

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76393

AT AUCKLAND

Before: A N Molloy (Member)

Counsel for the Appellant: The appellant represented himself

Appearing for the Department of Labour: A Longdill

Dates of Hearing: 28, 29 October & 6 November 2009

Date of Decision: 23 June 2010

DECISION

[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), cancelling the refugee status of the appellant pursuant to s129L(1)(b) of the Immigration Act 1987 (the Act).

INTRODUCTION

[2] The appellant, an Iranian man in his mid-20s, was granted refugee status by the RSB in March 2002. For the purposes of his refugee application, the appellant claimed that he had fled from Iran in 1998 after unwittingly becoming associated with a political opponent of the Islamic regime. It has since become apparent that his Iranian passport bears a notation which indicates that he was not living in Iran for most of the period during which his difficulties supposedly arose.

[3] In this context, the RSB issued a 'cancellation notice' to the appellant in June 2007. After interviewing the appellant in November 2008 and May 2009, the RSB issued a decision dated 26 June 2009 in which it found that his refugee

status may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information (referred to below as “fraud”). It is from that decision that the appellant now appeals.

APPLICATION FOR ADJOURNMENT

[4] On the first morning of the appeal hearing the appellant sought an adjournment. He claimed to have learned the previous evening that his father was critically ill in hospital in Tehran and was not expected to live. As a result, the appellant claimed that he was not in a fit state to attend the hearing. He also stated that he was waiting for his family to provide a document relevant to his appeal. He had first asked for the document about a month earlier, but was not aware of when or even if it would be made available.

[5] The Authority agreed to provide the appellant with an opportunity to obtain written confirmation about his father’s illness and about his prognosis. The hearing was to be reconvened the following day on the basis that the matter would be considered afresh, taking any additional information into account.

[6] When the appellant appeared again the following morning, he indicated that he had been unable to obtain written confirmation from the hospital where his father was being treated. He also confirmed that he no longer wished to pursue his application for an adjournment and that he preferred instead to proceed with the hearing in order to dispose of it as soon as possible.

JURISDICTION

[7] The appeal reached the Authority following the determination of a refugee status officer who exercised her function under Section 129L(1) (b) of the Act:

...determining whether a decision to recognise a person as a refugee was properly made, in any case where it appears that the recognition given by a refugee status officer (but not by the Authority) may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information, and determining to cease to recognise the person as a refugee in such a case if appropriate.

[8] Where, as here, a refugee status officer ceases to recognise a person’s refugee status in exercising their function under that section, that person is entitled to appeal to the Authority under s129O(2) of the Act, which provides that:

A person who is dissatisfied with a decision of a refugee status officer on any of the matters referred to in section 129L(1)(a) to (e) and (2) in relation to that person may appeal to the Refugee Status Appeals Authority against the officer's decision.

[9] There are two stages to the inquiry undertaken by the Authority on appeal. First, it must be determined whether the refugee status of the person “may have been” procured by fraud, forgery, false or misleading representation, or concealment of relevant information. If so, the Authority must then determine whether it is appropriate to “cease to recognise” the appellant as a refugee. This will turn upon whether the appellant currently meets the criteria for refugee status under the Refugee Convention: *Refugee Appeal No 75392* (7 December 2005) [10]-[12]; see also *Refugee Appeal No 75574* [2009] NZAR 355.

[10] Because the hearing of an appeal of this nature is largely inquisitorial, it is not entirely appropriate to refer to a burden or onus of proof as those are terms which sit more comfortably within an adversarial context. The Authority's view is that in cancellation proceedings, the DOL has the responsibility to present such evidence as it has in its possession by which it can be said that the grant of refugee status “may have been” procured by fraud, forgery, false or misleading representation or concealment of relevant information. It is important to add that “may have been” does not require the Authority to find that refugee status was procured by fraud. In *Refugee Appeal No 75563* (2 June 2006) the Authority held that:

...the term ‘may have been’ signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion. Beyond that it is not realistic to define an expression that is deliberately imprecise. (at para [20]).

[11] In order to properly assess the issues raised by this appeal, the Authority will first summarise the basis upon which the appellant obtained refugee status. The Authority will then set out the basis upon which the RSB reached its decision to cancel the appellant’s refugee status and the basis upon which the appellant appeals, before turning to address the issues raised.

