

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76410

REFUGEE APPEAL NO 76411

AT AUCKLAND

<u>Before:</u>	B L Burson (Chairperson) D Henare (Member)
<u>Counsel for the Appellant:</u>	D Mansouri-Rad
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	16 , 17 19 & 24 November 2009
<u>Date of Decision:</u>	14 December 2009

DECISION

[1] These are appeals against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) declining the grant of refugee status to the appellants, nationals of the Islamic Republic of Iran.

INTRODUCTION

[2] The appellant in *Refugee Appeal No 76410* is the mother of the appellant in *Refugee Appeal No 76411*. They will be referred to as “the mother” and “the daughter” respectively.

[3] Each of the appellants claims to have a well-founded fear of being persecuted in Iran by reason of violence and other gender-related abuse at the hands of a person with whom the mother entered into a temporary marriage. In addition, the daughter claims to have a well-founded fear of being persecuted by reason of her objection to the dress code requirements imposed on women in Iran.

[4] What follows is a summary of the evidence given in support of their appeals. An assessment follows thereafter.

THE APPELLANTS' CASE

The evidence of the mother

[5] The mother was born in the early 1960s and is the only child of her parents. When aged about one, her father died. Her mother ("the grandmother") came under pressure from her husband's family to give them responsibility for the mother's upbringing. However, the grandmother wanted to raise the mother herself and upon being offered employment in Tehran, embarked on a new life with the grandmother there. The grandmother never remarried.

[6] Shortly after the Iranian revolution, when aged 16, the mother married a neighbour. The mother and her husband ("the first husband") had four children. The eldest, a daughter, C1, was born in 1981. The second child, another daughter, C2, was born in 1983. The third child, a son, C3, was born in 1990. The fourth child – the daughter in this appeal – was born in 1991.

[7] When the mother was pregnant with C2, the family moved to X where the first husband's siblings lived. After moving to X the first husband found employment in his trade. Although life was hard the mother was happy. They had frequent contact with the first husband's siblings and their families.

[8] In mid-1991, when the mother was seven months pregnant with the daughter, the first husband died. In the following months she was financially supported by his family and she invited the grandmother to come and live with her in X to help with the children. However, her own savings were dwindling and she was aware that her in-laws were not wealthy. Wishing, as the grandmother had done with her, to raise her children herself, she decided to seek employment, safe in the knowledge that the grandmother would be able to look after her children at home.

[9] When the daughter was about two months old the mother began looking for work but found this to be a frustrating and often demeaning process. At job interviews she had to confirm that she did not need the permission of her husband because she was a widow and had children to support. Once she revealed these details the demeanour of the prospective employer changed. She felt very keenly

that the men who were interviewing her were only interested in offering her employment in order to have a sexual relationship with her.

[10] The first husband's siblings opposed her working and insisted that they could support her and the children. The mother insisted that she would raise her children and to provide for them. The first husband's family suggested a compromise position whereby she marry a brother of her first husband ("the brother-in-law"). The mother was horrified at this idea. The grandmother was equally adamant that the proposal was an undignified one and should be rejected. The mother made it clear to the family that she did not consider this a moral or suitable proposal. The first husband's family persisted in their attempts to change her mind and threatened her that they could take her children from her.

[11] Eventually, the mother found and accepted employment in a business linked to an important state institution believing this would insulate her from the predatory machinations of the private sector employers she had hitherto encountered. The first husband's family became incensed at this. They accosted the mother about her decision as she was making her way to and from work and came to the house to put pressure on her. The brother-in-law, whom it was suggested she marry, also came to her workplace shouting at her. He demanded to know why she was working and insisted that the family support her. This inevitably created a scene at her workplace and her troubles came to the attention of her manager, AA. She explained to him the background to her predicament. AA said that he would take care of it.

[12] The mother does not know what AA did but soon afterwards the visits to the shop and the house stopped. AA told her that he could arrange matters so that she was given control of the children. A short while later she was informed by AA that everything had been arranged and she needed to go to a particular office to sign the papers.

[13] The mother did so and, in early 1992, received a Certificate of Guardianship appointing her sole guardian of her three children, C2, C3 and the daughter in this appeal. By this time, C1 was over the age of majority and the mother received a separate document to this effect although this document made clear that C1 would still need her permission to marry. She does not know how AA managed to obtain the guardianship order. Although AA wore civilian dress at work, she was aware that he held a military rank and believes he had influential contacts.

