REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75679

AT AUCKLAND

Before:	A N Molloy (Chairperson) J Baddeley (Member)
Counsel for the Appellant:	D Mansouri-Rad
Appearing for the NZIS:	A Sandberg
Dates of Hearing:	17, 18 & 19 January 2006
Date of Decision:	15 March 2007

DECISION

---

[1] The appellant is a national of the Islamic Republic of Iran, now aged in his mid-30s. He obtained refugee status in New Zealand in 1998. The Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) has subsequently issued a decision cancelling his refugee status pursuant to s129L(1)(b) of the Immigration Act 1987 (the Act). He appeals against that decision under s129O(2) of the Act.

JURISDICTION

[2] Under s129L(1)(b) of the Act, a refugee status officer has the function of determining whether to cease to recognise a person as a refugee in any case where it appears that the recognition of refugee status by a refugee status officer may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information ("fraud").

[3] There are two stages to the Authority's enquiry on appeal. The Authority must first determine whether the appellant's refugee status "may" have been procured by fraud.

[4] If so, the Authority must then determine whether to “cease to recognise” the appellant as a refugee; that is, to cancel his refugee status. This does not automatically follow from a finding that refugee status may have been procured by fraud but depends upon whether the appellant currently meets the criteria for refugee status. This second stage requires the Authority to undertake its orthodox enquiry into whether the respondent satisfies the definition of a refugee as set out in the Refugee Convention; *Refugee Appeal No 75392* (7 December 2005) [10]-[12].

[5] Mr Mansouri-Rad submitted that “he burden of proof to determine if the original decision was properly made lies with the Refugee Status Officer", and that “the burden of proof ought to remain with Refugee Status Officer on appeal to the Authority”.

[6] Because this is an inquisitorial process, it is not entirely appropriate to refer to the burden or onus of proof. However, the Authority’s view is that in cancellation proceedings, the Department of Labour 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.

[7] Counsel also referred to the UNHCR Consultant Cancellation of Refugee Status, Legal and Protection Policy Research Series (March 2003), and submitted that there must also be proved an intention to deceive the determining body, which requires a higher standard of proof than a “may have been procured” test.

[8] We do not accept this submission. The Authority must apply the test set out in the Act, which imposes no requirement to prove an intention to deceive. The Authority has found that the term “may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information” is deliberately imprecise and signals a standard of proof lower than the balance of probabilities but higher than mere suspicion; *Refugee Appeal No 75563* (2 June 2006).

THE APPELLANT’S ORIGINAL CLAIM FOR REFUGEE STATUS

[9] In order to properly assess the issues which arise on appeal, it is necessary to set out the basis upon which the appellant obtained refugee status. This is summarised below.

[10] The appellant claimed that he had a well-founded fear of being persecuted by the Iranian authorities because of his political opinion. His difficulties arose as a result of being appointed as a bodyguard to an important official within the Iranian prison hierarchy while performing his compulsory military service during the mid-1990s. Before that time, the appellant had not experienced any difficulties relevant to his application for refugee status.

[11] During the course of his employment, the appellant was forced to witness the arbitrary execution of a number of prisoners. He also witnessed the administration of corporal punishment, often involving severe acts of mutilation.

[12] Over a period of time, the appellant grew increasingly uneasy with his role. He eventually decided that he had to leave his job. This was not an easy decision to make because he was the sole bread-winner in his family. The appellant felt that he needed to convince his family members that he had good reason to leave his secure job with its steady income. In order to do so, the appellant managed to obtain an illicit video which showed atrocities similar to those which he had been forced to witness. After watching this video, towards the end of 1995, his family members supported his decision to resign.

[13] Unfortunately the appellant forgot to return the video which he was not supposed to have. About six months after he left his job in mid-late 1996, the appellant's family home was raided and the video was discovered. The appellant was detained for six months before being brought before the Revolutionary Court. He was tried and convicted of political offences and sentenced to 10 years in prison.

[14] Before being transported to his eventual place of detention, the appellant bribed a guard and managed to escape. He left Iran unlawfully by sea and eventually made his way to New Zealand, where he lodged a claim for refugee status upon his arrival in October 1997. After coming to New Zealand, the appellant heard that the sentence had been increased to 20 years in his absence.