THE APPELLANT'S ORIGINAL CLAIM FOR REFUGEE STATUS

[12] The appellant’s claimed predicament arose from his friendship with a man called XX, whom he met in around 1995. Prior to their meeting the appellant had lived a life free from any particular difficulty and free of any negative interaction with the Iranian authorities. He had first obtained a passport after completing his compulsory military service during the early 1990s. He later renewed his passport

in around 1996.

[13] The appellant and XX became friends over time. At one point XX informed the appellant that he was a member of SAVAK, the intelligence section of the former Iranian government. The appellant attended five or six clandestine meetings with XX, although he did not know what the meetings were about or why they had been convened, as he was not invited to be present during or to participate in the discussions.

[14] The appellant sometimes delivered bundles of documents for XX, but did not know what the bundles contained. He also allowed XX to store documents in his shop premises from time to time. Again, he did not know anything about the nature of those documents.

[15] One day in early 1998, the appellant was approached by a mutual friend of his and XX, whom he had not seen for approximately two years. The friend informed him that XX had been arrested and said that any of his associates should flee. The appellant immediately left Tehran and went to stay with a friend in the north of Iran. He remained there for a month while his father made arrangements for him to leave Iran. His father paid bribes totalling several thousand US dollars to facilitate his departure.

[16] The appellant left in February 1998 using his own passport and an air ticket arranged for him by his father. He remained in Thailand for a few weeks. While there he returned his Iranian passport to his father in Iran and obtained a false passport which he used to leave Thailand. He arrived in New Zealand in April 1998, and applied for refugee status shortly after his arrival.

[17] The appellant's father was subsequently detained and mistreated by the Iranian authorities. They were looking for information as to the appellant's whereabouts. The Iranian authorities continued to visit the appellant's parents' home in search for the appellant up until the end of 1999. The appellant subsequently learned that XX had been executed.

[18] The appellant was interviewed by the RSB in December 1998. There was a long delay between the appellant's original interview by the refugee status officer in 1998 and the decision of the RSB recognising him as a refugee in March 2002. This unfortunate delay may be attributable in part to the pressure placed upon the refugee status determination system in New Zealand by the number of refugee applicants at that time.

[19] During the interim the appellant asked his family to send him his Iranian passport. INZ endorsed the passport with a work permit. Also during the interim the RSB had forwarded an interview report to the appellant, setting out the refugee status officer's understanding of the appellant's account, and seeking clarification of various matters. The RSB had also asked the appellant to produce his passport, which he eventually did in September 2001.

Events subsequent to grant of refugee status

[20] In September 2003, the appellant used his Iranian passport to leave New Zealand in order to take a vacation in Malaysia. In December of that year he was arrested and charged with an offence under the Misuse of Drugs Act 1975. He was convicted and, in August 2004, sentenced to a term of imprisonment for possessing methamphetamine for supply. He was released in early 2009.

[21] In April 2007, the RSB obtained a translation of various entries in the appellant's Iranian passport, including a notation which indicates that the appellant was not in Iran between June 1995 and January 1998. This is significant because all salient parts of the appellant's core claim are supposed to have taken place in Iran during the three year period in question; he met XX; XX was arrested; their friendship developed; the appellant went into hiding and the Iranian authorities began to search for him.

The "cancellation notice"

[22] On 7 June 2007, a (different) refugee status officer issued a "Notice of Intended Determination Concerning Loss of Refugee Status" (the cancellation notice) which was served upon the appellant in June 2007. The cancellation notice advised the appellant that the refugee status officer intended making a determination which may result in the loss of his refugee status. It identified the following grounds:

- (a) it is apparent from the appellant's Iranian passport that he was not resident in Iran during the period when he claimed he was befriended by XX; and
- (b) the appellant's new Iranian passport was issued on 28 February 1998, at a time when he was supposedly in hiding in the north of Iran.

[23] In effect the DOL submits that, if the passport notation is genuine, and if the appellant was outside Iran between 1995 and February 1998, then the account upon which he relied in order to obtain refugee status cannot be true. Further, the

fact that the Iranian authorities issued the appellant with a new passport in February 1998 appears to contradict his claim that he was in hiding from the authorities at that time. It is also inconsistent with evidence given by the appellant during his original interview with the RSB in 1998 that he had obtained his passport around two years prior to his departure from Iran in 1998 (that is, some time in 1996).

The appellant's response to the cancellation notice

[24] The appellant has consistently denied that he procured refugee status by fraud. He maintains that his original account is correct in every relevant particular. He also asserts that he did not intend to conceal any information and that he produced his passport to the RSB before his claim for refugee status was determined.

