[21] After more than 24 hours in custody the appellant was released because AA and DD produced the ownership deeds for the appellant's mother's house as security for his bail. The appellant also signed a type of summons by which he agreed that he would report for further questioning when requested.

[22] Approximately 10 days later, the appellant was summonsed by telephone to report to the intelligence department. He attended the following day and was questioned about the activities in his apartment and accused of being involved. He was threatened, abused and pressured to confess involvement although he repeated his earlier denials that he had no knowledge of CC's political activities.

[23] Later in the day, he was visited by EE, also a security official, who was much more polite. EE suggested the appellant should cooperate with the officials and then hinted that the appellant could escape his situation but did not say how. EE recorded the appellant's telephone number and then the appellant was released.

[24] Three days later, EE rang the appellant and suggested that a payment of five million toman (approximately US\$5,000) would solve his difficulties. They arranged to meet and the money was transferred. EE agreed that if the appellant was approached by the officers again he could contact EE to get assistance.

[25] Approximately one month later, the appellant was telephoned by *Ettela'at* officers and asked to appear at the station the next morning, which he did. He tried to call EE before he went but was not successful. Again, he was questioned about the apartment and CC, held for several hours and then released. The appellant did not mention EE or the bribe he had paid. The same procedure occurred the following month.

[26] In late September or early October 2009, three days after the third summons, EE telephoned the appellant and told him that two more officers were involved in the case and a further monetary payment was required. The appellant was given a bank account number and paid seven million toman into the account but remained fearful that the payment would not be the end of the matter. He believed he could be arrested and detained incommunicado at any time.

[27] In October 2009, the appellant applied for a New Zealand visitor's visa so that he could visit his (then) fiancée, BB. She told him not to declare that he had lived in Japan because if he did he may not be granted a visa. Although concerned about the untruth the appellant trusted BB and followed her advice.

[28] In December 2009, the appellant visited Dubai for four days with a friend who was taking a business trip. The appellant wanted to celebrate his birthday outside Iran and so accompanied his friend. He was concerned about having to

pass through immigration authorities and enlisted the help of DD who arranged for the appellant to be accompanied by another man through airport controls. The man took the appellant's passport, put an exit stamp in it and obtained the boarding pass for him. DD and the helper also knew the appellant's arrival time and had made arrangements to assist his safe return into Iran.

[29] Two weeks later, in late December 2009, the appellant was again summoned to attend the intelligence department. He did so and was questioned about the same matters. After his release at about 1pm, the appellant was telephoned by EE who asked for a further payment of five million toman. The appellant became angry about the third request but EE responded that the amounts were small for someone who had lived in Japan. The next day the appellant met with EE and made the payment.

[30] In late January 2010, the appellant's family learnt that CC was imprisoned in Adel Abad prison.

[31] Also in late January, the appellant's fiancée told him that his New Zealand visitor's visa would soon be ready for collection in Dubai and that he should pick it up as soon as possible in case it was retracted.

[32] On 4 February, the appellant made a return trip to Dubai to collect his visa. He made prior arrangements with DD to be escorted through the airport by a helper who arranged all his paperwork. He departed and returned to Iran without difficulty.

[33] Later that month, DD organised a customs officer to assist the appellant make his final departure from Iran. On the day of his departure, the officer met the appellant at the airport, obtained the appellant's boarding pass and an exit stamp in his passport. The appellant departed Iran and travelled to New Zealand without incident.

[34] On arrival in New Zealand, the appellant went to stay with BB. However, approximately one week later she told him she did not wish to continue the relationship. He was upset and believed that she was in a relationship with another man.

[35] In late March 2010, the appellant spoke with his brother AA in Iran who stated that the authorities had telephoned and then visited his mother's house inquiring about the appellant. In later telephone calls the appellant was told that

CC's family blamed the appellant for all that had happened and that CC had been advised by his lawyer to make a statement that the pamphlets in the apartment belonged to the appellant.

[36] On 1 April 2010, Immigration New Zealand granted the appellant a one-month visitor's permit. On 26 April 2010, he lodged his refugee claim with the RSB.

[37] On 11 February 2011 CC was released from detention. The appellant has not been able to make direct contact with CC because his family will not permit it.

[38] The appellant claims that he is at risk of being seriously harmed on return to Iran because he has an adverse profile with the authorities as the owner of an apartment where anti-regime activities took place in 2009, including the production of political pamphlets. He is accused of being involved with those activities and his cousin was imprisoned for approximately 18 months as a result of his own involvement. Furthermore, the appellant claims that his opposition to the religious theocracy in Iran, his belief that Iran should adopt a socially progressive, secularist ideology, and his inability to adhere to social norms will bring him into conflict with unnamed authorities.