[14] For the next two months, the mother's life improved. AA was very kind

towards her and the children. She was no longer being pressured by her in-laws and was happy at work. However, after several months, AA began making comments designed to find out her attitude to remarriage. Eventually AA asked her directly whether she was interested in marrying him. The mother replied that she was not ready to remarry but over the next few months AA kept raising the issue. After discussing AA's proposal with the grandmother, the mother decided to reject the proposal. She told him that she wanted to raise her children herself and, having only just obtained guardianship rights over them, did not want to lose control of her children through remarriage. If she entered into another marriage, her husband's particulars would be recorded on her birth certificate and AA and his family would then be entitled to exercise guardianship over the children.

[15] In response, AA proposed that they enter into a temporary marriage of the maximum permissible duration – some 99 years – so that the marriage would be like a “normal” marriage. In this way, he explained, their particulars would not be entered into each other's birth certificate and she would be able to retain control of her children. The mother was not happy with this suggestion. Temporary marriage was frowned upon in society and she was not in favour of it. Also, she understood from AA that he was already married with children but he told her that his wife did not object to this temporary marriage. She discussed this with the grandmother who was of the same opinion. She communicated her refusal to AA. At this point AA became threatening. He made it clear to her that he was the one who had arranged for her to be given guardianship of her children and he could easily take it away.

[16] The mother was in a quandary. On the one hand she was concerned that AA could undo the guardianship. Yet, he had been kind towards her and the children and promised to help her raise the children in a proper fashion. Weighing everything, the mother agreed and, in late 2002, entered into the temporary marriage. From that time onwards, AA visited the house at least once a week. Usually he spent two or three nights at the house with the mother and children. Sometimes he stayed longer but it was never more than a week.

[17] After a few months of married life, at AA's suggestion the mother sold the house she inherited from the first husband. Although the property was in her name only, the real estate agent gave the money to AA. AA gave her less than 50% of the proceeds on the basis he would purchase another property with the rest. He never did and they moved into rented accommodation. With the money she was given, the mother invested in a business which provided her with an

independent income. At around this time AA pressured the mother to stop working and she reluctantly agreed. From that time on she lived off the income she earned from her investment and with money that AA provided by way of maintenance. From time to time she also worked from home as a beautician, for neighbours who came to the home when AA was not there.

[18] Initially, life with AA was good. Although she very much felt that they were the “second family”, in that public holidays were always spent with his “first family” and not them, nevertheless, relations were good between them all. However, a year to 18 months into the relationship, AA’s behaviour changed. He became increasingly physically aggressive towards both her and the children. If he came into the house and the children were lying on the floor watching television, he often kicked them to make them get up. If he thought the television was too loud, he slapped them and told them to turn it down. If they were, in his view, too slow in bringing him a glass of water, again they would be slapped or hit. When she remonstrated with him not to treat her children in this way, he began slapping her and shouting at her.

[19] At the same time, he also became increasingly argumentative towards the mother. When argument arose she retreated into their shared bedroom to avoid the children witnessing what was happening. There, the argument would continue during which she was invariably slapped or verbally abused. AA became more sexually demanding and sexually aggressive towards her adding to her sense of humiliation. She was, for the remainder of her relationship with him, regularly forced to have sex with him against her will.

[20] He also became more controlling over her life. Although AA never generally accompanied them on holidays together, the mother took frequent lengthy holidays with the grandmother and children during summer to visit relatives in another part of Iran. These trips were always the source of much argument and contention upon her return. For a period following her return from these holidays AA would perpetually question her about the trip and who she had been seeing and would beat her in the course of their arguing about this.

[21] Over time, AA became increasingly violent towards the mother. Although the relationship between the mother and AA was characterised by regular low-level violence in the form of slapping, punching and verbal assault, greater levels of violence were inflicted upon the mother from time to time. On one occasion approximately 10 years ago, AA forced the mother to have sex against her will. He

beat her so badly that she suffered a dislocated uterus. Despite her haemorrhaging, AA initially refused her permission to go to the doctor but as her condition deteriorated, he relented and she eventually received appropriate medical attention. On another more recent occasion she was beaten to the point of unconsciousness. Although her daughter, C1, had come home and insisted she seek medical attention the mother was initially too afraid to leave the house in case AA was waiting outside. As a result of this injury, the mother suffered a depressed fracture to her skull and also substantial bruising. Her head injury was so severe that it was painful to brush her hair for about a month.

