

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

**REFUGEE APPEAL NO 76318**

**AT AUCKLAND**

**Before:** A R Mackey (Chairman)  
B A Dingle (Member)

**Counsel for the Appellant:** I Anand, Avondale Law

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

**Dates of Hearing:** 30 & 31 March and 8 April 2009

**Date of Decision:** 25 May 2009

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**DECISION**

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[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 the grant of refugee status to the appellant who is a national of Iran.

[2] The appellant is in his early 30s. This, his second claim for refugee status in this country, is presented on the basis that he claims he has a well-founded fear of being persecuted by the Iranian authorities should he return to Iran because of material he sent by email to his sister in Iran. He claims this material has now come to the attention of the authorities. The determinative issue in this appeal, as it was with his first appeal to this Authority, is his credibility.

**INTRODUCTION**

[3] The appellant arrived in New Zealand in September 2004 and lodged his first claim for refugee status in October 2004. He was interviewed by the RSB on later in October 2004 and, in a decision in early January 2005, his claim was declined. He then appealed that decision to this Authority. In a decision (*Refugee*

*Appeal No 75473* (16 November 2006)), the first Authority, differently constituted, dismissed the appeal.

[4] His first claim for refugee status in New Zealand was made on the basis that, because of his sexual orientation, he would be persecuted by the Iranian authorities on return. His credibility was largely rejected in the first determination.

[5] It is now necessary for the Authority to consider:

- (a) whether the appellant meets the jurisdictional threshold of establishing that circumstances in Iran have changed to such an extent that his second claim is based on significantly different grounds from the first claim; and (only if so)
- (b) whether, on the facts as found in the second claim, the appellant establishes that he has a well-founded fear of being persecuted for a Refugee Convention reason on his return to Iran.

[6] It is appropriate to consider the question of jurisdiction first.

### **JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL**

[7] The jurisdiction of a refugee status officer to consider a second or subsequent appeal is governed by s129J of the Act which provides:

**“129J. Limitation on subsequent claims for refugee status—**

(1) A refugee status officer may not consider a claim for refugee status by a person who has already had a claim for refugee status finally determined in New Zealand unless the officer is satisfied that, since that determination, circumstances in the claimant's home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim.

(2) In any such subsequent claim, the claimant may not challenge any finding of credibility or fact made in relation to a previous claim, and the officer may rely on any such finding.”

[8] There is then a right of appeal, pursuant to s129O(1) of the Act 1987 which provides:

“A person whose claim or subsequent claim has been declined by a refugee status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that the circumstances in the claimant's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer's decision.”

[9] The question of whether there is jurisdiction to entertain a second or subsequent claim was considered in *Refugee Appeal No 75139* (18 November 2004) where the relevant principles were set out at [54] - [57]:

[54] In any appeal involving a subsequent claim under s 129O(1), the issues are not “at large”. Rather, there are three distinct aspects to the appeal.

[55] First, irrespective of the finding made by the refugee status officer at first instance, the claimant must satisfy the Authority that it has jurisdiction to hear the appeal. That is, the claimant must establish that, since the determination of the previous claim, circumstances in the claimant’s home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim. As to this:

- (a) The change of circumstances must occur *in* the claimant’s home country. It is not open to the claimant to circumvent the jurisdictional bar by submitting that at the hearing of the previous claim the refugee status officer or the Authority misunderstood the facts.
- (b) A “reinterpretation” of a claimant’s case is neither a change of circumstances, nor is it a change of circumstances *in* the claimant’s home country.
- (c) The claimant cannot invite the Authority to sit as if it were an appellate authority in relation to the decision of the first panel and to rehear the matter. The Authority has no jurisdiction to rehear an appeal after a full hearing and decision.
- (d) A second appeal cannot be used as a pretext to revisit adverse credibility findings made in the course of the prior appeal.
- (e) Jurisdiction under ss 129J(1) and 129O(1) is determined by comparing the previous claim to refugee status against the subsequent claim. This requires the refugee status officer and the Authority to compare the claims as asserted by the refugee claimant, not the facts subsequently found by that officer or the Authority.
- (f) Proper recognition must be given to the statutory language which requires not only that the grounds be different, but that they be **significantly different**.
- (g) The Authority does not possess what might be called a “miscarriage of justice” jurisdiction.

[56] Second, in any appeal involving a subsequent claim, s 129P(9) expressly prohibits a claimant from challenging any finding of credibility or fact made by the Authority in relation to a previous claim. While the Authority has a discretion whether to rely on any such finding, that discretion only comes alive once the jurisdictional threshold for subsequent claims set by ss 129J(1) and 129O(1) has been successfully crossed.

[57] Third, where jurisdiction to hear the appeal is established, the merits of the further claim to refugee status will be heard by the Authority. That hearing may be restricted by the findings of credibility or of fact made by the Authority in relation to the previous claim, or “at large”, depending on the manner in which the discretion under s 129P(9) is exercised by the Authority.”

[10] Against this background, it is now necessary to have regard to the first and second refugee claims of the appellant in order to determine whether the jurisdictional threshold is covered.

## **THE APPELLANT'S FIRST REFUGEE CLAIM**

[11] The account which follows is a summary of the claim which was made by the appellant to the first Authority. He was represented by different counsel at that time.

[12] As stated, the appellant's first claim was based on his claimed sexual orientation. He claimed that he was first aware of his emerging sexual preference while he was still at secondary school. Over time, his confused sexual orientation became clearer to him. He read various "under the counter" materials on homosexuality, but was careful of a response he expected from his conservative and religious father.

[13] He claimed that he had entered into a sexual relationship with a man he met in 1993. However, that relationship failed. He then entered into a relationship with another man, KK, the following year. That relationship, he claimed, continued until 2004. He stated he and KK lived together in a shared apartment for some three or four years.

[14] In early 2004, problems arose for the appellant when he and KK, after attending a party with some gay colleagues, went to bed together at the party venue. They were woken, however, when officials broke into the house where the party had taken place and found the appellant and KK in bed together. The appellant and KK were detained but, as they were taken to the court hearing, the appellant managed to escape. After spending some three months staying with a grandfather, he was able to raise sufficient funds to leave Iran and make his way to New Zealand. He produced an arrest warrant in support of his claim.

