

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75989

AT AUCKLAND

<u>Before:</u>	M A Roche (Chairperson) S L Murphy (Member)
<u>Counsel for the Appellant:</u>	E Griffin
<u>Counsel for the Respondent:</u>	C Hurren
<u>Dates of Hearing:</u>	16 & 17 May 2007
<u>Date of Decision:</u>	14 June 2007

DECISION

[1] This is an appeal against a decision of a refugee status officer (RSO) of the Refugee Status Branch (RSB) of the Department of Labour (DOL), cancelling the refugee status of the appellant, a national of Iran, pursuant to s129L(1)(b) of the Immigration Act 1987 (the Act).

[2] The essential issue to be determined in this appeal is whether false details provided by the appellant as part of his refugee claim procured his recognition as a refugee.

JURISDICTIONAL ISSUES

[3] Pursuant to s129L(1)(b) of the Act, where a person has been recognised as a refugee by an RSO and where it appears such recognition may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information (hereinafter referred to as fraud), an RSO may determine to cease to recognise the person as a refugee. Such a decision may be appealed to this Authority pursuant to s129O(2) of the Act.

[4] If, however, the person was recognised as a refugee by this Authority, an RSO has no jurisdiction to cease such recognition. Instead, pursuant to s129L(1)(f)(ii), an RSO may apply to the Authority for a determination as to whether the Authority should cease to recognise a person as a refugee, in any case where recognition may have been procured by fraud.

[5] Whether the Authority is considering an appeal against a decision of an RSO under s129L(1)(b) (as is the case here) or an application for a determination under s129(1)(f)(ii), there are two stages to the Authority's enquiry. First, it must determine whether the refugee status of the appellant "may have been" procured by fraud. If so, it must then determine whether it is appropriate to "cease to recognise" the appellant as a refugee. This latter determination will depend on whether the appellant currently meets the criteria for refugee status set out in the Refugee Convention: *Refugee Appeal No 75392* (7 December 2005) [10]-[12].

[6] Given that these are inquisitorial proceedings, it is not entirely appropriate to talk in terms of the burden or onus of proof. Nonetheless, it is the Authority's view that, in "cancellation" proceedings, it is the responsibility of the DOL to present such evidence in its possession by which it can responsibly be said that the grant of refugee status may have been procured by fraud. It is also our view 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 that is lower than the balance of probabilities but higher than mere suspicion: *Refugee Appeal No 75563* (2 June 2006).

BACKGROUND

Appellant's refugee status

[7] The appellant is aged in his late thirties. He arrived in New Zealand on 11 May 1998, and claimed refugee status at the airport.

[8] The basis of the appellant's claim was that he had been involved with an illegal monarchist group in Iran and had assisted this group in various ways, including delivering material around the country for them. In March 1998, the Iranian authorities had discovered his activities, making it necessary for him to flee from Iran. After hiding within Iran for a brief period, in April 1998 he left Iran

illegally, without using a passport, by crossing the border to Pakistan. From there he travelled through various countries, eventually making his way to New Zealand.

[9] On 23 and 26 February 1999, the appellant was interviewed by the RSB in respect of his claim to be a refugee. In a decision dated 19 May 2000, the RSB accepted his claim and granted him refugee status.

CANCELLATION PROCEEDINGS

[10] On 3 August 2006, the appellant was served with a Notice of Intended Determination Concerning Loss of Refugee Status (the notice) in accordance with s129M of the Act and regulation 11 of the Immigration (Refugee Processing) Regulations 1999.

[11] In the notice, the RSO stated his preliminary view that the grant of refugee status conferred on the appellant may not have been properly made because it may have been procured by fraud and set out his reasons for reaching that view.

[12] At the core was the allegation that, rather than illegally departing Iran overland, the appellant appeared to have left Iran legally via Mehrabad airport, using a genuine passport issued in his own name. This, together with the fact that the appellant had extended his Iranian passport at the Iranian Embassy in New Zealand in July 2005, and had travelled to Iran using that passport in September 2005, suggested that his claim to have departed Iran illegally was false, that he did not fear the Iranian authorities, and that he was of no interest to them.