THE DOL'S CASE ON APPEAL

[25] The DOL's case comprises the documentary evidence compiled during the course of arriving at its determination in connection with the appellant's loss of refugee status. This includes, among other documents, the file relating to the appellant's claim for refugee status, a record of his conviction and sentencing in 2004 for an offence under the Misuse of Drugs Act 1975, a photocopy of his Iranian passport and a translation of a notation which appears in his passport.

[26] The DOL called one witness, Greig Young, the refugee status officer who made the decision to cancel the appellant's refugee status. Mr Young gave evidence in person and confirmed the content of a written statement dated 7 October 2009 which he had prepared for the purposes of the appeal.

[27] Counsel for the DOL provided written submissions in advance of the hearing, under cover of a letter dated 28 October 2009 and a written synopsis by way of closing submissions on 5 November 2009. She also made additional oral submissions both before and following the appeal interview with the Authority.

THE APPELLANT'S CASE ON APPEAL

[28] The appellant maintains that the account he gave when he applied for refugee status is entirely truthful. He says that he left Iran because he was at risk

of being detained and seriously harmed by the Iranian authorities, who were pursuing him because of his association with XX, a political opponent of the Iranian government.

[29] The appellant said that he had lived in Tehran with his family at all relevant times until he fled to the north of Iran shortly before leaving to come to New Zealand.

[30] He met and befriended XX in around 1996 while operating a business selling spare parts for motor vehicles. The appellant fled to the north of Iran after he learned of XX's arrest through a mutual friend in late 1998. The friend informed the appellant that the authorities were pursuing associates of XX.

[31] The appellant had allowed XX to store material in his storage facility. He did not know what the materials comprised. However he believes that the Iranian authorities discovered them and that they may implicate the appellant in the context of XX's political activities.

[32] While in hiding the appellant made contact with his family. He learned that some of XX's associates had been arrested. The appellant's father suggested that he ought to leave the country and then made the necessary arrangements to bring that about. The father renewed the appellant's passport.

[33] The appellant returned to Tehran two or three days before he was to leave. He stayed with a friend. The night before his departure the appellant's father gave him his passport and an airline ticket and told him that he would be met at the airport by someone who knew what had to be done to ensure his safe departure through the emigration procedures at the airport.

[34] In due course the appellant made contact at the airport with a man he had not previously met. The man took his passport and travel documents and returned approximately three quarters of an hour later. He handed the appellant a boarding pass and gave him instructions about how to proceed through customs. The appellant left without difficulty and later obtained further assistance in Thailand, where he obtained the false passport that he used to travel to New Zealand.

[35] The appellant said that he initially intended to leave Iran temporarily to see what would happen. He later learned that in the course of searching for him the authorities had detained and questioned his father more than once. He was also informed that a court summons had been served upon his family at their home in Tehran approximately one month after he arrived in New Zealand in April 1998.

The summons required the appellant to appear in court on a particular date. The appellant also learned that some of XX's friends had been executed while he was in prison.

Material provided to the Authority

[36] Prior to the appeal hearing the appellant informed the Authority in writing that he was unable to provide any documentary evidence because many of his belongings had gone missing while he was in prison. However the DOL file which was prepared for the hearing contained the documents relied upon by the appellant when he sought refugee status and the appellant produced a copy of his Iranian passport in compliance with a direction from the Authority.

[37] The appellant told the Authority on the first day of the appeal hearing that he was waiting on a document from his family in Iran. No document has been produced.

[38] The Authority turns to address the first stage of its inquiry.

ASSESSMENT OF THE APPEAL

Stage One: Whether the decision to recognise the appellant as a refugee may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information

[39] The Authority finds that the grant of refugee status to the appellant may have been procured by fraud, forgery, false or misleading representation or concealment of information.

[40] In reaching that conclusion the Authority takes into account the fact that the appellant's passport contained a notation in Farsi which, when translated, disclosed information that contradicts his original account.

[41] The appellant now claims that the notation is false and that it does not reflect the truth about his location between 1995 and 1998. However his explanation is not credible, for reasons expanded upon below. Further, the appellant proved to be a deceptive, inconsistent and unreliable witness in various other respects, the cumulative impact of which leads the Authority to reject his credibility.

[42] The Authority's reasons are set out below.

Appellant's claim that passport notation is false is not credible

The appellant's explanations for the notation in his passport

[43] The appellant claims that the notation in his passport is not genuine. He claims that his father had the false notation endorsed into his passport and says that its existence is entirely consistent with his claim that his father paid bribes to secure the appellant's safe departure from Iran.