[22] The children also suffered greater levels of violence from AA from time to time. When C3 was small, AA kicked him with some pointed shoes causing a laceration just below his knee. On another occasion the daughter was hit with a chain, causing an injury to her leg. When the daughter was aged about five or six, AA burnt the daughter's hand with a spoon after the mother had an argument with him and had been ordered to go out and buy him a newspaper. Upon seeing this, the mother flew into a rage and began hitting AA who, in return, beat her and then stormed out of the house. When C3 was aged about 11, AA insisted that he stop school and get a job though there was no financial necessity for him to do so. The mother protested but, again, AA responded to her intervention by beating her for her trouble. In the end, she was forced to agree that her son leave school and take up work as a manual labourer which was ill-suited to his physique.

[23] Early on in the relationship, concerned at the harm AA was inflicting on her and the children, the mother raised with AA the cancellation of the temporary marriage contract. His response was to threaten that he would take steps to cancel the guardianship order in her favour and he beat her. Cowed by this, the mother did not raise this again for some time. Although unsure of the precise date, in the later years of the marriage the mother summoned the courage to raise this issue again with AA. His response this time was to make threats against her son, C3, and also the daughter.

[24] As her two eldest daughters, C1 and C2, matured she began noticing that he was looking at them in an inappropriate way and became concerned for their safety. She encouraged them both to enter into early marriages. AA, however, made up various excuses to oppose the marriages. The mother was happy for the marriages to proceed but was beaten by AA when she tried to convince him to agree. Although legally she was the one with guardianship and could, in theory, make the decision, the reality of her marriage was that AA was using violence to

control her and if she agreed to their marriage without his consent she would be subjected to further violence. After C1 made clear she wished to proceed with the marriage, AA's consent was finally given although AA banished C1 from the family home for over a year.

[25] As the daughter got older, AA increasingly sought to control the way she dressed and her behaviour. He admonished her for her style of clothing or for having her hair exposed underneath her scarf. He sometimes followed her after school and admonished her for laughing with her friends. The daughter became increasingly unhappy and in early 2007 made a superficial attempt to cut her wrists while at school. As a result, the daughter was referred to a child psychologist for treatment. In the middle of 2007, towards the end of the school year, AA forbade the daughter from attending school. When the mother argued that the daughter should be allowed to sit her exams, AA responded by beating the mother. The mother told the daughter to be patient and she would try and persuade AA to allow the daughter to sit the examinations in September. However, this did not happen and on her birthday in September 2007, the daughter tried to commit suicide by taking an overdose of pills. The attempt was discovered by the mother who took the daughter to hospital where her stomach was pumped.

[26] In late 2007, a summons arrived requesting that the mother go to a police station regarding a dishonoured cheque. The mother rang AA and informed him that she had not written any particular cheque and asked whether he had done so. AA denied that he had written the cheque and she asked whether she should go. She was concerned that if she did not she may face criminal charges. AA informed her not to go to the police station as he would do so and resolve the matter. After work that day AA came to the house and the couple argued over the cheque. He began beating the mother. She was punched and when she fell to the ground AA began kicking her in the head and stomach while she was on the ground. AA forbade her from leaving the house. Over the next week, the mother tried to contact AA but he was either unavailable or told her he was busy handling business.

[27] Approximately one week later, the mother was arrested from home over the cheque and, after waiting for some hours, was taken to court. AA had by this time arrived. At the court was a young man who had filed the complaint about her and the cheque. The judge ordered that she had to pay the money or go to prison. AA agreed to pay the money and signed an undertaking to do so. When they returned

home AA began accusing the mother of having an affair with the young man who had received the cheque and began beating her. The daughter was at home and tried to intervene. At this point AA accused the daughter of having the relationship with the man because the complainant was a young man and began beating the daughter as well.

[28] Over the next few days AA continually harassed the daughter about having an illicit relationship with the young man who made the complaint. The daughter responded by making another attempt on her life by again slashing her wrists, this time more deeply than she had on the first occasion.

