

**REFUGEE STATUS APPEALS**  
**AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76349**

**AT AUCKLAND**

**Before:** A R Mackey (Chairman)

**Counsel for the Appellant:** D Mansouri-Rad

**Appearing for the Department of Labour:** No Appearance

**Date of Hearing:** 22 June 2009

**Date of Decision:** 30 June 2009

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**DECISION**

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[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the grant of refugee status to the appellant, a non-Muslim national of Iran.

**INTRODUCTION**

[2] The appellant is in his early 40s. He is a single man. His parents and four siblings remain in Iran. He arrived in this country on a false passport in September 2008 and claimed he was a refugee at that time. After an interview with an immigration officer, he was detained under s128 of the Immigration Act 1987 (the Act) because of the lack of appropriate documentation or identity. He was transferred to the Mangere Refugee Resettlement Centre and subsequently released on conditions in December 2008. A Confirmation of Claim for Refugee Status in New Zealand form was lodged on 8 September 2008. He was interviewed by the RSB on 10 October and 13 November 2008. The RSB declined his application in April 2009, after making some negative credibility assessments.

Some of these were based on perceived impressions of the appellant's temperament.

[3] The appellant appealed to this Authority in May 2009.

[4] Mr Mansouri-Rad has represented the appellant since his RSB interview and assisted in the preparation of a statement from the appellant, dated 6 October 2008. On 19 Jun 2009, counsel lodged a memorandum of submissions in support of the appeal. These have been fully noted.

[5] The core of the appellant's claim is that he predicts being persecuted on return to Iran, either subsequent to his airport arrival, or in his home district, for reasons of his being involved in an altercation with the *Basij* in 2008 and his past profile as a person with anti-government sentiments.

[6] The essential issues to be determined are whether his claims are credible and, if so, whether his prediction of being persecuted is well-founded.

### **THE APPELLANT'S CASE**

[7] What follows is a summary of the evidence given by the appellant before and at the hearing. It is assessed against relevant country information later in this decision.

[8] The appellant was born in 1968 in BB, a medium-sized Iranian town. Apart from two years while he was undertaking his military service during the Iran/Iraq war and another two years in the early 1990s, when he served on a fishing vessel based in the south of Iran, he has spent the whole of his life in the BB district. Virtually all of his family live in the same district.

[9] He is the fourth of five children born to his father, MM, and his mother, RR. His parents are in their mid to late 70s. His father was a businessman; he sold his shop and now works in the shop owned and operated by the appellant's elder brother, DD. The appellant has another brother, HH, who works for a company. Neither brother has a current political profile of any consequence, although HH was involved with the *Mojahedin (Peykar)* group in the early 1980s. The appellant also has two adult married sisters. All of the family are reasonably affluent in an Iranian context.

[10] The appellant's father was brought up with Zoroastrian beliefs and has always, in a private context, been anti-regime and a loyal monarchist to the former Pahlavi regime. His anti-regime views are not publicly expressed or known. The appellant's mother is from a Muslim background. The appellant was brought up to follow beliefs compatible with Zoroastrianism (good deeds, good things, good words). The appellant largely avoided any involvement with Muslim beliefs or observations, even during his military service.

[11] After completing his military service in the 1980s, the appellant was unemployed for a short while. He then worked on a shipping vessel for two years in the south of Iran before returning to his home town and working with his brother, DD, for some seven years until 1997. At that time, partly because DD's father-in-law had put money into the business, the appellant decided he should pursue his own career. Using his accumulated funds, he started a wholesaling and retailing business, dealing primarily in the sale and distribution of building materials. He owned a small shop and sourced products around the area of Iran near BB. His operations were purely domestic; he did not directly import materials and he never travelled out of Iran. For that reason, he had no need to obtain a passport. The business was reasonably profitable and he employed three employees.

[12] Apart from his business and family interests, the appellant stated that he had, for many years, been a supporter of student protests and, in 1999, he joined about 100 protesters outside the university in BB who were supporting protests in Tehran and elsewhere. He had no problems with that incident or with later support when he attended most of the anniversaries of the 1999 student protests.

[13] In operating his business, he encountered frustrations with bureaucracy and the constant need to pay bribes to obtain trade licences and to obtain building consents in respect of some land he had bought in partnership with a friend.