Material Received

[39] The Tribunal and the appellant have been provided with the RSB files, including copies of all the documents submitted by the appellant at first instance.

[40] On 1 April 2011 counsel provided written submissions and attached the following documents:

- (a) Supplementary statement from the appellant dated 1 April 2011; and
- (b) Copy of *Kayhan* weekly newspaper (published in London, UK) issue No. 1325 (23 September 2010).

[41] During the hearing the appellant also produced:

- (a) Copy of an ownership document for a property in Shiraz accompanied by a selective English translation;
- (b) A statement from the appellant's sister-in-law, a lawyer in Shiraz (dated 10 April 2011); and

- (c) A photocopy of both sides of an Iranian bank card.

[42] Counsel also provided further submissions and references to country information on 26 April 2011, 16 May 2011 and 17 May 2011. The submissions provided on 16 May 2011 included documents relating to the appellant's previous residence and employment in Japan.

Evidence from Department of Labour

[43] On the issue of the predicament for individuals returning to Iran having failed to obtain recognition as a refugee or protected person, the Tribunal directed that evidence be provided by the Department of Labour. Submissions and documents were provided on 28 April, 3 May and 9 May 2011.

[44] Further, in response to a Minute issued by the Tribunal on 20 April 2011, both Bernard Maritz and Conrad Wright from the DOL provided statements relevant to the issue of failed asylum-seekers returning to Iran from New Zealand. Mr Wright's statement gave details of countries presently returning failed asylum-seekers to Iran, together with some material supplied by the Inter-governmental Consultations on Migration Asylum and Refugees (Geneva). Additionally, he supplied details and translations of material from the Norwegian Immigration Appeals Board relating to a failed asylum-seeker, Rahim Rostami, who is reported to have been detained in Evin Prison after being involuntarily returned to Iran from Norway.

[45] On 4 May 2011, Mr Maritz appeared at the Tribunal and expanded upon his statement in which he outlined that there are three options by which failed asylum-seekers depart from New Zealand, as follows: they can leave voluntarily, they can be subject to a non-custodial deportation, and finally, they can be deported in custody.

[46] Mr Maritz confirmed that Immigration New Zealand prefers an individual to depart voluntarily before deportation procedures are initiated.

[47] For custodial deportations to Iran, it is necessary that there be:

- (a) an Iranian travel document;
- (b) airline clearances;

- (c) escorts;
- (d) transit visas for the deportee and escorts;
- (e) flight tickets for deportee and escorts; and
- (f) transit custodial arrangements.

[48] In respect of the travel documents for returnees, he advised that Iran does not allow their nationals to re-enter Iran on New Zealand Certificates of Identity. A person attempting to travel on this type of document will not be uplifted by the airline and will be refused entry into Iran. Immigration New Zealand Compliance Operations have extensive experience in dealing with the Iranian Embassy regarding Iranian travel documents. The Iranian authorities require the applicant to complete and sign an application form to the satisfaction of the Embassy. Immigration New Zealand is not allowed to complete or sign the application form on behalf of the applicant. The Embassy will only issue a travel document if it is satisfied that the person is willing to travel to Iran. If the Embassy suspects that the person is being returned against their will, it will not issue a travel document. The Embassy has previously insisted on speaking with an applicant before issuing a travel document and Immigration New Zealand presumes this is to verify their willingness to return to Iran.

[49] In the case of escorted deportees, New Zealand does not permit escorts to travel all the way to Iran with the deportee. A transit stop is always involved. At the transit stop, the escort will deliver the deportee to the transit airport where, depending on his co-operation and demeanour, his travel documents will either be handed to him personally to board the flight to Iran or, alternatively, to the crew of the airline transporting him to Iran. Mr Maritz was unaware of whether airlines travelling to Iran escorted such returnees or otherwise.

[50] In the event that the deportee is not accepted for boarding by the airline flying to Iran, the deportee would be returned to New Zealand.

[51] Mr Maritz confirmed that if an Iranian national held a valid Iranian passport on which he could travel, then the New Zealand authorities would not mark the passport in any way to indicate that the individual was removed from New Zealand or had sought refugee status. Nor could he think of any reason why New Zealand authorities would make any contact with the Iranian Embassy in relation to such an individual.