[29] The mother believes AA's attitude towards the daughter was in part motivated by his own feelings of desire towards her. The mother explained that from the age of about 13 or 14 the daughter started to physically mature and AA had begun looking at her in an inappropriate way. The mother felt that part of AA's reaction to the incident with the cheque stemmed from his desire towards the daughter. Indeed, her fears were aroused in this regard when following an argument she had with AA about ending the marriage, AA responded by saying that she should not think that she could take the daughter away from him and that someday the daughter would be his. The daughter's third attempt on her life was the final straw for the mother and she decided that she must remove herself and her daughter away from AA. By this time the daughter had not been allowed to return to school by AA.

[30] Understanding that AA would not agree to end the marriage and being increasingly concerned about the safety of herself and her children, the mother decided to leave AA. Without telling him, in early 2008, she travelled with C3 and the daughter to a distant relative's house in another part of Iran. Upon finding that the mother had left him, AA contacted C2 and demanded that she tell the mother to return to him. He threatened to make things difficult not only for the mother but also for C2 if she did not. When C2's husband objected, AA threatened C2's husband would regret being so rude to him. C2 contacted the mother and informed her of these developments. The mother did not want any more trouble for C2 so decided to return to AA.

[31] Following the mother and her children's forced return from the relative's house, AA's attitude towards them deteriorated. For the next few months his visits to the family home were perpetually marked by violence of some sort towards the mother and the children. He was also more violent towards the mother. Whereas

before much of the violence against her was carried out behind closed doors in the bedroom, he was now violent towards her in front of the grandmother, something the mother found particularly distressing. He also made good his threat to C2's husband by spreading a false rumour about him in the marketplace where he worked, causing his business to fail.

[32] In mid-2008 the mother received a telephone call from C1 who was by now residing in New Zealand. C1 informed her that she was pregnant and asked her to come to New Zealand. The mother told C1 that she could not leave Iran without her daughter. C1 explained that she would do her best to try and get a visa for both her mother and her sister (the daughter in this appeal) and requested that the mother obtain a passport issued for herself and the daughter. Once this was obtained C1 would then apply for the appropriate visas.

[33] Knowing AA would never agree to her and the daughter leaving for New Zealand, the mother applied for a passport for herself and her daughter without informing him. She knew that he would be angry and would beat her on her return but she was determined to go. At around this time AA was away from X with work and she took the opportunity to apply for a passport. The application took approximately two weeks to process and her passport was issued. The daughter's particulars were included in the mother's passport. She then telephoned C1 and informed her that she had the passport. By agreement with C1 the visa application was sent to one of the mother's friend's address.

[34] In late 2008, the mother heard from C1 that a flight had been booked leaving from Tehran. She told AA that she was planning to take the grandmother, C3, and the daughter for a holiday at her relative's house elsewhere in Iran. The mother was worried that AA may come and stay for two or three days around the date of departure. If so, this would effectively prevent her from being able to leave. She therefore decided to begin her journey two weeks prior to the flight. The mother had told C2 that if AA telephoned her to say that she was with her relatives in another part of Iran. This is what C2 did when he telephoned her during these two weeks and the mother heard nothing further from AA.

[35] The mother and daughter entered New Zealand in late 2008. In early 2009, C1's child was born. After she arrived in New Zealand the mother received regular calls from C2. In one call C2 informed her that AA was becoming increasingly angry about the mother's continued absence. In another C2 told her that she had argued with AA who had been shouting and making threats against the mother.

This made C2 angry and she informed AA that her mother was not in Iran for him to be able to do anything. The grandmother was so concerned about C2's safety during this period that she returned to live with C2. AA continued to come to C2's house and make threats as well as being generally verbally abusive. As a result of the stress the grandmother suffered a minor stroke.

[36] Having found out that the mother was in New Zealand, AA now began telephoning her at C1's house. In these telephone calls, AA threatened that when the mother came back he would kill both her and the daughter because she had dared to leave Iran without his permission. He also threatened to make her son disappear. Since that time AA has tried to telephone on a number of occasions. Recognising his voice the mother now simply hangs up the telephone.

[37] As a result of AA's threats she has warned her son to stay away from the house. Her son now leads a peripatetic lifestyle staying between the mother's relatives in other parts of the country. Sometimes he stays discreetly in X with his cousins.

The evidence of the daughter

[38] The daughter, now aged 18, told the Authority that she had never met her father who died shortly before she was born. She was still at pre-school when her mother married AA. She knows very little of her mother's life prior to the marriage although her mother has told her that she worked before she married AA and that they met through that work.