[15] After interviewing the appellant in March 1998, a refugee status officer issued a decision granting him refugee status on 3 July 1998. The appellant subsequently obtained permanent residence in New Zealand. A returning resident's visa was endorsed in his Iranian passport on 15 March 2001.

THE DECISION TO CANCEL REFUGEE STATUS

[16] A refugee status officer (not the one who had granted the appellant's original claim for refugee status in 1998) caused a Notice of Intended Determination Concerning Loss of Refugee Status (the notice) to be served on the appellant on 1 April 2005.

[17] The notice recorded the refugee status officer's preliminary view that the grant of refugee status to the appellant may have been improperly made by reason of it having been procured by fraud. He reached that view because the appellant, having obtained refugee status upon the basis that he was in fear of being executed if returned to Iran, had subsequently chosen to return to Iran on at least five occasions using his own genuine Iranian passport.

[18] The appellant chose not to attend an interview with the RSB. Instead he responded to the notice on 28 April 2005, when his counsel forwarded written submissions together with a statement signed by the appellant and dated "April 2005". He forwarded an additional statement, dated 8 June 2005, in response to additional questions submitted by the RSB.

[19] On 30 June 2005, the RSB published its decision cancelling the appellant's refugee status pursuant to s129L(1)(b) of the Act. The appellant appeals against that decision.

THE CASE FOR THE DEPARTMENT OF LABOUR

[20] The refugee status officer who issued the decision to cancel the appellant's refugee status appeared as a witness. He confirmed the contents of a written statement, dated 19 June 2006, that had been filed in opposition to the appeal. Annexed to this statement were items of country information, including a document concerning procedures at Mehrabad Airport.

[21] This was augmented by documentary evidence compiled in the course of the refugee status officer's determination concerning the loss of the appellant's refugee status. Some of these documents related to the appellant's refugee claim. Others related to his travel in 2003 and his application for permanent residence in New Zealand.

[22] In essence, the Department of Labour's position is that the appellant's claim

that he was forced to leave Iran illegally is fundamentally inconsistent with his ability to return to Iran so frequently without any undue difficulty, using his own passport. The respondent concluded for the purposes of its decision, and submitted for the purposes of the appeal, that the appellant had never been accused of serious crimes by the authorities; that he had never been tried, convicted and sentenced by the Revolutionary Court; and that he was not at risk of being persecuted in Iran when he left to come to New Zealand in 1997.

[23] The respondent lodged various documents, including the following:

a) statements by the refugee status officer, dated 9 November 2005 and 17 November 2005, together with various attachments;

b) a letter to the Authority dated 18 November 2005, enclosing the file relating to the appellant's wife;

c) counsel's written submissions dated 11 January 2005; and

d) a letter from the Department of Labour to the Authority and to counsel for the appellant dated 13 January 2006, enclosing various documents for the purposes of disclosure.

[24] After the hearing before the Authority, the respondent lodged final written submissions under cover of a letter dated 3 February 2006.

THE APPELLANT'S CASE

[25] The appellant admitted that he had returned to Iran on six occasions. He said that his return on each occasion was able to be explained in a manner consistent with his original claim for refugee status. He maintained the truth of his original account and claimed that any subsequent concerns were attributable not to his dishonesty, but to problems with interpretation during the course of his original application for refugee status and his subsequent appeal. The account which the appellant provided to the Authority on appeal is summarised below.

[26] He first decided to return to Iran shortly after the death of his grandfather in early 2001. The appellant particularly wanted to help his mother through her period of grief because he had been unable to help when his grandmother had died some time earlier.

[27] The appellant made contact with a friend who was the head of the *Herasat*, or security, at Mehrabad Airport in Tehran. The friend was able to assure the appellant that he was not on any blacklist and that there was no impediment to him returning to Iran safely through the airport. The appellant then borrowed money from a woman whom he had recently met so that he could make the trip, and applied for a returning resident's visa which was inserted into his Iranian passport on 15 March 2001. The appellant left New Zealand the following day. He entered and remained in Iran for about three months without difficulty. He stayed with his mother, maintained a low profile and experienced no difficulties.