[13] The appellant elected not to be interviewed by the RSB in connection with the matters raised in the notice. However, his counsel provided the RSB with a written statement dated 1 October 2006 by the appellant in which he admitted that, in 1998, he had departed Iran through Mehrabad airport using his own genuine Iranian passport rather than illegally crossing the Pakistani border as he had claimed in his refugee application. He maintained, however, that all of the other information he had provided in support of his refugee claim had been true and correct.

[14] On 30 November 2006, the RSB published a decision cancelling the grant of refugee status conferred on the appellant on 19 May 2000. This led to his appeal to this Authority.

THE RESPONDENT'S CASE

[15] At the appeal hearing, the DOL's case consisted mainly of documentary evidence compiled in the course of the RSO's determination concerning the loss of the appellant's refugee status. Of particular relevance is a photocopy and certified translation of an Iranian passport in the name of the appellant issued on 16 November 1997 in Iran and reissued (extended) on 25 July 2005 in Wellington, New Zealand.

[16] The RSO appeared as a witness for the DOL and confirmed the contents of a written statement dated 26 April 2007 that had been filed in opposition to the appeal.

[17] Counsel for the DOL filed written opening submissions dated 10 May 2007.

THE APPELLANT'S CASE

[18] The appellant confirmed the content of his two written statements dated 1 October 2006 and 3 April 2007. He also gave oral evidence. A summary of the content of his statements and his oral evidence follows. An assessment of the whole of the evidence is made later in this decision.

[19] The appellant is from a large family that reside in Tehran. His family live in a complex in which his three paternal uncles and paternal grandparents also have apartments. One of these uncles, his uncle HB, is particularly close to him. After completing his military service, the appellant went into partnership with this uncle, running a clothing business in the Tehran bazaar.

[20] The appellant's uncle HB had been a student at the time of the Iranian revolution and had been involved at a high level with one of the groups that successfully overthrew the Pahlavi Monarchy. Accordingly, after the revolution, he was well connected with the new regime. He served the regime as a high level military commander in Kurdistan and, although he ceased to work for the government within three or four years of the revolution, he retained high level contacts within the Iranian regime.

[21] In 1997 the appellant applied for and obtained an Iranian passport. He used this passport in December 1997 to travel to Dubai for a holiday and a buying trip for his business.

[22] In early 1998, the appellant decided that he would take a holiday to Thailand during the Persian New Year in March. He asked his uncle HB to assist him to organise a visa for Thailand. His uncle took his passport and passed it on to a travel agent named ZZ. On 2 March 1998, HB returned from a buying trip in Turkey. Upon his return he transferred a credit for the sum of US\$1,450 onto the appellant's Iranian passport.

[23] While performing his military service, the appellant had become involved with the monarchist group *Sultanat Talaban* which advocates a constitutional monarchy for Iran. He continued his involvement with *Sultanat Talaban* after he left the military. This involvement consisted mainly of delivering anti-regime material to different locations in Iran.

[24] The method by which he did this was that items would be concealed in his car by his *Sultanat Talaban* contact in Tehran (who also became a close friend), SS. The appellant would drive his car to whichever city he was being sent to and deliver it to a different *Sultanat Talaban* agent there who would take the car away and remove the items before meeting the appellant at a prearranged place and returning the car to him.

[25] In March 1998, the appellant made such a delivery to Shiraz. However, when he returned to pick up his car from the *Sultanat Talaban* agent, his car and the agent were not at the planned meeting place. The appellant rang his *Sultanat Talaban* emergency contact, KK, who told him to ring back an hour later. The appellant left for Tehran, and after arriving, he telephoned KK again. He received no reply. He then went to KK's shop and saw that it was closed. The appellant assumed that KK had been arrested and feared that he would also be apprehended by the authorities. This was because his car could be traced to him, and in any case, he had left some personal documents in it.