[15] The appellant's brother, AA, who had come to New Zealand in 1997 and secured refugee status on the basis of events unrelated to the appellant's claim, gave evidence in support of the appellant's claim at that time (as he indeed did in this second appeal). Both the appellant and AA were found to be lacking in credibility in substantive parts of their evidence. The first Authority did not accept, in the case of the appellant, that he had provided a truthful account about his alleged sexual orientation, nor did it accept various problems that he claimed stemmed from it. The arrest warrant, on the basis of a backdrop of inconsistencies and implausibilities, was given no weight.

[16] As the appellant was found not to have adduced any credible evidence to show that he was a homosexual, or that he had suffered any difficulties because of his professed sexual orientation in Iran, his appeal was dismissed.

### **THE APPELLANT'S SECOND REFUGEE CLAIM (BRIEF SUMMARY)**

[17] At the outset of the hearing of this matter, the Authority explained the limited jurisdiction in this subsequent appeal and that the Authority would only be able to consider the second claim if the appellant established significantly changed circumstances arising after his first appeal.

[18] The account that follows is a brief summary of the appellant's second claim made for the assessment of the preliminary jurisdiction issue.

[19] As will be seen, the appellant, in his second claim, states that he sent politically provocative photographs and other similar material by email to his sister, FF, who was a young photographer by profession and was living at the family home. He claimed that FF, with two friends, had been preparing a photographic display of their own material (not the material sent by the appellant) at a local public exhibition centre near the family home. The day before the proposed exhibition, the Iranian authorities arrested FF and her friends. The Iranian authorities then searched the family home and, in so doing, seized FF's computer upon which was found the provocative anti-regime photographs/material that had been emailed to FF by the appellant.

[20] The appellant claims that FF had been forced into admitting that the material came from him in New Zealand by email. The Iranian authorities considered this anti-regime and objectionable, and advised his family of this. He therefore claims that, on return to Iran, he would come to the attention of the authorities for inciting anti-regime dissent and would therefore be detained and persecuted.

### **THE QUESTION OF JURISDICTION**

[21] This issue can be resolved shortly. The new claim, as asserted, is significantly different from the first claim and is made subsequent to the determination by the first Authority. Accordingly, the Authority is thus satisfied that

it has jurisdiction to consider the new claim. In doing so, the credibility of the new claim will be addressed.

## **THE APPELLANT'S SECOND CLAIM IN DETAIL**

### **PRELIMINARY MATTERS**

[22] The appellant gave evidence over the first, part of the second and on the third day of hearing. During the second day of hearing, he became ill, suffering from a strong headache. His evidence was therefore adjourned until it was completed just over a week later. On the second day of hearing, the appellant's brother, AA, gave evidence to the Authority in support of the appellant's claim. Towards the conclusion re-examination by counsel when the appellant was asked how often he had contact with FF, whom he stated now was out of Iran in ZZ, the appellant stated that they were in contact on Saturday or Sunday each week. Counsel then asked whether the appellant could obtain a supporting statement from his sister FF. The appellant said he would try. Mr Anand then requested additional time from the Authority so that such evidence could be produced.

[23] The Authority noted that this appeared to be an irregular request, given that there was no previous reference to this possibility, and that such evidence could be of limited value since there would be no opportunity for the Authority or counsel to examine FF on any such evidence. The Authority however ruled that such evidence would be considered if it was provided within a short timeframe. However, there had to be the recognition that without the ability to cross-examine, the weight of such evidence could be affected. Accordingly, a period of some 10 days (until 20 April 2009) was allowed for the appellant to present additional evidence in writing from FF.

[24] On 20 April 2009 the Authority received a letter from counsel stating that:

"We are instructed by the appellant that he was unable to establish contact with his sister within the time period granted by the Authority. We therefore advise that the appellant is not able to submit any further evidence."

The letter also contained submissions unrelated to the provision of evidence by FF, which are referred to later in this determination.

[25] The appellant had presented to the RSB a copy of a document claimed to be a bail receipt for title deeds to the family home. He adopted statements that he

had made in respect of his second claim in October 2008, November 2008 and March 2009. At the outset, he stated he had made some untrue statements in his first claim.

[26] The Authority also noted initially that, in his statement of November 2008, which he presented to the RSB, he had deleted the first sentence from paragraph 18, which read:

“I no longer wish to apply for refugee status in New Zealand however I also do not want to leave the country on a travel document.”

[27] He advised that he did not know he could make a second refugee claim, but after speaking with a lawyer, he was advised that this was a possibility and therefore had proceeded. At the time when he had made the original copy of the statement, he merely wished Immigration New Zealand (INZ) to assist him get an Iranian passport so that he could leave this country to go to another country, apart from Iran. He claimed he had made the actual statement prior to lodging his second refugee claim and therefore made the deletion later when his second claim had been lodged. He stated he was not sure whether or not his second claim would be accepted but then, after deciding to proceed with the second claim, he deleted the sentence from paragraph 18.

[28] In relation to his application for an Iranian passport, he explained that, two months after his first appeal had been declined by the first Authority in November 2006, he was approached by INZ who asked him to apply for an Iranian passport. He proceeded with this, with the assistance of INZ. A while later, however, he was contacted by INZ who explained to him that his documents were not complete. He returned to INZ where he completed the Iranian forms, with the assistance of PP, an immigration officer.

[29] A few months later, he was contacted by INZ and asked what had happened to the application. He advised them he had received no news from the Iranian Embassy. He rang the embassy and was told that, because of a new law in Iran, it was now necessary for him to obtain an Iranian identity card preliminary to the processing of his passport. He advised PP of this requirement when he and his brother, AA, attended at INZ. PP appeared to be unaware of the necessity for the identity card. He completed the application for another identity card, but as yet has not received it. He had asked the embassy six or seven times what progress had been made and ultimately he had been told by them that he should not contact them any more and that they would let him know when the card and

passport were ready. He advised the Iranian Embassy that INZ were putting pressure on him to obtain the documents, but their response was that they were not in correspondence with INZ at all.

[30] The appellant stated that he had still not received a passport from the Iranian Embassy in New Zealand. The last enquiries he had made with the embassy had been in approximately August or September 2008. He had made no enquiries in the last six months.

### **THE FAMILY SITUATION**

[31] The appellant's parents live together in Tehran. They have been in the same house for some 17 years. His father owns a bakery shop. He is not working full-time at the shop but continues to supervise matters there. The appellant claims that his father disapproved of him being gay and there was a poor relationship between them. He has, however, had some contact, speaking to him on a few occasions since he has been in New Zealand. The last contact with his father was some seven or eight months ago. He keeps in regular contact with his mother however, including contact the night before the first day of hearing. He states that the regular contact with his mother had been over the Internet. He would go online with a video link to speak to his mother and other family members. The contact with his mother on the evening before the hearing had been at the home of one of his sisters. In their last discussion before the forthcoming hearing she told him that a paternal male cousin was to visit his sister FF in ZZ because family members were concerned about her.