[28] The appellant decided to return to New Zealand via Malaysia, where he remained unlawfully after his entry permit expired. He had been told that he could earn a lot of money acting as a *de facto* interpreter for groups of Iranians who had gone there to shop and hoped to earn enough to pay off his debts in New Zealand. Unfortunately the appellant ran into difficulties in Malaysia which delayed his return to New Zealand for some time.

[29] When he decided to leave Malaysia in September 2001, the appellant realised that his unlawful immigration status may cause him some problems on departing. Accordingly he handed his passport to a contact who promised to resolve this for him. When the contact failed to return the passport promptly as promised, the appellant threatened to go to the police. The passport was duly returned, however it had been endorsed with a number of false entry and exit stamps, and the photograph of the appellant had been cut with a blade.

[30] A day or two later, the appellant was attacked and robbed near his hotel. He was admitted to hospital for surgery to repair serious injuries which he received during the attack. The Malaysian authorities allowed the appellant to remain in Malaysia while he recuperated. He was granted an amnesty in respect of his overstaying, and he was not charged for the medical treatment he received.

[31] The appellant's doctors advised him to return to New Zealand to have further corrective surgery. Unfortunately this was not as easy as he expected. The appellant had inadvertently allowed his Iranian passport to expire and the Iranian embassy initially refused to issue him with a further passport because his original passport had been damaged.

[32] Even after he eventually received a new Iranian passport at the end of 2001, the NZIS noted that it did not have a New Zealand returning resident's visa

endorsed in it. When the appellant contacted the New Zealand embassy in Singapore to arrange for a returning resident's visa to be endorsed in his new passport, he faced further difficulties. The embassy informed him that he needed to make an appointment to see them in person. He travelled to Singapore to that end in October 2001. However he missed his appointment with the NZIS due to the disabling injuries which hampered him.

[33] Rather than remain in Singapore over the weekend and reschedule his appointment for the following week, the appellant decided that it would be better to try to resolve his problems from Iran. He returned there for the second time, via Malaysia, in October 2001. In keeping with his earlier experience, the appellant was able to enter through the airport in Tehran without any difficulty. Immediately after his return, the appellant was admitted to a hospital where he underwent further corrective surgery for his injuries.

[34] He then asked a friend in New Zealand to try to help him have the returning resident's visa endorsed in his new passport. However he grew tired of waiting and left Iran again in December 2001, hoping that the lack of a visa would not matter. It did. He was stopped in Dubai. After two days he was allowed to fly to Hong Kong, where he met with the same problem. He made contact with the New Zealand embassy in Hong Kong, but was informed that only the Singapore office was able to issue a visa. He was forced to return to Iran for the third time, via Dubai, in early December 2001, four or five days after his previous departure.

[35] Upon arriving at the airport, the appellant was questioned by the Iranian immigration authorities about what had happened to him in Malaysia, and about the state of his old passport, which was taken from him. His mother secured his release after a short period of time by acting as his surety and surrendering the deeds to her house.

[36] The appellant was told that he would need to attend an interview with the Iranian immigration service three or four weeks later. He decided not to keep the appointment out of fear that the problems which led to his departure from Iran in 1997 would come to light. After staying with his sister for two or three weeks, the appellant left Tehran and went to a small town in the north of Iran where he stayed at a holiday house owned by his mother's wealthy sister.

[37] From there, he contacted the friend of a friend who was able to satisfy him that the concerns of the Iranian immigration authorities were of a minor nature. By

the judicious payment of a sum of money, the appellant was able to avoid any problems.

[38] The appellant then borrowed $1,000 from his brother, which he used to bribe someone in the immigration department to return his passport. In the meantime he liaised with a lawyer in New Zealand, who advised him to make another appointment with the New Zealand embassy in Singapore.

[39] In February 2002, the appellant flew to Singapore, where he was interviewed by a representative of the NZIS who questioned him about a variety of matters. The NZIS had noted that the appellant had returned to Iran despite having claimed, for the purposes of his application for refugee status, that he would be executed if he ever returned there. The NZIS had also intercepted an Iranian national who had attempted to gain entry into New Zealand using a false New Zealand passport which contained all of the appellant's personal details. As a result of their concerns, the NZIS were not prepared to endorse a returning resident's visa in the appellant's new passport at that time. The appellant therefore returned to Iran for the fourth time.