[39] The daughter described the relationship between herself and her step-father as being "very bad". Her first memory of her step-father was being burnt by him with the back of a heated spoon. She was around six years old at the time and had been asleep at home when she woke up looking for her mother. She could not find her mother in the house and began crying. This made AA very angry and he shouted at her to be quiet. This only made her more upset and the episode escalated to a point where AA invited her to come down to the kitchen and play "a game". The "game" consisted of him tying her hands together and proceeding to burn her with the back of a heated spoon. The daughter explained that the mother walked into the house and heard her daughter screaming and upon learning of what had taken place, began shouting and screaming, and hitting AA. AA retaliated by beating the mother and then walking out of the house.

[40] The daughter explained that AA did not live with the family on a full-time

basis. Rather he came every week but would stay for different periods – occasionally as long as a week but usually for a few days.

[41] The daughter is the youngest of the mother's three children. She explained that when she was aged about 8 and 10 respectively, her two elder sisters married and moved out of the house. After that contact with them was infrequent. Her older brother was at school until aged about 10 and then he began working in a brick factory. She does not know why he left school. From that time on, although he still technically lived at home, they saw less and less of her brother. She does not know why.

[42] Life at home with AA was full of arguments and beatings. It seemed to the daughter that whenever AA had a bad day at work he would take out his frustrations and anger on them. On these occasions he was often very quiet and his silence was a prelude to him being verbally abusive to her and her siblings or her mother. He was also violent. He often slapped her and on many occasions would use objects to hit her with. On one occasion she recalls being hit around the legs with something like a ball-bearing in a chain, which caused a mark to her leg. The daughter recalls a particularly violent episode where AA beat her about the face repeatedly with a stereo cable after they had argued over what she was wearing. This caused substantial bruising to her face as a result of which she was unable to go out of the house. AA could be violent towards her mother which she both saw and heard from time to time but mainly her mother and AA argued in their bedroom.

[43] The daughter described AA as being very suspicious. He was always telling her mother that if she went outside to do a task she only had a certain amount of time in which to do it. If she was longer than the time he allowed, he would question her about where she had been and why she had taken so long to do the particular task. He was also very suspicious of her. Without her knowledge AA would follow her to school from time to time. She learnt this because when she came home sometimes, AA criticised her for doing things on the way to and from school. On one occasion it was about her laughing with her friends. On another occasion he confronted her about her being outside a public telephone box. The daughter explained to him that her friend had used the public telephone to call her mother but AA did not believe her and suggested that she and her friend were calling boys.

[44] AA was very particular about her compliance with the Islamic dress code for

women. He would not let her out of the house without her *hijab* covering every strand of her hair. He also insisted that her *manteau* (a cloak worn by women) should be fastened to the top button and should only be in black or dark blue. He forbade her wearing bright colours. He was constantly challenging her about her wearing make-up inside the house.

[45] This behaviour by AA led to many arguments between them and she often hid herself in her room to avoid him when he was at the family home. Even then he would find an excuse to argue with her. She was often in her room listening to music when AA would come to the door and complain about it.

[46] As a result of AA's treatment of her and her mother, the daughter has tried to commit suicide on three occasions. The first occasion took place in early 2007. She was at school and she removed the razor from a pencil sharpener and made a superficial attempt to cut her wrist. She found that as she was doing this that she could not bear to cut herself more deeply and only made superficial cuts.

[47] The second attempt occurred after AA had banned her from going to school. In mid-2007, shortly before exams were scheduled, the daughter and AA had a major argument. AA told her that she was always laughing with her friends and talking to boys on the telephone and it was obvious that she was not going to school to study. She was therefore barred from attending school and sitting her exams. Her mother tried to intervene on her behalf but AA beat her mother. The daughter was very upset about this. Her mother tried to placate her by saying that she would speak to AA and get him to agree to her being able to sit the re-set exams that were held two months later. The daughter was buoyed by this news and spent the next two months studying hard for her exams. However, when the time came, AA continued to refuse permission for her to return to school to sit the exams. She decided to make a more determined attempt on her life. One evening she went to the place where her mother kept her medication and took a large quantity of pills. Her mother discovered her in an unwell state and she was taken to hospital where she had her stomach pumped. This suicide attempt took place on her birthday. She saw nothing to celebrate.