[44] When asked why a 'false' notation was endorsed in his passport, the appellant said that it was to provide him with an alibi. He said that if he was confronted by the Iranian authorities as he attempted to leave Iran, they would believe that the appellant could not have befriended XX, and by implication could not be associated with his wrongdoing, because he had been away from Iran.

[45] The appellant's explanation is rejected.

[46] The appellant had initially told the Authority that when he left Iran in 1999 he was not aware that his passport contained such a notation. He said that he and his father only had a limited time together the night before he left Iran and the father had not explained the significance of the notation when handing the passport to him.

[47] The Authority notes that this explanation contradicts the information the appellant gave to the refugee status officer during his cancellation interview that he did not see his father before his departure and that he had obtained his passport from another person at the airport on the day of his departure. When asked to explain why he had told Mr Young that he had never seen his father at the airport, the appellant simply said "No comment".

[48] However, even putting that evasive answer to one side, the appellant's explanation is implausible. If the father had gone to the trouble of having a notation endorsed in the passport in order to provide an alibi to assist the appellant, it is inevitable that he would have taken the obvious step of informing the appellant of that fact. It would have taken no time to draw this to the appellant's attention. Indeed, not drawing the existence of the 'false' notation to the appellant's attention could have made his predicament worse in that he would not have been prepared to field questions from the Iranian authorities as to his whereabouts during the period in question.

When the appellant learned of the notation's significance

[49] The appellant's evidence about when he asked his father for an explanation to the meaning of the notation in his passport was also mobile and inconsistent.

[50] The appellant told the Authority that he did not know of the notation's existence until after he left Iran. He had noticed the notation when he was in Thailand in 1998, just before he sent the passport back to his father in Iran. He told the Authority that he did not ask his father about the notation at that time (in 1998) because it was not important to him. At that time his focus had been on getting out of Iran.

[51] He said that it was not until he received notification of the cancellation proceedings from INZ while he was in prison, in 2007, that he contacted his father to discuss the notation. It was only then that his father explained that the notation was inserted into the passport as part of the bribery package, in order to provide the appellant with an alibi.

[52] When pressed about the apparent implausibility of his father providing an alibi but omitting to tell the appellant about it, the appellant then contradicted his earlier testimony by stating that he *had* asked his father about this notation when he arrived in New Zealand in 1998.

[53] The appellant went further and claimed that he referred to his father's arrangements during the course of his application for refugee status, albeit that he may not have specifically told the RSB that his father obtained a passport bearing a false notation. However there is no such information in the appellant's refugee claim, in his supporting statement in the transcript of his interview with the refugee status officer, in the interview report or the decision granting him refugee status. It is clear that the appellant did not tell the RSB about the "false" notation in his passport when he applied for refugee status.

Additional lies told during the appeal hearing

[54] The appellant's general credibility is further undermined by additional discrepancies which came to light during the appeal hearing.

Court document

[55] The Authority does not believe the appellant's belated claim to have been the subject of a summons to appear in court.

[56] On the first day of the appeal hearing, the appellant claimed that a court

summons had been served upon his family, requiring the appellant to appear in court. The summons was served approximately one month after the appellant arrived in New Zealand in April 1998.

[57] The appellant was unable to provide a copy of the document. He told the Authority that his father sent a copy of this document to the appellant's (then) girlfriend in New Zealand in 2007, while the appellant was in prison. However he is no longer in contact with that woman and he does not know what became of the document.

[58] The appellant initially told the Authority that he learned of the existence of this document one month after it was served upon his family. If that were so, then it follows that the appellant would have known of the existence of the summons before he was first interviewed by the RSB in late 1998.

[59] However the appellant had never previously disclosed the existence of this document before the appeal hearing. He did not refer to it in the statement he filed in support of his original claim for refugee status in December 1998 and he did not refer to it during his interview with the RSB that month.

[60] When the implications of this became apparent to the appellant he changed his evidence and told the Authority that he had only found out about the document after he was interviewed by INZ in 2007, although he later repeated that he had received it in 1998, prior to his interview with the RSB.

[61] However the appellant's failure to refer to the existence of this document extends to the cancellation process. He did not refer to the document during either of his two interviews with the refugee status officer in November 2008 or May 2009.

[62] When asked to explain why he has not referred to the summons previously, the appellant claimed that he had not believed the summons would be of any relevance or assistance. He said that it was simply a document summoning him to the public court. It was not significant because it did not refer to any accusation or charge against him.