[40] The appellant's New Zealand-based lawyer eventually persuaded the NZIS to transfer the appellant's returning resident's visa into his new Iranian passport and the appellant was finally able to return to New Zealand in August 2002. He left Iran without difficulty.

[41] By the end of 2003, the appellant was missing his family in Iran. He resigned from his job and, for the fifth time, returned to Iran where he remained for two months without experiencing any difficulties. The appellant returned to Iran for the sixth time in 2004 for similar reasons, and again stayed with family members for two or three months. The appellant had realised that, provided he kept away from the Iranian authorities, he would have no difficulties in Iran.

THE APPELLANT'S MARRIAGE TO BB

[42] After he obtained refugee status, the appellant met AA, another expatriate Iranian living in New Zealand. After some discussions, the appellant agreed to marry AA's sister, BB, and to sponsor her travel from Iran to New Zealand.

[43] The appellant asked his mother to meet with BB in Iran. His mother agreed, but having met BB, she did not approve and refused to facilitate the marriage by

proxy. Subsequently, the appellant was told by BB that his mother had relented and the marriage went ahead. The appellant later found out that this was untrue and that his mother's signature had been forged on the necessary documents. However, at the time BB arrived in New Zealand in March 2001, the appellant did not know this and he believed that he and BB were going to have an Islamic marriage ceremony in New Zealand.

[44] BB contacted the appellant a week after her arrival. She asked him to take her to Income Support so that she could register for a benefit, but she said that she did not want to live with the appellant at that stage.

[45] That was around the time that the appellant's grandfather died. At the time he went to Iran in 2001, the appellant hoped that he would be able to reconcile his marital situation with BB once he returned. He was later told by AA that BB had obtained permanent residence in New Zealand and that she did not need him anymore.

[46] The appellant felt that he had been used by AA and BB to gain entry into New Zealand. He later visited the NZIS and provided them with a written statement outlining his concerns about BB.

DOCUMENTS PRODUCED BY THE APPELLANT

[47] The appellant produced various documents before his appeal hearing before the Authority, including:

a) letters to the Authority dated 20 and 21 September 2005, providing particulars as required by the Authority's Minute dated 15 September 2005;

b) a letter from counsel, dated 18 October 2005, enclosing the appellant's supplementary statement, dated 18 October 2005; a memorandum of items in dispute in the RSB decision; a letter from Dr Greenman, dated 20 September 2005; and an assessment by a neurologist dated 14 January 2003;

c) a psychiatric report dated 18 October 2005;

d) a further statement by the appellant dated 16 December 2005;

e) counsel's written submissions dated 12 January 2006; and

f) a copy of counsel's letter to Dr Greenman dated 11 October 2005.

[48] During the hearing, the appellant provided the Authority with a translation of parts of a daily newspaper originally printed in Farsi, relating to the ability of Iranians to return to Iran.

[49] Following the hearing, the appellant lodged additional documents, including:

a) a letter dated 24 January 2006, enclosing a 40th day memorial notice relating to the appellant's grandfather, together with an English translation;

b) a letter, dated 3 February 2006, enclosing eight medical documents relating to the appellant's mother, together with English translations; and

c) counsel's final written submissions under cover of a letter dated 17 February 2006.

THE AUTHORITY'S FINDINGS

STAGE ONE: REFUGEE STATUS MAY HAVE BEEN PROCURED BY FRAUD AND THE LIKE

[50] The Authority finds that the recognition of the appellant as a refugee may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information.

[51] We find that the appellant was not a credible witness. Having heard his testimony over three days, and having considered all of the evidence available to us, the Authority is satisfied that the appellant was not brought before the Revolutionary Court or the Revolutionary Prosecutor's Office in Iran; that he was not tried, convicted or sentenced by either body; that he did not escape from their custody and make his way out of Iran illegally at that time; and that he was not a person of interest to the Iranian authorities at the time he first left Iran to come to New Zealand in 1997.

[52] The Authority also finds that the appellant was able to return to Iran without difficulty on several occasions between 2001 and 2004, because there was no adverse interest in him on the part of the Iranian authorities. His claim to the contrary is rejected as untruthful.