[26] The appellant telephoned his mother who informed him that regime officials had been to their home looking for him and had searched the house and his room.

[27] After hearing this, the appellant travelled by taxi to Karaj where he went to the home of CC who was a friend of his uncle, HB. He asked CC to contact his

uncle for him. His uncle visited him in Karaj, and, over a period of several weeks, made arrangements for his escape from Iran. The uncle was assisted with these preparations by ZZ who was a travel agent but who also acted as a people smuggler and who could get people out of the country illegally.

[28] Over the weeks that followed, HB and ZZ formulated a plan whereby the appellant would be able to escape Iran across the Pakistani border and then flee overland to Europe. HB made a number of visits to the appellant at CC's apartment in Karaj in order to discuss these plans. Because HB was a doctor who made regular house calls to patients, he was able to visit the appellant without detection by the authorities.

[29] On the day that the appellant was due to depart, HB informed him that his departure had been postponed and that he would not be able to leave for a few more days.

[30] On 8 April 1998, HB arrived at CC's apartment early in the morning and informed the appellant that the plan had changed and that he was now to depart Iran through Mehrabad airport accompanied by ZZ. He instructed the appellant to follow ZZ through the airport and to copy everything he did. The appellant drove with HB and ZZ to the airport. At the airport he collected the foreign currency for which he had credits in his passport (the sum of US\$1,450 credited in March 1998 and a further sum of US\$500 credited in April 1998). The appellant then followed ZZ through the immigration departure area and presented his passport and ticket to the same official that ZZ did. He was given his boarding pass and was able to leave Iran, accompanied by ZZ, without difficulty.

[31] After arriving in Malaysia, the appellant and ZZ travelled to Singapore. They were planning to depart for Europe from Singapore but were unable to do so. Accordingly, after approximately one week in Singapore, they returned to Malaysia.

[32] Upon their second arrival in Malaysia, they went directly to a shopping mall where asylum seekers and agents tend to congregate. There, in a McDonald's restaurant, the appellant by chance met his brother-in-law, DD, who had fled Iran several months earlier after the Iranian authorities discovered that he and the appellant's sister, EE, were involved in anti-regime activities.

[33] Because he had been unsuccessful in his plan to travel to Europe, and because DD was travelling to New Zealand to meet EE who had already safely arrived there, the appellant decided to travel to New Zealand with DD. Using false passports provided to them by their respective agents, the two flew to Argentina together where they stayed briefly before flying to New Zealand on 11 May 1998. Both the appellant and his brother-in-law, DD, claimed refugee status at the airport.

[34] At the airport the appellant was interviewed by an immigration officer. In this interview he falsely claimed that he had departed Iran illegally over the Pakistan border. He did this because his agent ZZ had instructed him not to reveal that he had ever held an Iranian passport, and not to reveal that he had departed from Mehrabad airport, because he may get the people who had helped him at the airport in trouble.

[35] When the appellant was interviewed by the RSB in February 1999, he continued to follow ZZ's instructions and gave detailed information to the RSB about his overland journey out of Iran. He told the RSB that his agent was named ZZ but claimed that he had met him in Karachi, Pakistan and that a different man, "Hassan", had assisted him in departing from Iran.

[36] After being granted refugee status, the appellant met his wife, a national of a third country. The couple married in 2001.

[37] The appellant was granted New Zealand citizenship in 2002. After receiving New Zealand citizenship, he contacted his uncle HB in Iran and asked him to send him his Iranian passport. The passport expired on 16 November 2002.

[38] In 2005, the appellant came under considerable pressure from his family to return to Iran for a visit in order to see his elderly grandparents whom he had been unable to farewell properly when he fled Iran in 1998. In or around June 2005, he applied to the Iranian Embassy in Wellington for an extension to his passport which he obtained without difficulty.