[48] The daughter told the Authority that towards the end of 2007 the mother had been taken away because of a cheque that had been written in her name. The daughter does not know all the details but is aware that her mother was away for most of the day. Upon her return home there was a heated argument between her mother and AA. She saw her mother being violently assaulted by AA and

went to intervene. At this point AA also beat the daughter and began accusing her. He claimed that the cheque had been written by the mother because she (the daughter) was having some sort of illicit affair with this man. Over the next few days AA kept on harassing her about this incident and, in despair she again tried to cut her wrists and this time made one of the cuts deeper than the previous attempt. Again, however, she found that she could not go through with it and stopped before any significant damage eventuated. She tried to cover these cuts up with another bandage, but again her mother discovered this attempt. Her mother pleaded with her to not make things worse for her.

[49] Shortly thereafter the mother came to the daughter and told her that she would try and take them to a place where AA would not find them. She understood from her mother that this was going to be a permanent move. Thereafter, in early 2008, she, her mother, her grandmother and her brother all travelled to the home of her mother's relative in another city. After two weeks, however, her mother told her that AA had found them and that she had no choice but to return. Upon their return to the family home the situation was incredibly violent and volatile. There were arguments between AA and her mother constantly and she now saw him beating her mother regularly. After about two months things settled down to how they were before they left.

[50] After returning to the family home, the daughter was still not allowed to return to school. Eventually her mother told her that her sister, who had been living in New Zealand, was pregnant and had asked the mother to come to New Zealand to help her. Her mother told the daughter that she had informed the New Zealand sister that she would not come to New Zealand unless she (the daughter) was able to accompany her. Eventually a passport was obtained and in late 2008 both she and her mother travelled to New Zealand.

[51] Since the daughter has been in New Zealand she has resumed her education and has seen how free life is. She does not believe that she should be forced to wear clothes that she does not like and which she personally finds uncomfortable to wear. In Iran she was constantly being admonished at her school about her non-compliance with the dress code. On one occasion, as soon as she left the school gates, she, along with some of her friends, loosened her *hijab* for the walk home. She did not know that amongst the student body there were students engaged in surveillance of people who did not comply with the dress code requirements and other rules of social behaviour outside the school gates. The following morning she was summonsed to the principal's office and her

mother was telephoned. Her mother came to the school and was informed that the daughter would be expelled from the school. The mother pleaded with the school authorities and they made both her and the daughter sign an undertaking that she would comply with the dress code requirements from then on. Concerned not to lose her place at school, the daughter complied.

[52] If she returned to Iran, AA would not allow her to complete her education. Even if he did agree, she has now wasted almost two years of her life being outside the Iranian school system and sees no point in returning.

The evidence of C1

[53] The Authority heard from C1. She has been in New Zealand for four years and is a New Zealand resident. C1 confirmed that her father died when she was about 11 years old and that her mother had entered into a temporary marriage with AA. She confirmed that AA did not live with them on a full-time basis. C1 recalls that her mother had been working when she was a small child but soon gave up.

[54] She explained that for a period of time after her mother's marriage to AA things were alright but that life with him turned out to be not what she expected. The life she remembers sharing with her own father was very different from what it was with AA. She says that AA was always using foul language towards her, her siblings and her mother. AA was always finding different excuses for fighting and arguing with the children. If he wanted something from them or if they were making noise that was normal for children, he would shout and swear at them and hit them. C1 told the Authority that AA was always kicking, slapping or flicking them. He also had a tendency to throw his prayer beads at them when he wanted something from them. It was not that he hit them every day or every time, but it was a frequent part of his interaction with them.

[55] She also recalls AA behaving very badly towards her mother. He was often shouting at her mother and when they argued her mother would tend to go into the bedroom from where she would hear the argument continuing. She occasionally saw AA punch her mother. She cannot now recall the precise details of these arguments but she recalls AA being particularly fussy about the *hijab*. He was also asking her mother about where she had been after she had been out.

[56] C1 explained that she was encouraged by her mother to marry. She herself married when she was about 15 or 16 and although AA initially opposed the

marriage he agreed to it in the end. She was banned from returning home for a year. After her marriage she visited the family home from time to time although she tried to avoid being there when AA was around. However, sometimes he turned up unannounced after she was there and she witnessed the same behaviour she had observed prior to her marriage. On one occasion a few years ago she particularly recalls coming home and seeing her mother collapsed on the floor in a semi-conscious state. Her mother was too terrified to go to a doctor.