[53] On the evidence we have heard, the Authority is satisfied that the appellant fraudulently advanced a claim for refugee status based on the assertion of facts which he knew to be untrue.

[54] In this case it is immaterial whether the phrase “may have been procured by fraud [and the like]” in s129L(1)(b) be understood as imposing a standard lower than or equal to the balance of probabilities or, alternatively, a standard beyond reasonable doubt. Whichever standard is used, we find that the statutory test has been satisfied.

[55] There is no evidence that the appellant was entitled to refugee status for any reason at the time he was granted it. Our reasons follow.

THE APPELLANT WAS NOT TRIED AND CONVICTED IN THE REVOLUTIONARY COURT

[56] The appellant obtained refugee status on the basis that he had been arrested, tried and convicted of offences in the Iranian Revolutionary Court, following which he had been sentenced to a term of imprisonment of 10 years. After obtaining refugee status, the appellant subsequently returned to Iran on no fewer than six occasions. With the exception of one occasion, when he claims to have been questioned about irregularities in his old passport, the appellant did not experience any difficulties when entering or departing from Iran.

[57] The appellant’s ability to enter and leave Iran without difficulty calls into question the truth of his claim to have been tried and convicted in the Revolutionary Court. His evidence was that, before he returned to Iran for the first time, he received an assurance from a friend that his name did not appear on any blacklist. The obvious question raised by that information is “Why not?”

[58] The RSB raised this question when it wrote to the appellant prior to reaching its decision to cancel his refugee status. The appellant’s response was that there had been a misunderstanding. He stated that he had never been taken to the Revolutionary Court, nor had he ever claimed to have escaped from the Revolutionary Court. Instead, he claimed that he had been taken to the Revolutionary Prosecution Office, from where he escaped.

[59] He developed this line of evidence during the appeal hearing before the

Authority. In effect he now claimed that when he left Iran in 1997, he was merely facing prosecution for offences with which he had been charged. The appellant accepted that if he had been convicted of those offences and sentenced in respect of them, then it would have been impossible for him to return to Iran. He would have been apprehended upon arriving at the airport and no-one, including his contact in the *Herasat*, could have helped him.

[60] The appellant said that he had been facing a conviction and a prison sentence of 10 years, but he denied ever having claimed that a conviction had been entered or that a sentence had actually been imposed. According to the appellant, this confusion had arisen because of interpreting problems which failed to convey the difference between the Revolutionary Prosecutor's Office and the Revolutionary Court.

[61] Having managed to escape in 1997, the appellant explained, his problems have diminished with the effluxion of time. He also stated that the person who was in charge of the Revolutionary Court at the time the appellant left Iran is no longer in office. Accordingly, the appellant's profile has diminished to the point where he has been able to return to Iran without incident.

[62] For these reasons, the appellant claimed that his ability to return to Iran without difficulty does not indicate that his original grant of refugee may have been procured by fraud.

[63] The Authority is in no doubt that the appellant's explanation is a fabrication aimed at trying to cover up his original deception. Our reasons for reaching this finding follow.

[64] It is clear from the transcript of the RSB interview with the appellant in March 1998 before granting him refugee status, that the appellant was asked questions at various times about the charges brought against him in Iran. At one point he was asked:

> "Did you actually appear in the Revolutionary Court on charges or were you just in the office?"

To which he replied:

> "Rev Court."

Subsequently the appellant was asked additional questions to which he provided answers which are contrary to the claims he now maintains:

> "Q: Before your escape were you convicted and sentenced for your offences?

A: Yes.

Q: What were you sentenced to?

A: 10 years' imprisonment in a remote town."

[65] Following the interview with the appellant, the refugee status officer forwarded an interview report to the appellant's then legal advisers. The purpose of the report was to set out the refugee status officer's understanding of the appellant's case and to invite comment upon it prior to a decision being made. The interview report contains the following statement:

> "After being held in [X] prison for about five or six months, [the appellant] was taken to the Revolutionary Court where he was charged with a number of offences including giving information to opponents of the regime. He was convicted of these offences and was sentenced to 10 years' imprisonment in the remote town of [X]."