ASSESSMENT OF APPELLANT'S CREDIBILITY

[52] Before assessing the claims for refugee and protected person status, it is necessary to identify the facts against which such assessments can be made. That requires consideration of the credibility of the appellant's account.

[53] It will be recalled that the essence of the appellant's claim is that the authorities have identified him as the owner/occupier of an apartment which was being used for the production of anti-regime pamphlets and protest items. He was held in detention on arrival back to Iran and was only released due to the intervention of his cousin DD (a senior official) and production of property deeds as security. Another cousin, who was arrested with the offending material in the appellant's apartment, was detained in prison for approximately 18 months.

[54] For the reasons which follow, none of these core aspects of the claim are accepted as truthful.

The appellant's travel to and from Iran after his detention in July 2009

[55] The appellant gave evidence that in late 2009, after his own detention and the (then) ongoing incommunicado detention of CC, he felt concerned for his safety and in particular feared arrest, torture and indefinite detention. He was unsure whether he was identified on a list of people prohibited from leaving Iran and DD was unable to confirm whether or not he was. It is in these circumstances that the appellant says he took a spontaneous four-day leisure trip to Dubai in December 2009, exiting and entering through airport immigration controls.

[56] Asked why he took the risk of travelling when he was still being questioned periodically by the authorities and had achieved no resolution to his predicament, the appellant's response was mobile and unconvincing. He first said that he wanted "to see the market in Dubai" and to see if he could leave Iran without any problem. Asked for clarification as to what market he wanted to see, he said it was the car business market because his travelling companion was an importer of car parts. The appellant gave no explanation for his own interest in the car market. Pressed further to explain the travel, he stated that he wished to celebrate his birthday in another country. He also said that he called on DD's assistance to exit Iran and he asked DD to assist him on return should he encounter difficulties.

[57] The Tribunal does not accept the appellant's explanations for the travel at a time in which he says he feared for his freedom and safety. That the appellant was simultaneously so concerned about his predicament that he felt compelled to seek DD's assistance to exit and enter Iran, and yet made a leisure trip with a friend for no discernible purpose other than celebrating his birthday, is implausible. His unimpeded travel from Iran in December 2009 indicates that he was not of any interest to the authorities at the time and that he was under no apprehension that he was of interest to them or had any adverse profile. Had he genuinely believed he would have difficulties leaving or entering Iran, he would not have made the trip abroad.

[58] Further underscoring this view, the appellant made a second trip outside Iran in February 2010 for the purpose of collecting his New Zealand visitor's visa. Again, he says he feared difficulties on exit and return but received assistance from DD and his associates. Asked why he made the trip, the appellant said that his fiancée encouraged him to collect the visa as soon as possible after it had been issued.

[59] Having applied for the visa in October 2009, and having been informed by BB some days before the February 2010 trip that the issuance of the visa was imminent, the Tribunal also asked the appellant why he did not depart Iran as soon as he heard the visa was available, collect it and continue on his way to New Zealand. Such an itinerary would have reduced the number of exits and entries he had to make to Iran and would have minimised his time there. Instead, he departed Iran, entered again and then spent a further three weeks in Iran before his final departure for New Zealand.

[60] The appellant said the delay in his final departure was because he had to sort out his life and property, including arranging to give AA his power of attorney. When it was put to him that he had been intending to travel to New Zealand for over six months and therefore could have made such arrangements earlier, he gave a range of reasons why he could not leave immediately after the visa was issued, including because: he had financial problems which meant he had to sell a gold necklace to raise money; he had not told his mother he was intending to leave and it was difficult to say goodbye to her; he had some other matters concerning his properties which needed attention; and he needed to divide his properties between his brothers and it was a complex transaction that meant he needed to have them all together in the lawyer's office.

[61] The appellant's litany of reasons for his February 2010 travel to collect his visa and subsequent three-week stay in Iran are, in his claimed circumstances, implausible. They do not stand scrutiny in light of his own evidence that he began making preparations to leave Iran in July 2009 (once he and BB decided he should live with her in a western country) and that after he was summonsed to see authorities in late December 2009, having already paid three significant bribes, he was increasingly worried about his personal situation.

[62] Moreover, his evidence in this regard, which consisted of a series of statements and reasons as to why he could not leave, left the distinct impression that they were being spontaneously invented to explain his implausible claim. For example, his statement that his financial situation was such that he had to sell a gold necklace to finance his travel cannot be reconciled with his ownership of several rent-producing properties (which had provided income for the previous year), a supportive family who also owned properties and businesses and a fiancée in New Zealand who could have been approached for assistance. Neither is it plausible that, after six months of preparing to leave Iran to live elsewhere, he had not mentioned this intention to his mother or made suitable arrangements for his property and business interests.