[32] The appellant has two brothers. The elder brother, AA, has been in New Zealand for some years and is now approximately 40 years of age. The appellant lives with AA and maintains a good relationship with him. AA advised him that he could apply for refugee status on a second occasion and up until he received that advice he was not aware it was possible. The appellant stated that AA had spoken to a friend who had told him it was possible, although he could not remember the date of that advice.

[33] The appellant's younger brother, BB, lives with his parents in Iran. He is a law student and is approximately two years younger than the appellant. He is unmarried.



[34] The appellant has four sisters. The eldest, CC, is in her late 30s and lives with her husband and child in Tehran. The appellant has a good but not close relationship with her husband.

[35] His next sister, DD, is in her mid-30s. She is married with no children and lives in Tehran. Recent telephone calls, including the call from his mother, have been made from the home of DD and her husband, EE. EE is a cameraman for a radio and television network. The appellant enjoys a good relationship with him.

[36] His third sister, GG, is in her mid-20s and unmarried. She lives with her parents in Tehran and works in a travel agency as an accountant.

[37] His fourth sister, FF, is aged approximately 24. She is unmarried and works as a photographer in a local photographic shop. She takes photographs of weddings, functions, birthdays and in commercial premises. She completed a diploma at a local polytechnic in photographic and television work and has worked at the shop for some three to four years.

[38] The appellant states he had a good relationship with all his sisters over the years. They are not strict Muslims and although his sexual orientation was not something that they approved of, they did not reject him because of it.

[39] The appellant states that he is particularly close to his younger sister, FF, as they shared beliefs and ideals. Over the past four years, he has had fairly regular contact with FF. This contact took place using his own laptop in New Zealand and a computer used by FF at the family home. He estimates they would be in contact every two or three weeks. Before this, he had been in telephone and email contact with his family over the period 2004-2006. Telephone and Internet calls to the family home were regularly shared with his brother, AA, and often other family members joined into the calls at the Iranian end.

#### **THE SECOND CLAIM - EXCHANGE OF INFORMATION WITH FF**

[40] In approximately 2006, the appellant began discussing with FF social and political issues relevant to Iran. He explained that he and FF had common views on a number of social, societal and political issues. He was sympathetic to the situation faced by girls and women in Iran, which they discussed. It was painful to both of them to see drug addicts and other dispossessed people in Iran. From New Zealand he started discussing books and material he had located on the

Internet and that were available to him. Because he loved his country, it was distressing to him and FF to see the cruelty and other maltreatment that was happening to the Iranian people. FF was interested in these issues and as a result the appellant said he started to send her articles and pictures that he had obtained on the Internet, including pictures such as one of a girl “bashed up” by security people and cartoons lampooning President Ahmadinejad. In addition to FF, his younger brother, the law student, was also interested in this material.

[41] The appellant claims that the pictures he had sent to his sister were also to give her ideas for her own photographic work. They also discussed books about Iran, that were banned in Iran. He accessed additional material they discussed from offshore Iranian radio stations, BBC, “YouTube” and like sources. He had sent pictures of torture and executions in Iran to his sister which he had acquired after a “Google” search.

[42] The appellant found the evidence of human rights abuses in Iran painful. He therefore considered that he should share this information with friends and family although in New Zealand there was little he could do. He had not found anyone in New Zealand or any organisation that he could talk to about such issues. He was concerned that he should not discuss or pass on such information to the Iranian community in New Zealand as this might work against him in his efforts to obtain residence in New Zealand or it might create problems for his family back home.

## **THE ARREST AND DETENTION OF FF**

[43] In the appellant’s statement of November 2008, he appellant stated (verbatim):

- “6. [...], Iranian Police Officials arrested my sister. In that day my sister and two of her friends had been organizing their work in a hall for the exhibition, which was due to open the following day.
7. Amongst the photographs being exhibited, there were some that had been taken by my sister and portrayed subjects that were against the beliefs of the Islamic Republic and were not in their favor.
8. Whilst setting up the exhibition, Iranian Police members raided the place of the exhibition, damaged many of the photographs on display and arrested my sister and her friends.
9. At night time on the day my sister was arrested, the Police raided my parents house. The Police seized so many things that belonged to my sister and one of these items was her computer. The hard drive of the computer contained many photographs against the Government.

10. My sister was detained at YY for 18 days. They accused her of insulting the Leaders of Iran and encouraging others to be against Islam.
11. The Police came to know that I had sent many photographs to my sister and they questioned by family about me. They asked my family what I was doing out of the country and told them that I had sent illegal items to her. I believe the Police knew I had sent the photographs to my sister as she either confessed I had whilst being tortured or otherwise they traced them back to me from her computer.
12. After my parents used the ownership papers of their house as bail, my sister was releases. My sister had to report to the authorities once a week until the date of the court hearing. She only reported once and then sent into hiding. At present she is living with a friend in XX. She is too scared to appear at court.
13. I have been in contact with her. She told me that the security officials know about the emails that I had sent to her. During the time my sister was detained, the security officials visited my parents' house twice.
14. Because of the situation, which has now arisen in Iran, between my sister, the Police and indirectly me, I am very scared. My first application for Refugee Status was not accepted and I wanted to leave New Zealand to go to another country and take asylum, however I have to wait for my passport to be issued."

[44] He expanded on this statement before us.

[45] The appellant stated that his sister had been warned by people at the exhibition centre where she displayed her photographs that she would get into trouble if she showed inappropriate photographs. A photograph which showed a Mercedes-Benz "logo" and within it a poor child begging had been a photograph that she had been warned could cause problems. That photograph, for example, showed the huge difference in social levels and prosperity within Iran which the government denied. He explained that once permission had been given to give a photographic exhibition, but before it went on public display, a censoring process would take place. It was later reported to him by his sister, on 19 August 2008, that as she was getting ready for the exhibition, officials had telephoned the police station and then came to the exhibition centre asking about the photographs. One photograph was of a poor person standing with Ahmadinejad on his head with writing under it – "prosperous life, better life and freedom". This was evidently seen as enough of an excuse for all the photographs to be smashed, as it was promoting feelings against the regime and the president. He stated that officials from the YY police station of the Iranian police had carried out the raid at the exhibition centre. As he remembered, the YY police station were in charge of the promotion of morality standards. These officials told the three young women that

the photographs were against the regime. The whole exhibition was broken down and the women were taken away.