[66] The appellant's legal advisers responded in a letter dated 13 May 1998. The response comprised a detailed letter, six pages in length. Far from contradicting the refugee status officer's understanding of the appellant's evidence, the letter reinforced it, stating that:

> "[The appellant] was held in custody for six months before being taken before the Revolutionary **Court**. He illegally left Iran approximately five days after fleeing the Court."

It also contains the following statement:

> "What occurred was that the person guarding [the appellant] after being **sentenced** was known to him."

And also:

> "These are very serious allegations for which he was brought before the Revolutionary **Court**. After a brief **hearing**, he was **convicted** and **sentenced to 10 years' imprisonment**. After he escaped, this has been increased to 20. …
>
> He has been brought before the **Revolutionary Court** and **sentenced to a lengthy period of imprisonment**. The jurisdiction of the Revolutionary Court as amended in 1993 encompasses matters deemed to be offences against the internal and external security of the country. … His actions were obviously thought to compromise this security." [emphasis added]

[67] In his statement filed in April 2005 in response to the RSB cancellation proceeding, the appellant claimed that some of the confusion is due to discrepancies caused by inaccurate translation.

[68] Likewise, despite the extracts from correspondence and documents located on the file, counsel submitted that the appellant's claim to have been misunderstood and misinterpreted is plausible. He referred the Authority to the appellant's original statement in support of his application for refugee status,

prepared in 1997. At p2 the appellant stated:

> "After some months, they took me to the Revolutionary **Prosecutor's** office and in there I managed to escape from my official." [emphasis added]

[69] However, the penultimate paragraph of the statement also contains the following statement:

> "The **Court** had **sentenced** me for 10 years in jail in a city called [X]." [emphasis added]

[70] The appellant's original statement, his testimony during his RSB interview, and the content of his then lawyer's letter in response to the RSB interview report all state that the appellant was tried and convicted of offences in the Revolutionary Court, for which he was sentenced to a lengthy term of imprisonment. These are unambiguous statements. They are not the product of interpreting problems. The Authority rejects the submission made by counsel for the appellant that the refugee status officer who granted the appellant refugee status in 1999 was under the "mistaken impression" that the appellant claimed to have appeared before the Revolutionary Court; and that counsel who had acted for the appellant in respect of his original application had made a similar "assumption".

[71] There is a more recent document which also undermines the appellant's attempted explanation. In support of his appeal against the decision to cancel his refugee status, the appellant provided a report prepared by a psychiatrist, dated 18 October 2005. The report outlines the trauma disclosed by the appellant to the psychiatrist, expressed in the following terms:

> "… he was arrested by the regime and for six months placed in X prison where he was interrogated and tortured before finally being brought to a hearing in front of the Revolutionary **Court.**" [emphasis added].

[72] Under cross-examination from Mr Sandberg, the appellant confirmed that he attended that assessment alone and that there were no interpreters present. This is significant because the only reason why the psychiatrist would have referred to the Revolutionary Court, as opposed to the Revolutionary Prosecutor's Office, was because the appellant had used the term "Revolutionary Court".

[73] When asked why he had told the psychiatrist that he had been brought before the Revolutionary Court, the appellant prevaricated. He tried to deflect the question and did not answer it.

[74] The Authority is satisfied that he could not answer it. There was no room for confusion or interpreting errors. It is quite clear that the appellant made a claim

for the purposes of his original application for refugee status from which he now seeks to resile because it is undermined by his ability to enter and leave Iran without difficulty. He now says that he was not tried, convicted and sentenced to a term of 10 years' imprisonment by the Iranian Revolutionary Court. He says that this is a misunderstanding. He says further that the misunderstanding is irrelevant because all of those factors would have come to pass if he had not taken the opportunity to escape.

[75] We do not believe him. His change of evidence is no more than an attempt to explain why he was able to return to Iran without being arrested. As he conceded, anyone who had been convicted by the Revolutionary Court in Iran would be identified by the Iranian authorities at the port of entry should they seek to return to Iran subsequently.

[76] The fact that the appellant was able to enter and depart from Iran so frequently is an indication that he is of no interest to the Iranian authorities. In all the circumstances of this case, we are also satisfied that it indicates that this appellant was never at risk of being persecuted.