Lack of warning to appellant in Thailand

[63] The appellant stated that although AA and DD were keenly aware that the appellant may face grave consequences on return to Iran after CC's arrest in July 2009, they were unable to warn him because they did not have a telephone number for him in Thailand. This claim is undermined by his evidence that his bookings were made by his niece and that AA and DD obtained his flight details through her. Asked why AA and DD did not seek to contact the appellant through the airline before he boarded the plane, the appellant said he did not know. As to whether the niece was asked to contact him, he said that she was not but gave no explanation why.

Appellant does not tell fiancée of events in Iran

[64] Despite describing his relationship with BB in 2009 as being extremely close and stating that they spoke frequently, sometimes daily, after he returned from meeting her in Thailand, the appellant claims not to have told her anything of his difficulties post-July 2009. Asked why, he said that telling her would not have

achieved any different outcome. When the Tribunal suggested that there were at least two reasons he could be expected to tell her – namely, that she might be able to speed up his visa application and that she was the person to whom he shared his feelings and opinions about life in Iran and its challenges, the appellant simply maintained his evidence that he did not do so. Against the backcloth of other credibility concerns noted herein, the Tribunal finds that the lack of communication between the appellant and BB about his claimed difficulties in Iran, particularly when she was making arrangements for his visitor's visa, is not believable.

Vague evidence about circumstances after arrests in apartment

[65] The appellant's evidence of the arrests from his apartment was also undermined by his inability to give reasonable details about subsequent events and the fate of those arrested.

[66] Asked who else was arrested along with CC, the appellant did not know. He said he had only known one of CC's friends, Ali, and he does not know if Ali was arrested or not. The Tribunal suggested that if a group of students were arrested then it would be likely that the respective families would communicate with each other and share information, at least in the initial period following arrest. The appellant's response was that if those arrested were from different regions of Iran then there would be no communication between the families. He also said that he did not know who else was arrested because he had not been able to speak with CC directly.

Lack of concern for CC

[67] Although the appellant claimed to have a close relationship with CC and to have been deeply concerned about his ongoing detention, he exhibited a surprising lack of effort to confirm his whereabouts or attempt to secure his release. The appellant stated that he felt encouraged by EE's conciliatory tone that EE would resolve his predicament. Yet the appellant never asked EE about CC's whereabouts or situation. Nor did he ever provide CC's family with EE's contact details so that they could pursue the possibility of paying a bribe to obtain information about CC.

[68] When asked to explain, the appellant said that he did not enquire as to CC when he was summonsed because he was frightened. Asked why he did not seek

help or information from EE, whom the appellant described as being more approachable, he said that he was waiting to see what the outcome of the bribes was and that he did not think of asking about CC. Pressed as to why he did not ask at some later meeting with EE, the appellant said that the meetings were short. The appellant then changed his evidence and said that he did ask about CC on one occasion but that EE did not answer.

Inconsistent evidence about bank accounts

[69] Further peripheral aspects of the account were inconsistent. For example, on the first day of the hearing, the appellant gave detailed information about an ABC Bank account he opened in Iran after his return in January 2009. He said that it was the single bank account he operated in 2009 and that it was only used for deposits of rental income from one property.

[70] When the Tribunal asked him to explain a large deposit into the ABC account on a date which did not align with his earlier evidence about rental payment deposits, his evidence became mobile and inconsistent. He first responded by saying that he also had two bank accounts at DEF Bank and that he had bought a car. Then he changed his evidence and said his brother had sold a car and put the proceeds into one of those DEF accounts. He then changed his evidence again and said that the deposit was money he had transferred from DEF Bank into ABC Bank. His final explanation was that it was money transferred into his account by his brother. Asked why he had previously told the Tribunal that he only ever operated one bank account in 2009, which was at the ABC Bank, the appellant stated that because he did not have bank cards for the DEF accounts he did not mention them.

[71] The appellant's evidence about the bank accounts was so mobile and inconsistent it cannot be relied upon. His early evidence that he operated just one account in 2009 cannot be sensibly reconciled with his later evidence that he operated two further accounts. While the evidence relates to an issue which is relatively peripheral to the appellant's account, it strengthens the view that the appellant was prepared to provide false evidence to the Tribunal in support of his appeal.