[39] During the years since the appellant had fled Iran, the political climate had changed considerably. The appellant was aware that President Khatami had made a number of statements to the effect that Iranians living abroad, who had had problems with the regime, could now safely return to Iran. The appellant knew

of a number of Iranians in New Zealand who had had political difficulties in Iran but had been able to return there for visits with no problems. He also knew of a number of high profile critics of the regime who had safely returned to Iran from Europe and the United States.

[40] While making his decision about whether or not to return to Iran for a visit he had a discussion with his uncle, HB. His uncle advised him that although the new conservative president, President Ahmadinejad, had been voted into office, he had not yet appointed officials. Accordingly, his uncle advised the appellant that it was still safe for him to return to Iran but that, because President Ahmadinejad may appoint more hard-line officials in the future, it would be better for him to travel to Iran sooner rather than later.

[41] In September 2005, the appellant flew with his wife and baby son to Malaysia. From there, his wife and son travelled to the wife's home country. The appellant flew to Iran. He entered Iran using his own passport with no difficulty and attracted no interest from the airport officials.

[42] He remained in Iran for approximately four and a half weeks. For most of this time he stayed in his family's apartment complex in Tehran where his paternal grandparents resided. He also made a visit to his maternal grandparents and spent some time at his family's country villa.

[43] The appellant departed Iran on 21 October 2005 without difficulty. He then flew to meet his wife, with whom he spent approximately four and a half weeks, visiting his wife's family.

[44] Although the appellant was able to enter and leave Iran freely in 2005 and experienced no difficulties during the month he spent there, he does not believe that he could now live in Iran. At the appeal hearing, he explained there is no freedom in Iran, and that women are oppressed there.

[45] When asked by his counsel about his monarchist views, he expressed the opinion that Iran had a monarchist tradition and had been better off with a monarchy. He also believes that Iran should be a secular state. He believes that Iran is an unsafe place, where teenagers as young as 13 years old are armed by the state and are on the streets. It is a place where no one is safe because at any time when walking down the street you can be arbitrarily detained.

[46] Counsel for the appellant filed closing submissions dated 31 May 2007. On 13 June 2007 she filed three further documents. These were:

- (a) An undated unsigned translation of a further statement by the appellant.
- (b) A news article published on 31 July 2005, concerning the downwards movement of Iran in an international corruption-ranking system.
- (c) A translation of extracts from a book, "Behind the Scenes of the Revolution, Janar Shafizadeh's Confession".

[47] Counsel for the respondent also filed written closing submissions.

[48] All the material provided by the parties has been read and considered in the course of determining this appeal.

ASSESSMENT AS TO 'MAY HAVE BEEN'

Refugee recognition procured by fraud

[49] The Authority finds that the refugee status of the appellant may have been procured by fraud.

[50] The Authority did not find the appellant to be a truthful witness. Having heard his evidence over two days, it is satisfied that the appellant was not a person of interest to the Iranian authorities at the time of his departure from Iran in 1998.

[51] We find that the appellant advanced a false refugee claim to the New Zealand immigration authorities in 1998 and that, as part of this false claim, he concealed the fact that he had left Iran legally using his own passport because this fact may have indicated to the New Zealand immigration authorities that he was not a person of interest to the Iranian regime.

[52] The reasons for our findings are as follows:

Legal departure using his own passport

[53] In his written statements and in his oral evidence to the Authority, the appellant conceded that he misled immigration authorities in New Zealand on his arrival here. Specifically, he has admitted that his earlier claims never to have held an Iranian passport, never to have previously left Iran, and to have departed Iran illegally over a land border, were untrue.

[54] The appellant has admitted that he obtained an Iranian passport in 1997, that he used this passport for a holiday to Dubai in late 1997/early 1998, that in March 1998, he obtained a tourist visa in this passport for Thailand, that foreign currency credits were recorded in his passport on 2 March 1998 and 7 April 1998 and that, using this passport, he departed Iran lawfully, from Mehrabad airport on 8 April 1998.

[55] Despite these concessions, the appellant maintains that the facts as claimed and as found in his original refugee claim, upon which his grant of refugee status was based, were true and credible in every respect with the exception of details concerning his departure and his passport.