[46] They were kept overnight. When FF did not return home, her parents became worried and contacted officials at the exhibition centre, who were unable to provide any information. That evening, four police officials went to the appellant's family home and stated that their daughter had been taking illegal photographs and that they had come to take any further material away. They then proceeded to search the house and seize photographs, CDs and FF's computer. The officials also went to the homes of the other two women who were evidently released the following day.

[47] On the night of FF's arrest, their mother went to the police station to beg the officials to free FF. This was declined and it was stated that further investigation was needed to see what she had been involved in.

[48] At the time of the first police visit to the family home, there was no mention of the appellant but, on the next day, the police officials found illicit material and pictures on FF's computer. FF was beaten and tortured to find out where all the material was from and in that process she may have stated that the appellant was the person who had sent the photographs.

[49] The appellant became aware (apparently on [...] August 2008) of his sister's arrest and detention through his brother-in-law, EE (DD's husband). This was two days after her detention. EE reported that after the officials at the police station found out that the photographs had been sent by the appellant, they returned to the family home and asked for him. They asked who the appellant was in contact with. The officials told the parents that they were careless with their children who were working against the regime. In that visit there was specific reference to the appellant being in New Zealand. In addition to questions about the appellant on that second occasion, the authorities had wanted to know about FF's friends, contacts and to whom she made telephone calls.

[50] In response to questions about the appellant, his mother had stated that he had gone to get a job and that was why he had left the country. The officials claimed that they knew that the appellant had been given lashes in the past.

[51] When this was reported to the appellant, he initially thought that he should return to Iran and endeavour to get FF released, regardless of the risk to himself.

[52] The appellant explained that it was only after the second visit by the police to the family home that EE rang New Zealand. At the time of the call, AA had not been home in Auckland and so the appellant had relayed the information to him. There was then another telephone call between them when AA rang EE, later that same night, and they both had further discussion with him.

[53] The appellant stated that his mother and another sister had stayed outside YY police station for the first one or two nights after FF's detention, whilst his father tried to find out, amongst his friends, how they could get assistance to get FF released. The family were denied any visits to FF. They assumed that she was in YY police station as the officials stated she had been taken there. Ultimately, when FF was released some 18 days later, she confirmed that that was where she had been. During the 18 days that she had been in detention, there had been no further contact between the appellant's parents and the YY police officials, despite his mother going to beg with the officials. Eventually, an official stated that they would release her on bail. The negotiations for bail took place after the parents received a telephone call and were asked to take their house papers to the station as bail for the release of FF. It was also conditional on FF reporting to the police station each Saturday until a court hearing took place on her case.

[54] After taking the papers to the police station, FF was released and then went back to the family home. She did not receive back any of the possessions that had been taken. For a period of one week she remained at home and reported to the police station on the first Saturday. However, she became very concerned and feared being re-arrested. She was suffering a lot from the effects of the detention, during which time the officials had played the voices of people screaming under torture and deprived her of food and other necessities. Once FF was out of jail, the appellant said he and AA were able to have some contact by telephone at EE's house. This took place on one or two occasions. Because of the worries and concern, it was decided amongst the family that FF should leave Tehran. Accordingly, she went to stay with a friend in XX. The family were satisfied that it was wise to break the bail arrangements because of the risks to her. She did not report to the police while she was in XX.

[55] During the several months that FF was in XX (apparently between September 2008 and late February/early March 2009), she rang the appellant on a weekly basis and sent one email to him. In that email she stated that it was not

the appellant's fault. Unfortunately he has not kept a copy of that email although FF had used her regular address to send the email to him.

[56] When FF failed to report to the YY police station, the officials returned to the family home and searched it, stating they (the parents) were responsible for her and that if they did not give her up they would take away the family home. During the eight months since she failed to report, no date for the hearing of her case has been notified to the family although, on about 10 occasions, the family home has been raided and there have been threats and abuse to the parents. However, nothing has been done to seize the family home, despite the house title being taken as collateral for bail. When asked whether he was aware of any warrant for the arrest of FF, given that she had broken bail, he stated that his family had not been sent any letter that had been received by them although they had been threatened. They did not advise him of any arrest warrant or threats to take the family home.

[57] FF left Iran for ZZ in early March 2009, after arrangements had been made by the family for her to be taken to ZZ. She used a false passport for this journey, which was paid for by the family. The appellant has been in touch with FF since she had been in ZZ. He said that she rings every Saturday. Further contact has also been maintained with his family in Iran. It was reported to him that neighbours had been questioned about the whereabouts of FF. The latest information he had received was that a cousin had gone to ZZ to take money to FF. He (the cousin) had departed legally and encountered no problems.

#### **EVIDENCE OF THE APPELLANT'S BROTHER, AA**

[58] AA came to New Zealand in 1997 and obtained refugee status on the basis of events unrelated to this appellant's claim. He went on to obtain permanent residence and citizenship in New Zealand in 2000. He was asked at that time to help the appellant to come to New Zealand because the family was worried about an arrest and lashings that the appellant had suffered, approximately at that time, and the negative reaction to the appellant by their father. After this, AA, on several occasions in 2002 and 2003, attempted to sponsor the appellant to come to New Zealand under the Refugee Family Quota category. It was stated at the time of the appellant's first claim that all of these efforts were done without the appellant's knowledge because he was not living at home after 2000. The evidence provided both by the appellant and AA in this appeal however, acknowledged that the claim

that the Family Quota applications had been made without the appellant's knowledge, was not correct. A brief summary of the evidence given by AA on the appellant's first appeal is set out between [59] and [66] of the first decision (*Refugee Appeal No 75473* (16 November 2006)).

[59] AA had provided a letter in support of the second application. This statement, which is undated, had been made in mid-March 2009. It sets out:

"My brother's lawyer told my brother to ask me to write a letter and explain about incidents that recently happened in Iran and to my family.

As you know my brother, [the appellant], came to New Zealand in 2004 and applied for refugee but he was not accepted. My brother then lived his life in New Zealand being all the time under stress and mental pressure. He was hoping that one day his problems to be solved by finding a place as a shelter to live in peace because he had problems in Iran and was not able to live there.

After my brother's application for refugee was declined he decided to leave New Zealand and go to another country to live but another incident happened to our family and because of this incident my brother applied for refugee in New Zealand again.