Documents produced

[72] As noted above, the appellant has produced several documents in support

of his appeal including house title deeds for a Shiraz property, a copy of an excerpt from *Kayhan* newspaper and a statement from the appellant's sister-in-law, a lawyer in Iran.

[73] The Tribunal affords these three documents no weight. Because of the ease with which certain types of documentary evidence can be obtained in order to support refugee claims, findings as to the reliability of documents will usually follow findings with regard to the credibility of witnesses; see *Refugee Appeal No 72570* (11 November 2002) and *Refugee Appeal No 75794* (23 May 2006) at [56]. For the purposes of this decision, the Tribunal adopts the same reasoning.

[74] The appellant is not a credible witness and there are additional credibility concerns with each of the documents which are outlined below. However, even in the absence of those additional concerns, the appellant has demonstrated that he is prepared to give false evidence in pursuit of his refugee and protected person claim. In that context, the documents can be given no weight.

Specific credibility concerns with documents produced

[75] It will be recalled that the appellant claimed that AA and DD produced the title deeds to the appellant's mother's house as security for the appellant's release from detention in July 2009. At the RSB interview in June 2010 the appellant was asked to produce the property ownership deeds (or a copy thereof) which had been used as security for his bail. The appellant told the RSB that he would ask AA to provide the relevant documents but they were not provided before the RSB decision was issued and no explanation for their absence was provided.

[76] At the Tribunal hearing the appellant was again asked if he had documents to corroborate his account that the house had been used as security. Again, he said that he would ask AA to produce those documents but said that AA was not in the home city so there may be some delay. A copy of ownership deeds for a house in Shiraz was produced on 29 April 2011 with a selective translation. At the bottom of the translation it reads:

“Detained according to [hardly legible] letter 88/88 [dated] 7/5/88 [29/07/2009] referred by [hardly legible] the assistant to the public prosecutor of bench 4 [illegible] of Islamic Revolutionary Court of Shiraz. [Signed and stamped] 7/5/1388 [29/07/2009]”

[77] The document makes no reference as to why the property deed has been detained and gives no indication that the 'detention' is related in any way to the

appellant, or to his claimed predicament. Neither have there been any further efforts by the Revolutionary Court or officials to take further action with regard to property, notwithstanding the appellant's claim that he has breached his conditional release by departing Iran and not being available when summonsed. Coupled with the finding made above that the veracity of otherwise-uncorroborated documents generally follows the credibility of the appellant's evidence, the Tribunal is of the view that the document can be given no weight.

[78] As noted above, the appellant also produced a copy of issue No. 1325 of the *Kayhan London* weekly newspaper (23 September 2010) which contained an article, the English translation of which is reproduced in full:

“According to a report sent by one of Kayhan-London readers in Shiraz, 4 youths from Shiraz who have been imprisoned by Shiraz Adelabad prison since about a year ago, have sought help from the international human rights organizations and human rights activists from all over the world to take necessary steps for their release from prison.

These 4 youths had participated in the previous years' protest demonstrations. They were all arrested at their home by the security forces; Meelad Ghanbari and Abbas Jokar on the first day of Mordad 88 [23 July 2009], Reza Bazrafshan in Shahrivar [August/September], and Hamid Rezaei in Aban [October/November].

The families of these people are unaware of their situation; they have not even been told by the authorities in which prison their children are.

One of the detainees of Adelabad, who was recently released on bail, has given the names of these people in order to bring relief to their families.”

[79] The Tribunal has several concerns about the content of this article. First, it states that it is based on information from an unnamed source in Shiraz and there is no indication that the information has been verified. Second, the claim in the article that the detainees have sought help from international human rights organisations has not been corroborated by any information from any such organisations. In similar cases of detention in Iran, human rights organisations often publish the names and other details of persons arrested and detained. No such information has been provided from any human rights organisation regarding the youths in question. Third, the article is inconsistent both with the appellant's evidence and internally. It simultaneously claims that the families of the detainees do not know where the detainees are and that the detainees are in Adel Abad prison. As to the appellant's evidence, he said that CC's family were made aware of his location in Adel Abad Prison in January 2010 which is also inconsistent with the September 2010 article stating that the families had no such knowledge. These concerns, added to the finding above that the weight attached to

documents should follow findings of credibility of the appellant's account, lead the Tribunal to conclude that the article cannot be relied on.