[56] At his RSB interview in February 1999, the appellant was questioned in considerable detail about his departure from Iran. In response, he provided an abundance of false details concerning his movements, the identities of the people who assisted him with his (supposed) overland departure, and his time allegedly spent in Pakistan. He seeks now to sever these false details from the remainder of his account which he asserts is not impugned by it.

[57] A similar argument was advanced by the appellant in *Refugee Appeal No 75802* (23 January 2007). The appellant in that case had also advanced a false claim to have left Iran illegally by land border when he had in fact departed via Mehrabad airport using his own passport. Like the appellant in this case, he also sought to sever the false details he had provided regarding his departure from Iran from the remainder of his claim. In that decision, the Authority stated at [57]:

“The Authority has had extensive experience in hearing refugee claims from Iranian nationals. Because of the nature of the Iranian regime, the agent of persecution in such claims is almost always the state. A person’s mode of departure from Iran is a highly significant component of their refugee claim. This is because a computerised blacklisting system prevents the departure of persons of interest to the regime whose names have been placed on the blacklist: Danish Immigration Service *Report on Fact Finding Mission to Iran 9-17 September 2000* (September 2000). Iran has a high degree of official corruption and, on a number of occasions, the Authority has accepted evidence that appellants have been able

to circumvent the blacklist through the use of contacts and the payment of bribes. Such claims however, receive strong scrutiny and have frequently been rejected.”

[58] The appellant has suggested that although he did conceal relevant information (the mode of his departure from Iran and the fact of his passport) from the New Zealand authorities, this concealment did not procure his grant of refugee status for the purpose of s129L(1)(b) of the Act.

[59] The Authority disagrees. The mode by which an Iranian asylum seeker departed from Iran is always a significant component of their refugee claim. Had the appellant disclosed to the RSO that he had left Mehrabad airport lawfully on his own passport, his claim would most likely have been less readily accepted and subjected to more severe scrutiny by the RSO. Such scrutiny would have included an examination of the entries in the appellant’s passport (including the currency transactions and the Thai visa) which, on their face at least, indicate that his departure from Iran was organised well in advance.

[60] In assessing whether the appellant had a well-founded fear of being persecuted in Iran, the RSB officer placed reliance on the fact of his illegal departure. In her decision granting him refugee status, she found:

“[The appellant’s] illegal departure from Iran would bring him to the immediate attention of the authorities if he were to return there by reason of his lack of any valid travel documentation for entry into Iran. Once his background is established through questioning, he would be the subject of further investigation. His monarchist activities give rise to a real chance that he will be detained, maltreated, if not tortured, and imprisoned quite possible for a lengthy period.” (*sic*)

[61] The RSO obviously accepted that the appellant had been involved in monarchist activities when making the above finding. However, this acceptance must be seen in the light of her acceptance of the fact that he made an illegal departure from Iran, necessitated by the Iranian authorities’ apprehension of his activities. The appellant’s activities which gave rise to his illegal departure, and his illegal departure itself, cannot be severed from each other in the manner suggested by the appellant, leaving his recognition as a refugee untainted. The appellant is burdened with the fact that his recognition as a refugee was premised in no small part on his illegal departure which was both a factor which aggravated his risk on return and circumstantial evidence of his status as a fugitive.

Time spent in Karaj

[62] The appellant's admission that he departed Iran on his own passport is not the only matter which leads us to find that his refugee status was procured by fraud. His evidence concerning his time spent in hiding in Karaj also supports this conclusion.

[63] When giving evidence to the Authority about the period he spent hiding in Karaj, the appellant provided details that were inconsistent with the information he had provided to the RSB. Following his RSB interview in February 1999, his then counsel was sent an interview report which included a number of written questions the RSB wished the appellant to answer. One of these was as follows:

"What is the name of the friend of [the appellant's] uncle with whom [the appellant] stayed in Karaj prior to his departure from Iran?"

[64] A name was supplied by the appellant through his counsel in answer to this question.