In August 2008 the security police in Iran arrested my sister. Police detained my sister for 18 days and told my sister that she has to go to court but before court she was released on bail. Later my sister escaped and now is in ZZ. My family told us that she illegally left Iran and went to ZZ. She tries now to go to another country to take refuge.

My brother [the appellant] and my sister FF have no security in Iran. Police is after them. My brother sent photos to my sister and now he is also in trouble. Police went to my parents and question them about my brother and sister. They are after my brother because my brother was in contact with my sister by email. My brother sent photos to my sister and this is why the police want to arrest my brother.

Everyone in my family in Iran know that if my brother returns back to Iran he will be arrested. My parents are so worried about this and always want to make sure that my brother is safe in New Zealand.

This new incident and my sister's problem have made a very risky situation in Iran for everyone.

Please help my brother. He has been suffering so much. He is under a very bad mental condition. He is always in fear and frightened of going back to Iran.

In regard to my brother's interview, I am more than happy to act as a witness if I need to give more information about my brother's situation." (sic)

[60] AA stated that the evidence he gave in the appellant's first claim was "ninety percent true". His evidence about the appellant being "beaten up" by officials, and his escape, had not been true. In respect of the arrest warrant the appellant had produced, AA stated that the appellant had told him he had arranged to obtain the fraudulent arrest warrant. AA, however, stated they did not

talk about it any further. AA said he had lied in his evidence in the first claim in the interest of the safety of his brother and because he had been living in a country ruled by *mullahs* who would send somebody with a gun to look for the appellant. In that situation, he thought he should lie for his brother.

[61] He presented to the Authority some photographs downloaded from the Internet which he claimed showed the abusive treatment of people in Iran. None of this material, however, related directly to the appellant or his family.

[62] AA confirmed he had returned to Iran on two occasions in 2000 and 2005. He had returned to see his mother whose health was poor, due to a heart condition. He had no problems entering or leaving Iran. As a refugee returning to Iran, he did not feel at risk because his situation had been a personal problem and therefore not one which was linked to the general justice system. He explained that he had a current Iranian passport but did not have the new national identity card which was not a requirement at the time when he obtained his passport. He stated that he had applied for the new identity card and was still waiting, some two years later, to receive it.

[63] In relation to the appellant's decision to lodge his second refugee claim, AA stated that he had been discussing the appellant's situation with a friend who had told him that they should consult a lawyer and a lawyer would tell them whether or not lodging a second claim was possible. He himself did not know about subsequent claims and it was not until they got the lawyer's advice that they proceeded.

[64] Since his time in New Zealand, he has kept in contact with his family but, after August 2008, they stopped direct contact. However, he had kept in regular contact with his brother-in-law, EE, since August 2008. Approximately every two weeks, his family would go to EE's house where there would be a telephone exchange between them and the appellant and himself. After the release of FF from custody, and when she went to XX, she also had had some contact with him and the appellant at their home in New Zealand.

[65] Up until August 2008, the contact he and his brother had with the family was by both telephone and computer. FF had a computer at the family home and that was the only one in the house. FF's computer had been taken on the night when the officials came to the family home. It was taken along with CDs, a camera, photographs, personal books and other belongings. None of this has



ever been returned as it has been kept as evidence against her. This information had been passed to him by EE when he called the appellant. At the time of the first call from EE, he himself was at work so the appellant took the call. However, on his return home, he had contacted EE himself and both he and the appellant had had further discussions. This was the day after the initial incident where FF had been detained. He thought the call had taken place on a Friday in August and this was the first knowledge that both he and the appellant had about FF's situation.

[66] EE had reported to them that FF had been preparing an exhibition when the government officials came to the gallery and said that the pictures were anti-government and anti-Islam and took FF away. EE also stated that, soon after, officers in plain-clothes came to the family home and took FF's computer and other goods and spoke badly to his parents. They told them that FF had been preparing material against Iran and Islam.

[67] AA and the appellant were told that the officers came from the YY police station, which was one which usually dealt with political matters.

[68] EE also told them that the following evening, the undercover officials came to the family home and, in addition to stating that FF was acting against the government at the exhibition, they asked about the appellant and the pictures he had sent to FF.

[69] AA said that later, when he and the appellant received a telephone call from FF in XX, she stated that she had been beaten during the first night of detention and had revealed that there were pictures on her computer which had been received from the appellant who was overseas.

[70] During the second visit by the officials, they stated that FF and the appellant were both involved in anti-government activities. The officials asked where the appellant was, what he was doing overseas, who did he work with, and was it a group who were against the government? His parents replied that they did not know anything.

[71] EE went on to report to them that FF had been kept in custody. The family first found out where FF had been held in custody, during the first visits to the family home and that she was at the YY station. The family had gone to that police station the day after she had been arrested. His mother and father had both

gone but they did not see FF. They were just told that FF was acting against the government and would stay in jail until a court date had been set. His mother had cried and begged for her daughter's release, telling the officials about her heart problems. The parents were not given any documents or anything else in relation to the date of the hearing at that time.

[72] EE also reported that two other people had been arrested at the same time as FF. After the initial telephone conversations with EE, AA and the appellant kept contact with him. They were told a while later that the police had asked the family to enter into bail arrangements and that to do this, they needed to provide the title deeds to their home. These would be held until there was a hearing of her case. As a result of this, his father gave the ownership papers of the family home, as bail, to the police authorities. The release of FF was then secured. This had taken place approximately 18 days after she had been first detained at the YY station. His mother and father went to pick her up.

[73] FF had been told to report each Saturday until the date of hearing. AA and his brother had never been advised of any formal date of hearing or written charges. AA had been told that FF had been charged with inciting people against the regime and displaying anti-revolutionary pictures. FF had gone to the police station after the first week but then became fearful for her life and so arrangements were made for her to go into hiding in XX. When she did not report for bail, officials went to the family home and asked for her. The family stated that they did not know where she was and that she had escaped. AA stated that there had been 11 or 12 visits since that time and on each visit the family home was searched and the same question was asked about FF: "What was she doing?" The parents were advised that she was required to report to them. The authorities had even gone to the extent of asking neighbours about her whereabouts. They had not gone to any other place however, such as homes of other family members or the father's business.

[74] No action had been taken in relation to the seizure of the family home and his parents still remained there, although their situation was uncomfortable as the authorities came at irregular hours.

[75] While FF had been in XX, she had been in contact with the appellant and himself by telephone approximately every two weeks. It was then that she explained that she had been beaten in detention and that they had placed loud speakers near her, which broadcast material from the Koran. He was unaware as

to what had happened to the two friends of FF involved in the photographic exhibition. He did not know if they had been released or whether there had been contact with the families of the other two young women.