[80] Finally, the Tribunal places no weight on the statement from the appellant's sister-in-law because it simply refers in a very general way to facts which have, after two days of examination of the appellant, been rejected as untrue.

Summary of Factual Findings

[81] For the reasons detailed above, the Tribunal rejects the appellant's claim to have an adverse profile with the Iranian authorities because of the arrest of students from his apartment in 2009. Also rejected is his claim to have been arrested and detained in July 2009 and then summonsed for ongoing investigations until late 2009 or early 2010. The Tribunal finds that the appellant lived in Iran from January 2009 to February 2010 without attracting the attention of the Iranian regime or any individual officers connected with it. He departed and re-entered Iran legally and without assistance from DD in December 2009 and February 2010. He also departed Iran in late February 2010 legally and without incident.

[82] The Tribunal finds that the appellant is a middle-aged Iranian national with a valid Iranian passport on which he departed from Iran in February 2010. He has spent the majority of his adult life living outside of Iran although he has family and several property and business interests in Iran. The appellant finds life in Iran to be restrictive and thinks that the Islamic regime hinders economic and social progress. He would rather not live there permanently. The appellant can return to Iran using his own valid Iranian passport and there will be no indication to the Iranian authorities that he sought asylum in New Zealand. He does not have an adverse profile of any sort with the Iranian authorities.

[83] It is on that factual basis that the appellant's refugee and protected person claims will be assessed.

JURISDICTION

[84] The refugee appeal was lodged with the Refugee Status Appeals Authority ("the RSAA") prior to 29 November 2010 but had not been determined by that body by that date. Accordingly, it is now to be determined by a member of the

Immigration and Protection Tribunal. See subsections 448(1) and (2) of the Immigration Act 2009 ("the Act").

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

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

- (a) a refugee under the Refugee Convention (section 129); and
- (b) as a protected person under the Convention Against Torture (section 130); and
- (c) as a protected person under the International Covenant on Civil and Political Rights ("the ICCPR") (section 131).

THE REFUGEE CONVENTION – THE ISSUES

[87] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

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

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

ASSESSMENT OF THE CLAIM TO REFUGEE STATUS

[89] For the reasons given above at [55]-[80], the Tribunal rejects the appellant's claim to have an adverse profile with the Iranian authorities on account of his profile as the owner of the apartment in which CC was arrested and his own subsequent arrest, detention and ongoing investigation by authorities.

[90] The Tribunal now turns to consider the additional claim that if he now returns to Iran as a failed asylum-seeker, there is a real chance he will attract the adverse attention of the Iranian authorities on return and suffer serious harm as a result.

[91] For the purposes of refugee determination, "being persecuted" has been defined as the sustained or systematic violation of basic or core human rights, demonstrative of the failure of state protection; see *Refugee Appeal No. 2039/93* (12 February 1996). Put another way, persecution can be seen as the infliction of serious harm, coupled with the absence of state protection.

[92] In determining the phrase "well-founded fear" as referred to in Article 1A(2) of the Refugee Convention, the Tribunal adopts the approach in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA) where it was held that a fear of being persecuted is established as well founded when there is a real, as opposed to a remote or speculative, chance of it occurring. The standard is entirely objective.

[93] The appellant's claim to be at risk of serious harm from the Iranian authorities if he returns after he has unsuccessfully sought refugee status in New Zealand is, he says, based on his personal circumstances and in light of country information, including:

Articles:

- i) "Iranian Students living in Australia held on trips back to Iran" *The Australian* (8 April 2010);
- ii) "Court targets Iranian expats" *The Australian* (9 April 2010);
- iii) *Iran Emrooz* "The Iranian Government's spying abroad to identify its opponents" 15 October 2009 (Relating to the activities of the Iranian Embassy in Hamburg Germany following post-2009 election unrest)

- iv) “Military Authorities Threaten the Supporters of ‘Green Movement’ Outside The Country” *BBC Farsi* (5 November 2009).

Country and legal information:

- i) Refugee Review Tribunal *Country Advice: Iran IRN37255* (19 August 2010)
- ii) Select references from *BA (Demonstrators in Britain - risk on return) Iran* CG [2011] UKUT 36 (IAC) (1 February 2011) (UK) Upper Tribunal (Immigration and Asylum Chamber)

[94] While the country information about the situation facing some Iranian returnees, particularly those with a known anti-regime political profile or documented protest activity, indicates that they may be subjected to arbitrary arrest, detention and mistreatment, such information does not establish that every Iranian citizen returning after a failed asylum claim abroad is at risk of serious harm to the real chance level. In other words, while there is a risk of serious harm for some returnees, for many others there is no such risk.