[77] We turn to various other aspects of the appellant's evidence which support the Authority's conclusion that he was a dishonest witness.

INCONSISTENT EVIDENCE RELATING TO THE APPELLANT'S ESCAPE

[78] For the purposes of his original application for refugee status in 1997, the appellant claimed that he escaped from custody at the Revolutionary Prosecutor's Office in 1997 while being guarded by a friend. He offered the friend money to allow him to escape, and convinced the friend that the friend would not get into trouble. The friend agreed and, on that basis, the appellant was able to get away.

[79] In contrast, the appellant told the Authority during the hearing of his cancellation appeal that he was able to escape by simply taking advantage of an opportunity which arose when the person guarding him was looking for or smoking a cigarette. The appellant said that he was very familiar with the area in which he was being held because of the role he had previously held in his employment, and he had grasped an opportunity to escape.

[80] On the face of it, the simplicity of his escape appears somewhat implausible, given that the appellant was accused of apparently serious offences,

and had been held in a high security prison for six months. The explanation is of even more concern because it is substantively different from the original manner in which the appellant claimed to have escaped.

EASE OF ENTRY AND EXIT INCONSISTENT WITH FEAR OF BEING PERSECUTED

[81] There are various other factors which indicate that the appellant was not acting in the manner of someone who was truly concerned for his safety in Iran. For example, he allowed his Iranian passport to expire while he was in Malaysia. He says that he simply did not notice that it had expired. Given that the need to renew his passport would inevitably mean that he would have to interact with the Iranian authorities, that seems like an extraordinary risk to have taken.

[82] Further, when confronted with the fact that he had missed his appointment with the New Zealand Immigration Service in Singapore in 2001, the appellant opted to return to Malaysia and then to Iran. He did not want to wait in Singapore over the weekend and try to obtain a further appointment in person the following Monday.

[83] He explained that because of his injuries, he was experiencing great difficulty in doing anything practical. That is a flippant and unconvincing answer. However difficult his injuries made life for him, the appellant would have faced the same difficulties whether he was in Singapore, Malaysia, or Iran. Instead of remaining in Singapore for two days, he returned to Malaysia where he also remained for two days before going back to Iran. Once back in Iran, he was admitted to a public hospital where he underwent further operations to his hands. These actions are not consistent with his claim that he was trying to remain incognito and to maintain a low profile.

ADDITIONAL CREDIBILITY CONCERNS

[84] There were various other aspects of the appellant's evidence which support the Authority's finding that he is not a credible witness.

[85] The level of assistance which the appellant was able to obtain at various key times is implausible.

[86] Within a fortnight of the death of his grandfather, the appellant was able to borrow a significant amount of money from a woman he had only just met, and to contact and obtain assistance from an old acquaintance in the *Herasat* in Iran, to whom he had not spoken since his departure from Iran more than four years earlier, and who did not even know the appellant had left Iran.

[87] At a later time, the appellant was able to call upon a favour from the police chief who happened to be in charge of his immigration file. Later still, he was able to summon a favour from an acquaintance who arranged for his old passport to be returned to him for long enough to have a returning resident's visa endorsed in his new Iranian passport by the New Zealand High Commission in Tehran.

[88] We also take into account, for the purposes of determining the appellant's general credibility, the circumstances of his marriage to BB. The appellant told the Authority that he had not known BB before he came to New Zealand from Iran, and claimed that he met her through her sister, AA, who was living in New Zealand. AA was also unknown to the appellant before he came to New Zealand. He said that his wife had forged signatures which enabled the marriage to proceed by proxy in Iran.

[89] This evidence is contrary to the content of a letter which the appellant admitted that he had written to the NZIS in 2000, in support of his wife's application to come to New Zealand. In that letter the appellant claimed that he had been a long-time friend of BB, and that they were in fact cousins. The appellant stated in his letter that they had been fond of each other before the appellant left Iran, and that they had remained in touch by telephone since he had left. The appellant's letter states that his mother discussed the proposed marriage with BB's family in Iran on his behalf.

[90] The appellant told the Authority that the content of that letter was untrue. He admitted that these were lies and said that he regretted them.