[76] Because there was so much uncertainty in Iran and there were risks to his sister's life, the family had concluded that the best option was for FF to leave Iran. The only advice he had given personally was for her to try and save her life by leaving the country.

[77] AA explained that sometimes the appellant had spoken to FF when he was not at home but they usually discussed the telephone calls afterwards. He reported that there had been some contact with FF while she was in ZZ. She had telephoned some two days after her arrival on approximately 3 March 2009.

[78] AA said he considered the biggest problem for both FF and the appellant was when the officials saw the pictures on the computer, after FF had been put under pressure and admitted that they were from her brother. This added to the problem she already had. He was sure that FF did not wish to put the appellant's life at risk. He said that he had known that the appellant was sending pictures to his sister and that the reasons for that were that she was a photographer and she and the appellant had a close bond. He had no idea that sending such pictures to her would put both of them in danger. If the appellant returned at this time, he considered he would be put into prison and suffer severe punishment like those shown in the photographs that he and the appellant had produced. He stated that he was sure the Authority is aware of the poor human rights situation in Iran but wanted to show some of the pictures to the Authority to reveal the reality of life for ordinary people.

## **COUNTRY INFORMATION**

[79] With the letter dated 23 March 2009, Mr Anand provided 12 relevant country information reports which have been noted by the Authority.

## **SUBMISSIONS BY COUNSEL**

[80] Mr Anand provided a memorandum of counsel, dated 24 March 2009, which briefly summarised the appellant's claim, the RSB decision, jurisdiction of the Authority, general comments on credibility the "real chance" of persecution, the

human rights situation, Refugee Convention reason and general conclusions. These have all been taken into account by the Authority.

[81] Additional submissions relating to credibility issues were raised in a letter dated 20 April 2009. These are considered in the assessment of the appellant's case which follows.

[82] In his final submissions, Mr Anand referred the Authority to specific parts of the country information he had provided, particularly stressing the lack of freedom of expression in Iran and the references to detention and persons being persecuted for trying to exercise their freedom of expression. He referred us to a summary of the human rights situation in *Refugee Appeal Nos 76107-76110* (26 November 2007) [56]-[57].

[83] He submitted that the appellant had been truthful in providing his evidence to the Authority and that his disclosure of previous lies to the first Authority should not completely undermine this claim. The Authority was required to look at the changed circumstances and the basis of the new claim. In particular, if there were doubts on issues such as where FF had been detained, the Authority should exercise the benefit of the doubt in favour of the appellant on such credibility issues.

## **THE ISSUES**

[84] 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."

[85] 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 SECOND CLAIM**

### **CREDIBILITY**

[86] For reasons set out below, we do not accept that the Iranian authorities have obtained prejudicial information that the appellant sent to the computer of his sister, FF, that was anti-regime or anti-Islamic. The Authority considers the appellant and his brother have fabricated a case in this regard using the claimed incident of his sister, FF, as the pretext for implicating the appellant in anti-regime activities.

[87] Our reasons for rejecting credibility and substantial parts of the appellant's claim and his brother's supporting evidence, follow:

### **THE APPELLANT'S LACK OF CREDIBILITY**

[88] The appellant's evidence both in his first appeal and in this appeal, together with the evidence of his brother in both appeals has been considered in the round and cumulatively leads us to the assessment that, due to inconsistencies, implausibilities and improbable coincidences in timing, it simply cannot be relied upon as a truthful account of the incidents the appellant now raises as the basis for his second claim. The principal reasons are set out below.

[89] Section s129P(9) of the Immigration Act 1987, as counsel rightly pointed out in his letter of 20 April 2009, states:

"In any appeal involving a subsequent claim, the claimant may not challenge any finding of credibility or fact made by the Authority in relation to a previous claim, and the Authority may rely on such findings."

[90] In this case, the Authority adopts the negative credibility findings set out between [81] and [134] of the first appeal. These findings pointed to serious credibility shortfalls on a number of matters raised by the appellant, and by AA, in the evidence they gave in support of the first claim. The appellant, and his brother AA, were found to lack credibility not just on one, or some minor issues, but substantive parts of the evidence, including: the relationship between the appellant and AA ([82]-[84]), the relationship and contacts with family members and associates ([85]), applications for admission under the Refugee Family Quota category ([86]-[90]), the journey to New Zealand ([91]-[95]), the arrest and escape in 2004 ([96]-[103]), the authenticity of the arrest warrant produced ([104]-[107]) and the appellant's response to prejudicial information ([108]-[111]).

[91] Mr Anand, in his letter of 20 April 2009, submitted that while the Authority may rely on the previous credibility findings in assessing this present appeal, however the fabricated account given in the past is not conclusive of the appellant lacking credibility in the present appeal and that the appellant's new claim ought to be considered on its own merits and facts. We agree with that submission. However, Mr Anand went on to submit that factors now weighing in favour of the appellant's credibility, including consistency of the account with country information and the fact that he had given a reasonable explanation for falsehoods in the previous claim meant it was fair "to consider the false details made in the previous claim were readily admitted by the appellant at the time of the second claim". We are not entirely sure as to the core point of this submission but must note that in subsequent claims, previous lack of credibility in the earlier appeal is clearly relevant as a factor to be taken into account in the general assessment of credibility of the appellant (and indeed witnesses) in any subsequent claim. As in this second claim, all of the evidence, including the findings from the first appeal, must be assessed in the round. Both positive and negative credibility findings from the first appeal are thus factors, amongst others, the Authority has taken into account in reaching its ultimate conclusions on the lack of credibility of this appellant and AA. The fact that the appellant has now admitted providing false details in the past cannot somehow take the previous findings in the first claim out of the overall assessment now made in the second claim, or give any form of "absolution".

[92] When it was put to the appellant that in his first claim he had stated in October 2004 that he had had no contact with his family for some time and that this appeared to be inconsistent with the evidence he was now providing the appellant stated that, as he had stated at the beginning of the hearing, some parts of his previous claim were not true. He had not told the truth because the agent had told him that his case would not be accepted. He therefore invited the Authority not to go through his previous evidence as he was now telling the truth. When asked why he would lie about contact with his family once he was in New Zealand he stated that it was stupid and once he had started telling lies he was then bound up in continuing the lies. He was confused, mixed up and one lie led to another. He stated that in the midst of this he had asked his brother to lie for him as well in his first claim. He apologised.