[14] In July 2004, however, while attending the anniversary of the student protests, he was one of 15 people arrested. He was detained overnight at that time, and had to put up his trade licence as bail. He was never able to retrieve that licence but managed to continue trading without it.

[15] In approximately August 2000, a friend, OO, whom the appellant had known since they were classmates in the 1980s, introduced him to a small group of men who had an active interest in domestic and international politics and who attended frequent meetings at the home of the leader of the group, FF, There were five

principal members of the group, FF, OO, KK, RR and the appellant himself. A few other people attended from time to time. The other four principal members had all been in prison at some stage during the 1980s because of their political activities, either in the *Mojahedin* or, in RR's case, in the *Tudeh* group. They had been in prison for periods of between two and four years.

[16] The meetings took place usually on a Thursday or Friday and would last for a few hours in the evening, with the appellant attending two or three times a month. The group did nothing else apart from hold meetings and have internal discussions. They did, however, read articles and material of an anti-regime nature which were often sourced on the Internet by FF. All members of the group were very careful not to discuss politics outside of these meetings, but they did, however, take articles away to be read at their own leisure. From time to time, the appellant kept such articles in his own room, in the house he shared with his parents.

#### **THE WORKERS PROTEST AND *BASIJ* ALTERCATION**

[17] In mid-May 2008, in order to progress a building permit and land registration matters, the appellant had to attend the municipal land registration department building in BB. At about 9am, as he was leaving his home, he received a text message from FF telling him that there was a demonstration of 20 or so people from a company who were protesting in front of the provincial government offices (which were directly across the road from the municipal land offices). The appellant went to the municipal offices about 10am and again went through the frustration and anger at having to pay a bribe so that he could have work done in relation to the inspection of his land.

[18] After coming out of the municipal building, the appellant saw the protesters directly across the road and went to join them to enquire what the incident was about. In discussions over the next half an hour, he found that these were employees from a private company, ZZ, who were trying to make their predicament known to the provincial governor and to highlight their plight of being underpaid and delays receiving their wages. After being with the workers for about half an hour, a plainclothes official came out of the back of the provincial governor's building and called, on a loud-hailer, for the protesters to disperse or otherwise they would be confronted. This made the workers angry and they started shouting anti-government slogans. Thereupon a group of *Basij* also came

from the back of the building. Some were uniformed and some were not. There were about eight to 10 uniformed *Basij* officers. Two or three of the officers were armed with “Colt” pistols on their belts and others had long wooden sticks. The *Basij* officers then confronted the demonstrators and started to hit them with the sticks.

[19] One of the officers, armed with a stick, came to the appellant and told him to go away at once. The appellant shouted abuse at him to the effect that he should go and “ask his fair-minded president if this was a fair and just way of proceeding”. (This was a reference to President Ahmadinejad and a slogan that he had used to show how just and fair he was.) The officer clearly understood the appellant’s statement and the appellant was then hit with a wooden stick on the arm. In self-defence, the appellant pushed the officer back and then punched him in a manner that caused the officer to fall to the ground and appear to be seriously hurt. The appellant is quite a well-built, sturdy man, whereas the *Basij* officer was relatively young and smaller, aged, the appellant thought, about 23 to 26.

[20] Upon seeing the officer fall to the ground and not get up, the appellant became very scared of the consequences and immediately ran away in a panic. Fortunately, no-one followed him. He went to a side street away from the parking area where he had left his car and, after climbing a wall and getting some 100-150 metres away from the governor’s building, he was able to make a telephone call to his friend, RR. The appellant and RR were business partners in respect of the land development project that had taken the appellant to the municipal council in the first place. The appellant explained his problem to RR and asked him to come and pick him up immediately in a vegetable market nearby. He did not use his own private car as he would have exposed himself to the *Basij* and could have been caught. RR came quickly as he lived nearby and took the appellant to his home. The appellant then waited at RR’s home to see what was happening. He was particularly worried because he had noted during the altercation that one of the *Basij* officers, in civilian clothes, had been filming the incident all the time, using a compact, hand-held movie camera.

[21] After staying a while at RR’s home, the appellant contacted his brother, HH, and told him briefly of the incident with the *Basij*. He also contacted his mother and informed her that he had a problem but that she should not worry about him and that he would contact the family later. The appellant remained at RR’s house.