[65] At the hearing, the appellant stated that the friend of his uncle's with whom he stayed in Iran was named something entirely different. When asked why he had provided a different name to the RSB, he claimed that he had been trying to protect the person he had been staying with (referred to earlier in this decision as CC) in case his disclosure of his name to the immigration authorities in New Zealand would lead to difficulties for him. This explanation is not accepted.

[66] In his original refugee claim, the appellant provided the real names of his uncle and his two contacts in the *Sultanat Talaban* (KK and SS). When asked why he had provided KK's and SS's real names when it would appear they were at far greater risk of harm than CC, should details of his refugee claim be exposed in Iran, he claimed that because he had been unable to contact KK and SS, he thought they may have escaped from Iran and that therefore disclosing their names would not have made any difference. Given his lack of knowledge about their fate and the fact that it was equally possible that they had been apprehended and his disclosure of their names may have sealed their fate, the appellant's explanation is dismissed as fanciful.

[67] When asked why he gave his uncle's real name, he provided the strange explanation that his uncle was his relative and that if he had a problem then his

uncle had a problem as well but because CC was merely a family friend, the appellant decided not to mention his name in case he got into trouble.

[68] The Authority finds that the reason that the appellant gave a different name for CC in his evidence to us and to the RSB was that he had simply forgotten a detail of a false account.

[69] Another of the RSB's written questions concerning the appellant's time in Karaj concerned his uncle. This question was:

"Would the visits that [the appellant's] uncle made to him in Karaj have involved a degree of risk that he would lead the authorities to [the appellant], given the family connection, and the business relationship between the two men?"

[70] The written answer provided by the appellant, through his counsel, was as follows:

"Yes, there was obviously a risk involved that my uncle may have led the authorities to me. My uncle, however, is a doctor and the authorities would have had to follow him from house to house as he made his calls (and presumably searched the houses of all his calls) in order to find me."

[71] At the appeal hearing, however, the appellant gave evidence that although his uncle had once studied medicine, he had never practiced as a doctor and did not make house calls on patients as he had claimed to the RSB. When given the opportunity to explain why he had provided this false information to the RSB, he declined, without explanation, to comment.

[72] The appellant has conceded that he lied to the RSB about the identity of the man who sheltered him in hiding and the mechanism by which his uncle was able to visit him in hiding undetected in order to arrange his departure from Iran. Taken cumulatively with the concerns expressed above, these concessions lead the Authority to the conclusion that the claimed period of hiding in Karaj is another false episode in the appellant's refugee account. It also logically follows that, if the appellant did not spend a period of time in hiding in Karaj, he was not being sought by the Iranian authorities for his claimed monarchist activities, and that his claims concerning these activities are also false.

Meeting with brother-in-law in Malaysia

[73] The appellant travelled to New Zealand from Malaysia with his brother-in-law, DD. When interviewed in 1999 about his refugee claim, he claimed that his meeting with DD in Malaysia had been entirely coincidental. This matter was one

aspect of his claim about which the RSB sought further information in their interview report. In that report the RSO put the following to the appellant:

“[The appellant’s] reunion with his brother-in-law in Malaysia seems to be more than a coincidence, particularly given the size of the country and the odds that they would meet up with each other, and given the fact that his brother-in-law had departed Iran some 5-6 months earlier.”

[74] The answer the appellant supplied was as follows:

“... When the agent, [ZZ], and I came to Malaysia from Singapore we went to a complex and it was there that we met [DD] who was already staying there. There were lots of refugee applicants staying there, from Afghanistan and Iran. [DD] was under the care of another agent who was going to send him to New Zealand through Argentina. Since [ZZ] had told me he could send me to Australia or New Zealand through Argentina, [DD] and I decided to go on the same flight and travel together to New Zealand.” (emphasis added)

[75] When giving evidence before the Authority about his surprise meeting with DD in Malaysia, however, the appellant claimed that on his return from Singapore, before organising accommodation, he and ZZ had gone to a shopping mall and that it was in a McDonald’s restaurant at this shopping mall that he had his chance meeting with DD.