[93] We therefore commence our assessment of the credibility of the appellant's second claim noting, from the first appeal decision, the history of falsehoods from

both the appellant and AA. Somewhat of necessity, many of the lies in the first claim have now been admitted to give *prima facie* credibility to this second claim.

### **COINCIDENTAL TIMING OF THE SECOND CLAIM**

[94] The appellant's first refugee claim was declined by this Authority on 16 November 2006. After that time, steps were being taken by Immigration New Zealand (INZ) officials and the appellant to obtain an Iranian passport to facilitate his removal. The pressure on the appellant by INZ appeared to increase. From the information on the file, this is particularly evident from a letter dated August 2008 (page 622) wherein INZ confirmed its advice to the appellant that he was now required to apply for a one-way travel document to facilitate his return to Iran. That letter also called for proof of a completed application being made to the Iranian Embassy by September 2008. Also, the appellant was reminded that he had been granted a conditional release by a District Court on the basis he would assist INZ to obtain travel documents. The dating of that letter, and the subsequent refugee application lodged on 20 October 2008, which makes reference to FF being arrested in the latter part of August, must be considered as amazingly, and fortuitously coincidental, particularly when almost two years had elapsed since the appellant's first appeal had been dismissed and INZ were then clearly taking serious steps towards the appellant's removal.

### **INCONSISTENCIES BETWEEN THE EVIDENCE OF THE APPELLANT AND AA**

[95] The appellant, in his evidence to the RSB (page 721 of the file), stated that the Iranian officials did not advise his family of the whereabouts of FF when she was detained. The family were so worried that her father contacted some friends in power to assist in locating FF. He had been unsuccessful. However AA, in his evidence to us, stated that the family found out that she was detained at the YY police station when the officials made their first visit to the family home. AA stated that EE informed them in the initial telephone call that the parents had been told that she was at the YY police station and so the family went to that police station that night although they did not actually see FF. When this was put to AA for comment, he stated the family knew where FF was all the time and that was the reason why they continued to go and look for her at the YY police station. When this discrepancy was put to the appellant, he stated the family knew the officials who came on the first night had come from the YY station, but "they" only found out where she had been detained after she was released. He said he and AA may

have talked to the family at different times and there may have been miscommunication between them. He stated that when he gave his reply to the RSB, it was a general answer and the family did not know where FF was held and “you cannot trust the officials”.

[96] Additionally, the appellant stated in his evidence to the RSB (page 724 of the file) that FF had been arrested with two of her friends and that the two friends were released the next day. However AA, in his evidence to us, said he did not know what had happened to the two friends or whether or not they had been released. When this discrepancy was put to him, he said it could be because he did not ask about the other people and that possibly the appellant received information that he did not.

[97] The appellant and AA both confirmed that they shared all the information that was provided to them from EE and other family members in relation to the claimed detention of FF, and family actions that followed. It was thus clear that considerable detail had been shared between the two brothers, who lived in the same house and shared telephone calls with the family on many occasions. We find it implausible therefore that information relating to the two friends and knowledge by the family of the place of detention of FF would be the subject of inconsistent evidence between these two brothers. We conclude that these inconsistencies are strong indicators of a fabricated claim.

#### **DELETION OF THE COMPUTER MATERIAL**

[98] The appellant’s evidence as to the material he had sent to FF, the timing and manner in which he deleted it from his computer and other matters relating to its storage and retrieval prior to and during the hearing was unsatisfactory in several respects.

[99] The appellant claims to have deleted all the emails sent to him by FF, including attachments, when he first heard of her arrest on Friday 22 August 2008. He says he went on to his “Hotmail” address and deleted all the material sent to him from FF, including emails which had photographs or other visual material attached. He also confirms that after that time, she has only ever sent him one further email from XX, consisting of text only and that he no longer has a copy of that last email. Further, he claims that the photographs he has submitted copies of (and which are on file) were photographs that FF had sent to him as attachments to emails, sent through Hotmail, prior to her arrest. He had saved



those pictures (without the emails) onto his computer desktop and that was why he was able to retrieve them for his lawyer who submitted some of them to the RSB.

[100] The appellant's file contains a copy of one of the photographs which he claims to have been sent by FF prior to her arrest and which was saved on to his computer prior to August 2008. On the bottom of the page is printed the URL address for a Hotmail account and the date 7 January 2009. This information indicates that the photograph was accessed through a Hotmail account on 7 January 2009, more than five months after FF's arrest. When asked to explain how he could have downloaded this material from his Hotmail address in January 2009 when he claims to have deleted it all in August 2008, the appellant stated that he could explain this. He had received an email from his sister which he had opened and then copied the picture received from it onto a USB storage device. When asked how the Hotmail address and date got on to the copy of the photographic attachment, he stated that it was from an email he received from FF when she was in hiding in XX. The Authority does not accept this explanation. It does not explain why the photograph would have the Hotmail url and January 2009 date on it when it had supposedly been deleted from Hotmail in August 2008. Neither does it sensibly explain how the date from one email (with no attachment) would mysteriously appear on to the printed copy of a completely separate image.

[101] On the first day of the hearing, the appellant told the Authority that he had copies of all the photographic images FF had sent him stored on the hard drive of his computer. He confirmed that he had saved them onto his computer when FF sent them as attachments. It was from his computer that he had then saved them onto a USB storage device which he provided to his lawyer who then printed them and submitted some of the printed copies to the RSB for inclusion in the appellant's file (pps 771-767). The appellant confirmed several times that he had all the submitted images, and more, still stored on his computer.

[102] At the end of the first day of the hearing, the Authority requested that the appellant bring the computer to the hearing the next day so that the images could be viewed on his computer. The purpose for doing so was that the stored images would have attached information as to the date they were created and modified, thereby indicating what date they were saved onto his computer. The Authority intended to analyse those dates to see whether they fit with the appellant's claims about when they were saved from the Hotmail address – that is, prior to 22 August 2009. However, when the Authority asked to see the computer and the images

saved on it, the appellant was unable to produce them. Initially, he provided the Authority with a USB storage device containing a number of images, but none of the images which were reproduced in printed form in the file. After further requests, he supplied the Authority with a USB flash drive showing some of the pictures. He (later) explained to the Authority that he had created this flash drive by saving the images from his original storage flash drive on to his computer hard drive and then transferring them from the hard drive on to a second flash drive which was provided to the Authority.