[22] At approximately 9pm to 10pm that evening, when the appellant's brother had finished work, he went to the family home, only to find that it had just been raided by the authorities. He immediately rang the appellant at RR's home by mobile telephone. He explained to the appellant that the security officers, in civilian clothes, had raided the family home and mistreated his parents, pushing them and abusing them. They had detained their father and left with him. During a search of the house, the officers had found a one-page article which was strongly anti-regime. The article was one that had been passed to the appellant by FF. The appellant had forgotten to destroy it and left it in his home to read at a later time. The appellant also had his own personal computer at his home but, as he understood it, this had not been taken away or at least it has never been reported to him by his family that the computer was confiscated or searched.

[23] On hearing that the family home had been raided, the appellant concluded that he must leave BB immediately. The appellant then rang a colleague, JJ, who had been in military service with him and lived in a town, SS, some 70 kilometres away. That friend acted to help immediately and told the appellant to come to the SS. The appellant then made arrangements with a cousin who came and picked him up from RR's house and drove him overnight to meet with JJ in SS. On arriving at approximately 5am, it was then agreed that the appellant would be taken to a hut, owned by JJ, which was some 10 kilometres into the country-side. His cousin immediately returned to BB. The appellant then remained in the hut for the next 70 days.

[24] While staying in JJ's hut/summer hunting cottage, the appellant was able to keep contact with his family and with JJ by using his cousin's mobile telephone which had been lent to him during the journey from BB. His family reported to him that his father had been detained by the authorities for some five days while they waited to see if the appellant would surrender himself. When there was no sign of the appellant reporting to the authorities, they decided to release his father because of his age and the significant distress being suffered by his mother. No bail requirement was made. DD informed him that the *Basij* had been to his shop and asked for the appellant's whereabouts. He also told him that his mother had noted that there were strange people around the family home and she considered they were being watched closely.

[25] The appellant was also in contact with his friend, OO, whom he asked to work his brothers to organise an escape from Iran. The arrangements that were

being made by OO and the family took some time to put in place. Eventually, OO was able to hire a helper who was paid by DD in three payments. JJ came to the hut on a weekly basis and also kept the appellant informed of progress on his escape.

[26] The arrangements made for his escape firstly involved obtaining a new birth certificate, with a false name and false details. This then led to him being issued with a new passport in the false name. When the passport and ticketing was in place, the appellant was taken in JJ's car to Tehran and, after further organisation, carried out by Mohammed and the helper, the appellant then boarded a plane to Thailand and ultimately, using another false passport and another people-smuggler, made his way to New Zealand.

[27] Since his arrival in New Zealand, the appellant has been in contact with family members and has also been in contact with OO on three occasions.

[28] His brothers have reported to him that in approximately January/February 2009, some intelligence service officers had gone to DD's jewellery shop and asked about the appellant again. They instructed DD to supply any news or contact that he had with the appellant be passed on to them. DD stated that he did not know where the appellant was or where he had gone to and that he would pass on any information immediately he received it. DD was told that if he did not co-operate, he would be charged in the same way as the appellant. A few days after that, the intelligence officers went to the family home and spoke to the appellant's parents. Again, they asked about the appellant's whereabouts and instructed his parents to give them any information. Likewise, the appellant's parents stated they would pass on any information that they obtained and were threatened with reprisals if they did not. As the appellant understood, the security officers wore civilian clothes. He does not know whether or not they identified themselves.

[29] The appellant was engaged but has had no contact with his fiancée since shortly after he arrived in New Zealand. They decided between them to call off their association and communication as her family were against her leaving the country, even though the appellant had asked her to come with him when he left. The fiancée's family wanted nothing more to do with him because he had lost his job, his business and all of his family contacts.

[30] The appellant advised that he had had contact with his mother and brothers since the recent presidential elections and the very significant and published protests that had taken place since the elections. He was informed that this was disrupting the whole country and that it included protests in BB itself. His mother reported that people were chanting in the streets every evening and the atmosphere was extremely tense.

[31] The appellant stated that the Iranian passport, issued in a false name, which he had used to depart from Iran, had been left with a person he knew in Korea during the 10 days he remained there. That friend had got rid of the passport by sending it to somebody in Thailand. He stated that this was a passport issued on a false birth certificate and that he had actually never had a valid passport in his own name or travelled out of the country previously.