[91] It is clear that the appellant has lied about his marriage either to the NZIS or to the Authority. While the evidence relating to his marriage is not directly relevant to his account, the appellant's demonstrated willingness to knowingly provide false information with the intent of deceiving New Zealand's Immigration authorities is a matter which we can properly take into account in the context of this appeal.

MEDICAL EVIDENCE

[92] The Authority turns to the various items of medical evidence available in connection with the appellant. These include a brief letter from a neurologist in January 2003; a brief letter from a general practitioner, dated September 2005, and a three-page report from a consultant psychiatrist, dated 18 October 2005, in connection with a consultation with the appellant some five days previously. The documents support the appellant's claim to have received injuries to his arms in 2001, and refer to some ongoing problems with headaches.

[93] We note that the psychiatric report indicates that the appellant may have post traumatic stress disorder, and mood disorder. However, there is nothing in this evidence which causes the Authority to alter its view about the appellant's credibility. The psychiatric report was prepared on the basis of a single consultation with the appellant. It appears that the account given to the psychiatrist was broadly consistent with the account which we have found to be wholly false.

[94] This evidence is considered for the sake of completeness, as the appellant did not seek to make any particular claims with regard to his mental state.

[95] While the psychiatrist concluded that the appellant displayed some impairment of concentration, he also found there to be little impairment to the appellant's long-term memory. His opinion was that neither was likely to create any difficulties in respect of the hearing before the Authority.

[96] Unlike the psychiatrist, the Authority has had the benefit of hearing and observing all of the witnesses, and considering all of the evidence in this appeal. Nothing in the psychiatrists report causes us to have any doubt that the appellant is a dishonest witness who made a false claim for refugee status in New Zealand.

CONCLUSIONS AS TO WHETHER THE ORIGINAL GRANT OF REFUGEE STATUS MAY HAVE BEEN PROCURED BY FRAUD, FORGERY, FALSE OR MISLEADING REPRESENTATION, OR CONCEALMENT OF RELEVANT INFORMATION

[97] For all of the reasons given, 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 relevant information".

[98] It is clear that the appellant was granted refugee status on the basis of his

fraud, that is, his false refugee claim. There is no evidence that the appellant was at risk of being persecuted in Iran for any reason when he sought and obtained refugee status in New Zealand in 1998.

STAGE TWO

WHETHER THE APPELLANT SHOULD CEASE TO BE RECOGNISED AS A REFUGEE

[99] Having found that the appellant's grant of refugee status may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information, it is necessary to consider the second stage of the two stage test, that is, whether or not the appellant currently meets the criteria for refugee status.

THE ISSUES

[100] 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."

[101] 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?

[102] The Authority will deal with each in turn.

[103] The Authority has already found that when the appellant left Iran in 1997, he was not a person of concern to the Iranian authorities for the reasons which he has maintained to date.

[104] In his opening written submissions, counsel for the appellant stated that the appellant claims that he still has a well-founded fear of being persecuted for a Convention reason.

[105] In part, this submission was based upon the appellant's claim that he was never convicted by the Revolutionary Court, simply detained by the Revolutionary Prosecutor's Office. Counsel submitted that therefore there would remain a dormant file relating to the appellant, which placed him at risk of being persecuted in the future should the file for some reason be reactivated. The argument is that he has been lucky up until now, but that an ongoing risk endures.

[106] The Authority has rejected the appellant's evidence to this effect. We have found that his belated claim to have been detained by the Revolutionary Prosecutor's Office is no more than a device aimed at explaining why the appellant could return to Iran without difficulty.

[107] The appellant provided no other case for refugee status other than the one which he originally presented. With the exception of one occasion at the end of 2001 when the appellant was questioned by the immigration authorities in Iran in connection with matters unrelated to his refugee status, the appellant has never had any difficulties while in Iran, or while entering or departing Iran, on the six occasions that he has done so since 2001. Further, no members of his family or friends have experienced any difficulties in connection with his return on any of those occasions.

[108] Given the absence of any credible evidence that the appellant faces a real chance of being persecuted in Iran for any reason at the date of this decision, the Authority finds that the first issue must be answered in the negative. Accordingly, the second does not arise.

CONCLUSION

[109] The following determinations are made:

(a) Refugee status 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.

[110] The appeal is therefore dismissed.

.....
A N Molloy
Chairperson