[63] The Authority rejects that explanation. The importance of such a document lies not in the level of detail which it contained, but in the fact that, if genuine, it would have corroborated the appellant's claim to have been the subject of official interest at a time and in a manner consistent with the manner in which he was seeking to obtain refugee status in 1998.

[64] If the document had truly existed, and if the appellant had been made aware of it shortly after his arrival in New Zealand, it is inevitable that he would have brought it to the attention of the officer determining his refugee status. Likewise, if he had been made aware of it in 2007, it is inevitable that he would have referred to its existence during his cancellation interviews.

[65] The appellant's belated reference to such a document is not credible, and his mobile and evolving account of when it came to his attention underlines the Authority's impression that the appellant is not a witness whose evidence can be relied upon.

Renewal of Iranian passport in New Zealand

[66] The appellant informed the Authority that he lost his Iranian passport in around November 2003 and that he had reported its loss to the New Zealand Police around that time. He said that he had not sought to replace his Iranian passport after its loss, and nor had he ever attempted to renew or extend it from New Zealand.

[67] This is demonstrably untrue. Various documents on the INZ file confirm (and the appellant did not dispute) that the appellant travelled to Malaysia in September 2003. Yet the INZ file contains a photocopy of the appellant's passport which confirms that it was issued in Iran on 28 February 1998 and that it was due to expire in February 2003, some six months before he travelled to Malaysia.

[68] It was therefore put to the appellant that either his Iranian passport had been extended, which he denied; or he had travelled to Malaysia on a different travel document, which he also denied, or he had been able to depart and re-enter New Zealand and enter and depart from Malaysia on an expired travel document, which is implausible.

[69] The appellant finally admitted that he had renewed his Iranian passport while he was living in New Zealand, before he travelled to Malaysia in 2003. He said that he had initially denied this because he wanted to avoid having to explain how it was possible.

[70] The difficulty caused by such an obvious lie is not necessarily related to the fact that the appellant was able to renew his Iranian passport without difficulty.

Rather it is that the appellant has demonstrated his willingness to withhold the truth and to overtly mislead the Authority, despite taking an affirmation promising that his evidence would be truthful. Given that the appellant's credibility is directly in issue, the significance of this cannot be understated.

Evidence inconsistent with evidence given in support of original claim

[71] The appellant has also given conflicting evidence with respect to various aspects of his original claim for refugee status.

Father's detention

[72] In December 1998 the appellant informed the refugee status officer who determined his claim for refugee status that his father had been detained by the Iranian authorities on two separate occasions, for about five or six days. In contrast, he told the Authority that his father was taken for questioning for approximately one day, but was never detained. When this discrepancy was put to the appellant, he said that he did not believe that the refugee status officer correctly recorded his answer.

[73] The Authority does not accept that explanation. The transcript of the appellant's original interview with the refugee status officer in 1998 refers specifically to two periods of detention. The answer recorded as having been given by the appellant differentiates between the first detention, when the father was said to have been mistreated, and the second detention, when he was merely interrogated. The Authority does not accept that the answer was incorrectly recorded. Rather, it finds that the appellant has simply failed to recall accurately details of a false account which he had given some years earlier.

When he met XX

[74] Throughout his cancellation interviews, the appellant has claimed that he knew XX for less than two years. This contradicts his earlier claims that he knew XX for around three years.

[75] The Authority pointed out to the appellant that his written application for refugee status contains a statement to the effect that that he had known XX for three years. The appellant said that he did not know who had completed the form,

but was adamant that it was a mistake and that he was not at fault.

[76] However the appellant had provided a handwritten statement in December 1998 in which he confirmed that he had known XX for around three years. Further, the transcript of the appellant's interview in 1998 indicates that he had also told the refugee status officer that he had known XX for nearly three years.

[77] In explanation, the appellant claimed that perhaps this detail was simply not so important to him. However he had again proved to be a mobile and evasive witness and the Authority gained the clear impression that the appellant was attempting to provide answers which best suited his interests rather than giving truthful evidence.

Date and issue of the passport

[78] When he was interviewed in 1998 the appellant told the refugee status officer that he had obtained his passport about two years prior to his departure from Iran in 1998; that is, some time in 1996. It is apparent that the appellant's passport was in fact issued in early 1998, at a time when he claims that he was under investigation by the Iranian authorities in connection with his association with a man who has since been executed by the regime.