[32] The appellant has been in contact with OO on at least three occasions since he has been in New Zealand. OO reported that FF and the other colleagues continue to have their informal meetings where they discuss political issues. OO strongly advised him to remain where he was in New Zealand because he considered the regime will be merciless upon him if he is returned. In addition, if the appellant was arrested, he would be tortured and give the names of FF and other members of that group.

[33] OO and other members of the group have not had any problems of which he was aware. Their past records concerned the appellant, but as the material he had left in his home from FF showed no direct linkage to anybody in the group, he currently saw no way in which any of those members would be linked to the problems that had arisen for him after his altercation with the *Basij* outside the provincial government offices. The appellant has not told his brothers about the details of his involvement with FF and his group, or the content of the discussions that they were having.

[34] In giving this evidence in relation to his contact with OO and OO's instructions to the appellant that he should remain in New Zealand, the appellant became very agitated. He apologised for his outburst and stated that he had become highly frustrated with the decision of the RSB, which he considered completely misunderstood his situation and the merciless approach that would be taken to him by the Iranian authorities should he return to Iran.



[35] Over the last two weeks since the elections in Iran and protests both in Iran and many other countries, he has attended three protests by Iranians in Auckland. These protests have voiced opposition to the current dictatorship of Ayatollah Khomeini and President Ahmadinejad. He was not an organiser but had attended and held placards which had been handed out by the organisers. The protesters were trying to pass a message to New Zealand and the world. Television cameras had attended the demonstrations and about 300 people had taken part in the first demonstration, 70 to 80 people at the second and 150 at a demonstration the day before the hearing. After the hearing, he stated he was about to attend a further demonstration in Auckland city.

### **THE APPELLANT'S SUBMISSIONS**

[36] The Authority has carefully noted the submissions, dated 18 June 2009, from counsel. These referred initially to some apparent translation errors in the interview with the refugee status officer. Mr Mansouri-Rad, a Farsi speaker himself, stated that he had heard the recording of the full interview and there were two or three times where an incorrect interpretation or nuance had been placed on the appellant's answers. These errors had led to the officer reaching adverse credibility conclusions, particularly in relation to the appellant's temperament and demeanour and also the understanding of some of the core facts. The appellant and Mr Mansouri-Rad suggested that the recording could be played to the Authority. In the circumstances, the Authority relied on Mr Mansouri-Rad's assurances, as responsible counsel, that there were some apparent errors in the interpretation of some parts of the appellant's evidence before the RSB. This was done, partly because of the assurance from counsel, but also because the Authority had undertaken a full, *de novo* assessment of the totality of the appellant's case.

[37] Mr Mansouri-Rad submitted that the recent events in Iran had escalated risks to the appellant substantively and that this was evidenced from country information, such as BBC news reports. These stated that several western countries were advising their nationals that they should not travel to Iran in the current situation as there is a heightened level of investigation and subsequent risk on return at Iranian airports that returnees are coming back to inflame the current situation and support the anti-regime protests.

[38] It was also submitted that because the town where the appellant comes from is a relatively small one and he comes from a well-known family and indeed, was a reasonably well-known businessman himself, “everyone knows everyone else’s business”. Thus, in such a town, it is highly probable that the authorities and indeed, much of the local population, are well aware that the appellant has left the country, after being involved with the *Basij* while attending a small protest. His risk, in his home district, is therefore substantive and real and is further heightened by the current and very recent crack-down on dissent and perceived anti-government individual following the clear message from the Supreme Leader given in Friday prayers on 19 June 2009.

## DOCUMENTS

[39] In addition to the country information on the appellant’s file, the Authority has also had the opportunity of considering various recent country reports. These included: the Danish Refugee Council *Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc, Fact finding mission to Iran 24 August - 2 September 2008* (Copenhagen, April 2009), the UK Border Agency *Country of Origin Information Report – Iran* (17 March 2009) 9.12 – 9.17, relating to the *Basij*, and the United States Department of State *Human Rights Report – Iran (2008)* (25 February 2009) 1(d) – Arbitrary arrest and detention.

[40] From the Danish report, the Authority has noted particularly paragraph 5.1 “*Basij* – the “Morality Police” in Tehran”. This states that over the past two years, western embassies report an increase in the presence of *Basij* in the streets of Tehran, that they have become more active in other parts of the city where they had not previously been patrolling and that

“The *Basij* may also show up unexpectedly in order to intimidate the population. [In] this way it is never known where and when the *Basij* will strike. A common strategy is to pick one district of the city or town at a time, where the patrols are intensified during a certain period of time.”