[57] As she got older, C1 tried to talk to her mother and tried to understand what was going on and to tell her that she cared for her but her mother made it clear that she did not want to engage in these sorts of conversations. She does recall a conversation she had with her mother when she was still a small child where she told her mother that she should let AA go. She recalls her mother saying that it was not possible to do this.

[58] C1 also told the Authority that as she matured into her early teens she began noticing AA giving her “dirty looks” which made her feel very uncomfortable. She did not discuss this with her mother.

[59] C1 confirmed that it was she who had asked her mother to come to New Zealand because she was having difficulty with her pregnancy. C1 confirmed that she and a friend in New Zealand filled out all the details. She told the Authority that the mother made it clear that AA would never agree to her and her sister coming to New Zealand and that the application must be hidden from him. It was agreed that the paperwork would be sent to a friend of her mother’s in another city who AA did not know about. C1 also told the Authority that the mother has been residing with them since she has been in New Zealand. She confirmed that AA has telephoned on a number of occasions. Her mother told her that on one occasion AA made threats against her and her sister. He has also threatened her brother. Since that time she understands from her mother that AA has made a number of telephone calls but her mother simply hangs up the telephone. C1 has also been in contact with her brother and understands from him that he is living in various places because he is afraid of AA.

Documents and submissions

[60] On 13 November 2009, the Authority received from counsel submissions of the same date in respect of both appeals. On 16 November 2009, the Authority received a letter dated 13 November 2009 from Dr Tony Wansbrough confirming

that the mother had various medical symptoms which, in the doctor's opinion, meant that she may not be well enough to proceed with the hearing. The doctor confirmed that the mother had indicated to her that despite this she wished to proceed with the hearing.

[61] During the course of the hearing the Authority received the following documents:

- (a) Copy of Certificate of Guardianship issued by the Office of Guardianship Affairs of the Justice Department of the Islamic Republic of Iran granting the mother guardianship over her children C2, C3 and the daughter;
- (b) Certificate of the Office of Guardianship Affairs of the Justice Department of the Islamic Republic of Iran in relation to C1 confirming that her age meant she was considered an adult under the Iranian civil code and was not subject to the guardianship order made in favour of her mother in respect of her siblings;
- (c) Copy of the Death Certificate of the mother's first husband;
- (d) Sketch made by the mother during the course of the hearing relating to her description of AA.

[62] At the conclusion of the hearing, counsel made oral submissions in support of both appeals. Counsel was given leave to file further country information within 14 days but as at the date of this decision no further information or evidence has been received from counsel.

THE ISSUES

[63] 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."

[64] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the

principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

Objectively, on the facts as found, do the appellants have a well-founded fear of being persecuted?

CREDIBILITY

[65] The Authority heard detailed evidence from the mother in particular over the course of three days of hearing. The Authority also heard from the daughter. Their evidence was consistent with what they had said previously and with each other. Their evidence was spontaneous, detailed and consistent with country information including country information about the practice of and stigma attached to temporary marriage in Iran – see here S Haeri, “Power of Ambiguity: Cultural Improvisations on the Theme of Temporary Marriage” *Iranian Studies* Vol 19, No 2, pp123 – 154; S Haeri “Temporary Marriage: An Islamic Discourse on Female Sexuality in Iran” in Mahnaz Afkhami and Erika Friedl (eds) *In the Eye of the Storm: Women in Post-Revolutionary Iran* (Syracuse University Press, Syracuse NJ, 1994) at p105; F Harrison “Iran talks up temporary marriages’ *BBC News* (2 June 2007). Their accounts were corroborated by credible documentary evidence, including medical evidence, and by C1. While some credibility issues arose in the hearing these were all resolved satisfactorily by the mother and daughter.

[66] The Authority has some reservations about the lack of documentary evidence in this case surrounding the relationship with AA. However, such material as is available is now under the effective control of AA and unable to be obtained. She explained she had not declared the existence of AA to Immigration New Zealand when lodging her visitor application because she feared that Immigration New Zealand might request something in writing from AA to confirm she had a relationship to return to as a condition of granting the visitor visa. The Authority is satisfied these are plausible explanations for the lack of any corroborative documentary evidence.

[67] Their accounts are therefore accepted in their entirety.