[76] When questioned about this inconsistency, the appellant claimed that he had difficulty remembering exactly where he had met DD because he was giving evidence about events that happened 10 years previously, but he thought that he had indeed met DD at a McDonald’s restaurant.

[77] The Authority accepts that it may be difficult to recall peripheral details concerning events that occurred 10 years previously. It is also accepted that the appellant was under considerable stress at the appeal hearing. However, the appellant was specific in his evidence to us that he had met DD at a McDonald’s restaurant and did not appear to have any difficulty recalling this evidence. He was similarly specific when providing the information about the place where he met DD to the RSB when interviewed by them, however, he specified a different place (the complex where they both stayed).

[78] It has now emerged that the appellant’s real mode of departure from Iran was completely different from that which he had presented in his refugee claim. Given his inconsistency about the place where he had his chance meeting with DD, the implausibility of such a chance meeting in any case, and the fact that the appellant and DD travelled together from Malaysia to New Zealand, we find that

the appellant's chance encounter with DD is yet another false detail that he provided to the RSB in support of his refugee claim.

[79] We find that DD and the appellant travelled together to New Zealand as the result of a deliberate plan and not as the result of a chance encounter in a McDonald's restaurant in Malaysia. Co-travel with a relative is more indicative of an orderly planned departure than a spontaneous escape. Had the RSB officer been aware of this deception, she again may have been less inclined to accept the appellant's refugee claim. To this extent, concealment of his deliberate travel with DD played a part in procuring his refugee status.

[80] The reasons identified above sufficiently establish that the grant of refugee status to the appellant may have been procured by fraud. Indeed, taken cumulatively, his concealment of his true mode of departure, the conclusion that he was not in hiding prior to his departure and was not at this or any other time being sought by the Iranian authorities and that he travelled to New Zealand with his brother DD as part of an organised plan rather than as a result of a spurious chance meeting satisfy us that the appellant's refugee status was, in fact, procured by fraud.

[81] On the evidence the Authority has heard, it is satisfied that the appellant consciously and in full knowledge of his responsibility to tell the truth, deliberately and fraudulently advanced a claim to refugee status based on an assertion of facts which he knew to be untrue.

[82] It is clear from the evidence before us that the appellant's fraud procured his recognition of refugee status and that such procurement was wrongful. There is an absence of evidence supporting the proposition that, at the time the appellant was granted refugee status, he was entitled to it.

[83] Having found that the appellant's grant of refugee status may have been procured by fraud, 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

[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?

WHETHER THE APPELLANT SHOULD CEASE TO BE RECOGNISED AS A REFUGEE

[86] For the reasons set out above, the Authority has found that, at the time the appellant departed Iran in April 1998, he was not a person of interest to the Iranian authorities. The appellant has provided no case for refugee status other than the one presented by him in March 1998 which we have found to be false.

[87] Further, since his refugee claim was determined, the appellant has travelled to Iran in September 2005 and re-entered that country through Mehrabad airport using his own legal passport, without difficulty. He spent a month living without incident, for the most part at his family home in Tehran, before departing again with no difficulty in October 2005. His ability to do so is consistent with there being a lack of interest in him by the Iranian authorities.

[88] The appellant considers Iran to be unstable, dangerous and lacking in the rule of law. His assertions in this regard are of a generalised nature. He has provided no evidence that conditions in Iran would have any particular impact on him.

[89] Given the complete absence of evidence before us establishing that the appellant faces a real chance of being persecuted in Iran, the Authority finds that the first issue must be answered in the negative and the second does not accordingly arise. It is therefore appropriate to cease to recognise the appellant as a refugee.

CONCLUSION

[90] The following determinations are made:

- (a) Refugee status may have been procured by fraud.
- (b) It is appropriate to cease to recognise the appellant as a refugee.

[91] The appeal is therefore dismissed.

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M A Roche
Chairperson