[95] A number of recent decisions of the Tribunal and Refugee Status Appeals Authority have outlined the Iranian authorities’ response to the widespread public protests which erupted after the disputed Presidential election in June 2009; see for example *AB (Iran)* [2011] NZIPT 800009. In short, the Iranian regime has responded to protesters and critics with a range of harsh and often arbitrary security responses including violence towards protesters, mass and targeted arrests, incommunicado detention (often involving serious physical mistreatment), forced confessions, unfair court trials and ongoing monitoring and harassment of individuals and groups.

[96] A summary of events since the elections of June 2009 is provided in the Human Rights Watch *World Report: Iran* (2011) p523 as follows:

“Iran’s human rights crisis deepened as the government sought to consolidate its power following 2009’s disputed presidential election. Public demonstrations waned after security forces used live ammunition to suppress protesters in late 2009, resulting in the death of at least seven protesters. Authorities announced that security forces had arrested more than 6,000 individuals after June 2009. Hundreds – including lawyers, rights defenders, journalists, civil society activists, and opposition leaders – remain in detention without charge.”

[97] An abundance of country information also indicates that individuals in Iran

who are accused of activities perceived to be anti-regime or politically active are, once identified, at risk of a violation of fundamental human rights. Representative of the country information available is the United States Department of State *Country Reports on Human Rights Practices: Iran* (8 April 2011) (“the DOS report”) which states:

“The government severely limited citizens' right to peacefully change their government through free and fair elections, and it continued a campaign of postelection violence and intimidation. The government committed extrajudicial killings and executed persons for criminal convictions as juveniles and through unfair trials, sometimes in group executions. Security forces under the government's control committed acts of politically motivated violence and repression, including torture, beatings, and rape. The government administered severe officially sanctioned punishments, including amputation and flogging. Vigilante groups with ties to the government, such as Basij militia, also committed acts of violence. Prison conditions remained poor. Security forces arbitrarily arrested and detained individuals, often holding them incommunicado. Authorities held political prisoners and continued to crack down on women's rights activists, ethnic minority rights activists, student activists, and religious minorities. There was little judicial independence and few fair public trials.”

[98] This targeting of politically active individuals has also included those returning to Iran from abroad who may have been expressing political opinions outside of Iran. See for example “Court targets Iranian expats” *The Australian* (9 April 2010).

[99] However, the question relevant to this appeal is whether an individual with no adverse profile and a valid Iranian passport, returning after a failed refugee and protection claim in New Zealand, would be at risk of serious harm to the real chance level.

[100] The Refugee Review Tribunal (RRT) country advice of 19 August 2010 states that it is uncertain whether the Iranian authorities impute returnees with anti-government or anti-Islamic Republic political views simply for applying for protection abroad. It goes on to acknowledge that while some returnees have been subjected to ill-treatment, it is:

“...unclear as to whether any of these examples of ill-treatment are attributable to political beliefs imputed by authorities due to asylum claims made while abroad.”

[101] The other items of country information referred to by counsel indicate that, on return to Iran, some individuals have been targeted for attention by the Iranian authorities, and some of those have been seriously mistreated. However, it also makes clear that the Iranian authorities are targeting individuals with a profile or characteristics which elevate their risk profile, such as known political activity

abroad, association with other political activists or identification from demonstrations via digital video or photographic sources; See for example “Court targets Iranian expats” *The Australian* (9 April 2010); *Iran Emrooz* “The Iranian Government’s spying abroad to identify its opponents” (15 October 2009); “Military Authorities Threaten the Supporters of ‘Green Movement’ Outside The Country” *BBC Farsi* (5 November 2009) (as cited in counsel’s submissions 26 April 2011). Because those items of country information relate to individuals with an adverse profile and/or who have been politically active in opposition to the regime, they are not directly relevant to this appellant.

[102] Likewise, the recent case of *BA (Demonstrators in Britain - risk on return) Iran* CG [2011] UKUT 36 (IAC), cited by counsel, addresses the question of risk arising from opposition political activity outside Iran and for those who left Iran illegally. Such factors are not relevant to the assessment of the appellant’s predicament.