[79] The DOL submits that this discrepancy is significant. It submits that the actual date of issue undermines the appellant's claim to have been at risk in early 1998. It also submits that the appellant's oral testimony indicates that he was aware of the importance of such an inference, and that he sought to prevent that inference from arising. The Authority agrees.

Summary of findings

[80] As already indicated, "may have been" does not require the Authority to find that refugee status was procured by fraud, and signals a standard of proof that is lower than the standard of probabilities but higher than mere suspicion: *Refugee Appeal No 75563* (2 June 2006), [20].

[81] In any event the Authority finds that whichever standard of proof was adopted, the "may have been" threshold is reached in this case.

[82] The appellant claims that he has never intentionally misled INZ. He says that the reason he did not give his passport to INZ when he applied for refugee status in 1998 is that he did not have his passport with him at that time. It was

subsequently sent to him by his family in around 2000. The appellant claims that when he eventually handed the passport to the RSB he did so voluntarily. He says that the RSB had possession of his passport with the offending notation endorsed within it at the time he was granted refugee status and therefore says in effect that he has not intended to mislead at all.

[83] While there may be some superficial attraction to that contention, it does not withstand scrutiny, and it is not a true reflection of what happened.

[84] The appellant did not 'volunteer' to provide the passport to the RSO. On the contrary, he had ignored or at best overlooked an earlier request to provide it. He eventually complied only after the refugee status officer made a further request because it became apparent that the appellant had submitted the passport to the New Zealand Immigration Service in order to have permits endorsed upon it.

[85] Further, while it is true that the RSB was in possession of the passport at the time the appellant was granted refugee status, they had not obtained a translation of the notation which indicates that the appellant was living outside Iran during the period in question, and the appellant did nothing to draw the notation to the attention of the RSB.

[86] In any event, the Authority is satisfied that the appellant is not a truthful witness. His evidence was consistently mobile, evasive, inconsistent and implausible and the Authority finds that the account relied upon by the appellant for the purpose of his refugee claim is false. There is no reason to believe that the notation in question is not genuine. On the contrary, it reflects the true position; the appellant was not present in Iran during the period between June 1995 and January 1998, and the account relied upon by the appellant when he claimed refugee status cannot be true.

[87] The Authority is satisfied that the appellant left Iran legally and without difficulty in 1998, using his own passport. He has been able to renew his passport, again without difficulty, and has never been of interest to the Iranian authorities.

[88] The Authority now turns to the second stage of the inquiry.

Stage two: Whether the appellant should cease to be recognised as a refugee

[89] Having found that the appellant's grant of refugee status may have been procured by fraud, forgery, false or misleading representation or concealment of

misleading information, the Authority moves to the second stage of the two-stage test. This requires the Authority to determine whether the appellant currently meets the criteria for refugee status.

THE ISSUES

[90] 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.

[91] 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?

[92] The appellant has not provided any case for refugee status other than the claim which he first put forward upon arrival in New Zealand. During the cancellation interviews with the RSB he made some reference to having converted to Zoroastrianism while in prison in New Zealand. However he made it clear to the Authority that he did not seek to rely upon this for the purposes of his appeal. He presented no evidence in this regard.

[93] The Authority finds that the appellant is a young male of Iranian nationality. It appears that he lived outside Iran between 1995 and 1998 before returning to Iran briefly and leaving again in 1998. There is no credible evidence that he was a person of interest to the Iranian authorities when he left Iran in 1998 or that he would be a person of interest to them now. He left Iran without difficulty, using his own Iranian passport. There is no credible evidence that he did so unlawfully. He has renewed his passport without difficulty while in New Zealand and is either in possession of, or is able to obtain, a genuine Iranian passport.

[94] He has been outside Iran for some years, but has lived in New Zealand lawfully since 1998. Even if the appellant were to be questioned at the airport as

to his whereabouts since leaving Iran, there is no reason why the Iranian authorities would learn of his conviction or his claim for refugee status in New Zealand, and no evidence that he would be at risk of being seriously harmed if they did.

[95] Taking into account all of the appellant's circumstances, and considering their cumulative effect, the Authority finds that objectively, on the facts found, there is no real chance of the appellant being persecuted for a Convention reason if he were to return to Iran. Accordingly, the first principal issue is answered in the negative and the second does not need to be considered.

CONCLUSION

[96] The following determinations are made:

- (a) The decision to recognise the appellant as a refugee may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information.
- (b) It is appropriate to cease to recognise the appellant as a refugee.

[97] The appeal is therefore dismissed.

"A N Molloy"
A N Molloy
Member