[41] The report also notes that not only is there an increased presence of *Basij*, but also they have become stricter in addressing aspects of dress and dissent and that “This exemplifies the arbitrariness of the working methods of the *Basij*.” The very recent events following the elections in Iran and the activities of the *Basij*, are referred to in recent reports which have been noted by the Authority. These include: Human Rights Watch *Iran: Violent Crackdown on Protesters Widens*

(hrw.org/en/news accessed 29 June 2009), Amnesty International *Iran: Stop using Basij militia to police demonstrations* and *Iran: Khamenei's speech gives legitimacy to police brutality* (both from amnesty.org /en/news accessed 29 June 2009), a report from the *Sunday Times* UK "Mahoud Ahmadinejad regime plots purge after Iran election protests – The supreme leader's brutal crackdown has crushed dissent on the streets" (timesonline.co.uk sourced 29 June 2009).

## **THE ISSUES**

[42] 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."

[43] In terms of *Refugee Appeal No 70074/96* (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 APPELLANT'S CASE**

### **CREDIBILITY**

[44] Prior to determining the issues set out above, it is necessary to make an assessment of the appellant's credibility. The Authority found the appellant to be a credible witness. His evidence was largely consistent with the information originally provided by him to the RSB and the country information available. The interpretation errors at the RSB, explained by counsel, have, to a reasonable extent, overcome some aspects of the appellant's evidence before the RSB that the Authority would otherwise have questioned him upon. The Authority, of course, has conducted a full and fresh re-assessment of the totality of his case.

[45] The appellant's story is a fairly simple one – that he has violently assaulted a *Basij* officer during a public demonstration and therefore is at substantial risk on return. Such a story could readily be fabricated. However, after hearing all of the appellant's evidence, the Authority was unable to detect any major inconsistencies or implausibilities in his story. Particularly in the light of current events, the Authority considers that if there is any residual doubt as to his risk on return, it should be extended to the appellant in this situation.

[46] Accordingly, the Authority accepts the appellant's credibility and it is now necessary to assess, prospectively, the well-foundedness of risks to him.

### **WELL-FOUNDED FEAR OF BEING PERSECUTED**

[47] The Authority has, for many years, interpreted the term "being persecuted", in the refugee definition, as the sustained or systemic violation of basic human rights, demonstrative of a failure of state protection. In other words, core norms of international human rights law are relied on to define the forms of serious harm which are within the scope of "being persecuted". This is often referred to as the human rights understanding of "being persecuted" and is fully explained in *Refugee Appeal No 74665/03* [2005] NZAR 60; [2005] INLR 68 at [36] to [125].

[48] This appellant would be returning to Iran, almost certainly to the principal airport in Tehran, at a time of heightened instability in the Iranian state. He will be returning from a western country without a valid passport. That alone will bring him to the initial attention of the authorities at the time of his return.

[49] In his home district, the Authority accepts the submission that because of the size of the town that he comes from and because he and his family have some significant profile in their home district, there is heightened risk. As the appellant and his family are long-standing business owners, it is accepted that the flight of the appellant will, at a high level of certainty, be noted. The Authority therefore finds that the appellant will be at a substantive or real chance of being detained by the *Basij* or other government authorities on return to his home town. The detention will be in relation to the alleged assault of a *Basij* officer and the recorded, if somewhat minor, anti-regime profile that already exists in relation to him in his home district. The country information noted above indicates that torture and severe maltreatment are endemic features in *Basij*/security service detention. There is a real chance of the appellant being persecuted on return, either to his home district or indeed, subsequent upon detention which could take

place immediately after his arrival in Tehran. Refugee assessment is, of course, made as at the date of decision, looking prospectively and objectively to the situation on return.

[50] The first issue is therefore answered in the affirmative. The Authority finds that that well-founded fear is, at least on a contributory basis, for reasons of the appellant's imputed anti-government (political) opinion. Whilst the assault on the *Basij* officer, in itself, may be a purely criminal offence for which the appellant may rightly be prosecuted, because of the relevant circumstances in which the assault took place, which had become highly politicised, the real chance of severe maltreatment by the authorities on return must be considered as, at least at the contributory level, for a Refugee Convention reason.

## **CONCLUSION**

[51] For the reasons set out above, the Authority finds that the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"A R Mackey"  
A R Mackey  
Chairman