[103] The Tribunal has also considered the article in an Iranian newspaper “Punishment for Travel Abroad with Forged Documents” (17 February 2011) (cited and translated at www.missionfreeiran.org) which refers to comments by a retired Iranian judge that Iranians who are identified as having undertaken “case writing” (providing false Iranian court documents in support of an asylum claim) may be subject to charges and a court case on return to Iran. However, there is no further information before the Tribunal that these comments represent any wider intention by the regime to prosecute cases or that any cases have been prosecuted. Neither is it clear from the article what the offence actually involves. In any event, in the present appeal, there is no evidence that the appellant is known by the Iranian authorities to have sought asylum here in New Zealand or produced false documents for that purpose. The claim that the appellant may be subject to such a prosecution is no more than speculation or surmise and falls well short of the real chance threshold.

[104] Counsel concedes, in his letter of 17 May 2011, that the country information and submissions filed regarding failed asylum seekers do not support an argument that all failed asylum seekers returning to Iran are *per se* entitled to recognition as a refugee or protected person. Rather says counsel, the appellant’s prospective risk is the result of a cumulative assessment of his situation which includes his claimed adverse political file in Iran.

[105] Having assessed the information before it, the Tribunal agrees that an individual who returns to Iran does not have a risk of being persecuted to the real chance level only on the basis that he or she is a returning failed asylum seeker. Counsel has not identified any country information which establishes that an Iranian national who departed Iran legally, who does not otherwise have an adverse profile with the authorities, and who has not been identified as undertaking anti-regime political activities overseas would be at risk of serious harm to the real chance threshold on return. Nor is the Tribunal aware of any such information.

[106] The Tribunal also notes that it has not been established for this appellant that the Iranian authorities are aware he has sought refugee status in New Zealand. He has not had any contact with the Iranian Embassy himself and as Mr Maritz stated, there is no reason why the New Zealand authorities would contact the Embassy in relation to this appellant. There is no other information before the Tribunal that establishes that the Iranian Embassy knows of his situation or even of his presence in New Zealand.

[107] Finally, the Tribunal has not overlooked counsel's submission that the appellant may be at risk of serious harm in Iran because he does not agree with the Islamic regime and his objection to it will lead him into conflict with the authorities. But the claim is not well-founded. The Tribunal accepts that the appellant does not agree with aspects of the way the Iranian regime operates. However there is no credible evidence that he has ever publicly expressed that opinion in the past, or that he is motivated to do so in the future. His objection to the Iranian regime can best be described as a personal preference to live in a more secular democracy with a modern lifestyle, such as he experienced in Japan. However, that preference is not one that can be addressed in a refugee or protected person claim where the focus is on sustained or systemic violations of fundamental human rights that reach the level of serious harm.

CONCLUSION ON CLAIM TO REFUGEE STATUS

[108] Having considered each of the strands of the appellant's claim separately and cumulatively, the Tribunal finds that none of them, on their own, or taken together, satisfy the Convention requirement that there be a well-founded fear of being persecuted for the appellant. For the reasons given, the Tribunal finds that

a person having all of the characteristics of the appellant, and facing the particular circumstances he does, is not at risk of being persecuted to the real chance level on return to Iran.

[109] The first issue having been answered in the negative, the second issue does not arise for determination.

THE CONVENTION AGAINST TORTURE – THE ISSUES

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

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

Assessment of the claim under the Convention Against Torture

[111] The appellant relies on the same evidence in support of his claim under the Convention Against Torture as he did to support his claims under the Refugee Convention. The Tribunal has already found that the evidence does not establish that he faces a well-founded fear of being persecuted in Iran. For the same reasons, on the basis of the evidence before it, the Tribunal is satisfied that the appellant has not established that there are substantial grounds for believing that he would be in danger of being subjected to torture if now returned to Iran.

[112] The appellant is not entitled to be recognised as a protected person within the meaning of section 130(1) of the Act.

THE ICCPR – THE ISSUES

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

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

Assessment of the claim under the ICCPR

[114] Pursuant to section 131(6) of the Act, “cruel treatment” means cruel, inhuman or degrading treatment or punishment.

[115] Again, the appellant relies on the same evidence in support of his claim under the ICCPR as he did to support his claims under the Refugee Convention. For the same reasons, having regard to the factual findings set out in relation to the claim, the Tribunal finds that the appellant has not established substantial grounds for believing that he would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if returned to Iran.

[116] The appellant is not, therefore, a person requiring protection under the ICCPR and it follows that he is not a protected person within the meaning of section 131(1) of the Act.

CONCLUSION

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

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

[118] The appeal is dismissed.

“B. Dingle”
B A Dingle
Chair

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B A Dingle
Member