[103] However, when he produced the computer on the third day of hearing, all the images he had previously claimed were on the computer had, for some inexplicable reason, disappeared. He said that his computer had been infected by a virus on at least two occasions prior to the hearing (approximately six and two months previously) and that is why the images had disappeared. He could not explain why many other images he had saved on his computer had not been affected. Nor could he explain why the images were no longer on the computer when he claimed to have saved them onto his computer to create the flash drive for the Authority, just a few days before, save to repeat that his computer had been affected by a virus.

[104] When it was put to him that one view of the situation could be that the reason the photographs were no longer on his computer was that he had deleted them recently so that the Authority could not check from computer records when and from where the material had been accessed or downloaded, he stated that the Authority had to trust him. He had had a problem with his computer in the form of a virus and all the information had gone. When it was explained that this could be seen as a problem of credibility, because it was no longer possible to check when the photographic material was downloaded or anything else in relation to that material that would normally be held in the computer records, the appellant again replied that when he started to have problems with his computer then he just took the material from the USB memory stick and downloaded them to his computer. He had been doing this since the first days of his hearing even up to the evening before the last date of hearing. No matter which reasonable alternative we explored with him in this regard, the result was that the key photographs and material had disappeared. All his evidence in relation to the manner in which he had downloaded and sent the allegedly offending material to his sister was either exaggerated, confusing or implausible. We simply do not accept the changing and mobile evidence he gave in this regard.

### **SENDING DANGEROUS MATERIAL TO HIS SISTER**

[105] When asked why he would put his sister at risk by sending her such potentially dangerous material the appellant stated that it never crossed his mind that the Iranian authorities would ever be able to go to the “Inbox” of a person’s computer in Iran. He stated that many of the websites that he had taken material from and sent to his sister were blocked in Iran. When it was put to him that it appeared logical that passing such material to his sister in Iran could cause her problems he again stated that he never guessed that the authorities would make such checks.

[106] He claimed that he had started sending banned material to his sister in Iran about two years ago, a short time before his first claim had been declined. As part of his discussions with FF, once he started locating material she had asked him to send it to her so that they could later have talks about the pictures. When asked why he could not merely show her the material by video link, he stated that he did not have a printer (so that he could print out the material to show her) and that to send the actual picture was a clearer process. He stated that he therefore attached such material to emails and sent them to her. He had, however, kept no record of what he had sent and the emails and photographs were now not available on his computer as he had deleted them as soon as he heard that his sister had problems. He had asked a friend to see if they could be recovered but had found that would be an expensive process. Also, at one time during his RSB interview, they had said they would check to see if they could find out if the material could be recovered but he had not heard further from them.

### **LACK OF CORROBORATIVE EVIDENCE FROM FF**

[107] We found it implausible that after some six weeks in ZZ, and regular weekly contact between FF and the appellant, it was not possible for her to send some form of evidence in support of the appellant’s claim, even to establish she was in ZZ. This could have been done readily by letter, postcard, email or otherwise. Even when an additional 12 days was allowed to the appellant to provide such evidence, he was still unable to provide it, claiming that he had been unable to contact her during that period of time. All of this evidence appears inconsistent with his previous statements, and that of AA, that they had been in regular contact since she was in ZZ and, in addition, that their cousin had now gone to meet her in ZZ to assist her in leaving ZZ. We find the lack of reasonably available

corroborative evidence in this regard severely undermines the plausibility of FF even being in ZZ or out of Iran. Again, the evidence in this regard points strongly towards a fabricated claim.

#### **DELETION FROM 28 NOVEMBER 2008 STATEMENT**

[108] We found the appellant's explanation as to why he had included, and then deleted at a later date, a statement that he no longer wished to apply for refugee status in New Zealand but did not want to leave New Zealand on a travel document, to be unconvincing. The statement was clearly made after the alleged arrest of his sister FF on 19 August 2008, as it is referred to in para 6 of that statement. The appellant therefore clearly prepared and then submitted the statement as part of a second application for refugee status. Indeed, at para 14 of the statement, he refers to "my first application for refugee status" thus by implication the statement was prepared as part of a second claim. While this is not a substantive point, it contributes to the view that the second claim was a rushed, last-minute, contrived story, put together in a desperate bid to remain in New Zealand.

#### **FAMILY HOME/SECURITY FOR BAIL**

[109] The appellant provided a copy of a Farsi document with an English translation which he claims is evidence that on 7 September 2008 the home ownership papers for the family home have been surrendered to the Iranian authorities as a bail bond. However, the translation states it had been placed under a "ban" by the Public and Revolutionary Court. While the document sets out the name of the appellant's father as "purchaser", it provides no reference to his sister's detention or any onward linkage to the appellant's claim. We accordingly found it a document of no assistance to the appellant's case and therefore can place no weight upon it.

[110] The production by the appellant of the above document, allegedly placing the family home under a "banning" order, must also be seen in light of the totality of the evidence the appellant has presented, including significantly that he produced a false warrant of arrest in his first claim.

[111] While placing no weight on the alleged document from the Public and Revolutionary Court in Tehran, we also find it surprising that, after a period of some eight months, the Iranian authorities would have failed to take further steps

towards seizing the family home in response to the alleged breach of bail conditions by FF. The appellant could not give any explanation.

### **CONCLUSION ON CREDIBILITY**

[112] When all of these elements are cumulatively considered, we find that it leads to the unequivocal conclusion that the evidence of both the appellant and AA is unreliable and lacks credibility on the core issues. We find that this is a fabricated claim that has been somewhat hurriedly put together by the appellant when it became evident that serious steps towards his removal from New Zealand were being taken by INZ.

[113] Accordingly, the appellant has not produced credible evidence to establish his claim that there is a real chance of him being persecuted on return to Iran for any Convention reason.

[114] As the appellant has not provided credible evidence in support of his second claim that establishes any risk of harm whatsoever on return to Iran, the first issue must be answered in the negative and the second issue need not be determined.

[115] We are accordingly left with a situation where this appellant, who is accepted as being an Iranian national, would be returning to Iran with the profile only of him being a relatively young man who had spent several years in New Zealand and who had attempted to obtain a passport from the Iranian authorities in New Zealand when under some pressure by INZ. This leaves him with nothing more than him being a returning overstayer from this country. Such a profile or predicament, on the country information available, does not present him with any real chance of being persecuted. At most, he is at risk of possible questioning, on his return, in relation to minor immigration issues. He may be the subject of some prosecution in that regard, but we do not consider that the country information indicates in any way that that would rise to the level of being persecuted.

**CONCLUSION**

[116] For the reasons mentioned above, the Authority finds the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

"A R Mackey"  
A R Mackey  
Chairman