Well-founded fear of being persecuted

Discrimination against women in Iran

[68] Mr Mansouri-Rad submits that if the credibility of the appellants is accepted then the question of whether these appellants have a well-founded fear of being persecuted is simple to answer in the affirmative. Mr Mansouri-Rad's submission is correct. The Authority's jurisprudence has long recognised the discriminatory nature of the legal, social and cultural context within which gender relations are constructed in Iran and enforced as matter of state policy and the failure by the state to take effective steps to combat widespread violence against women – see, for example, *Refugee Appeal No 71427/99* (13 August 2000) at paragraphs [3]-[11] and [74]-[78]; See also *Refugee Appeal No 76226* (12 January 2009) at paragraphs [75]-[90].

[69] In recent years women's rights activists have via the "One Million Signatures" campaign, demanded the revision and reform of Iran's discriminatory civil and penal codes. The campaign started on 12 June 2006 with a demonstration in *Haft-e-Tir* Square in Tehran which was broken up by the authorities. This has signalled the beginning of systemic repression by the Iranian regime of the women and men engaged in the various grassroots movements aimed at promoting gender equality in Iran. More than 50 activists have been prosecuted with offences including "propaganda against the system and "acting against national security". Others have been detained without being formally charged – see Amnesty International report *Iran: Womens rights Defenders Defy Repression* (February 2008); S. Ebadi "Iran's Women are not afraid" *The Guardian* (6 October 2009). That the campaign for greater gender equality in Iran is being dealt with by the regime as a national security issue only serves to underscore the extent to which discriminatory rules and practices are embedded within the regulatory fabric of the Iranian state and that it, at the very least, continues to condone violence by men against women.

Application to the appellants' case

[70] Each appellant has lived in an environment characterised by oppression, intimidation and varying degrees of violence inflicted against them. The mother has been a victim of repeated spousal rape over many years. The perpetrator, AA, is a controlling, manipulative and violent individual occupying a managerial

position in an important state institution. He has made threats that should they return he will kill both of the appellants. While it is impossible to ascertain whether this is hyperbole on his part, at the very least, the fact that he has so openly displayed a propensity to violence against them in the past is a reliable indicator of what his attitude towards them will be in the future. There is, the Authority is satisfied, a real chance that each appellant will be exposed to further violence and emotional abuse by AA. Country information makes clear that the institutional, cultural and legal frameworks of Iran are such that they cannot expect any degree of protection from the Iranian institutions from this harm.

[71] It is not possible for the mother and daughter to live elsewhere in Iran as a means of escaping AA. He has shown himself adept at putting pressure on her other children and, in particular, C2 to force her to return to him. This is a reliable indicator of what may happen should she attempt to establish a new life for herself elsewhere in Iran. The daughter is obliged to live with the mother and so she too would be forced to return to live with him.

[72] In short, the Authority is satisfied that each appellant does face a well-founded fear of being persecuted if returned to Iran.

Nexus to a Convention ground

[73] In *Refugee Appeal No 71427/99* (13 August 2000) at paragraphs [90] – [109], the Authority set out the relevant principles relating to what constitutes a particular social group for the purposes of the Refugee Convention and explained why, in the context of Iran, women constitute such a group. However, the risk to the mother and daughter must arise by reason of their membership of this particular social group. Again, *Refugee Appeal No 71427* is illuminating on this point. At paragraph [112], the Authority noted:

“Accepting as we do that Persecution = Serious Harm The Failure of State Protection, the nexus between the Convention reason and the persecution can be provided either by the serious harm limb or by the failure of the state protection limb. This means that if a refugee claimant is at real risk of serious harm at the hands of a non-state agent (eg husband, partner or other non-state agent) for reasons unrelated to any of the Convention grounds, but the failure of state protection is for reason of a Convention ground, the nexus requirement is satisfied. Conversely, if the risk of harm by the non-state agent is Convention related, but the failure of state protection is not, the nexus requirement is still satisfied. In either case the persecution is for reason of the admitted Convention reason. This is because "persecution" is a construct of two separate but essential elements, namely risk of serious harm and failure of protection. Logically, if either of the two constitutive elements is "for reason of" a Convention ground, the summative construct is itself for reason of a Convention ground.”

[74] As to this, given the Authority's findings in paragraphs [68] and [69] there can be no doubt but the reason why there will be a failure of state protection in respect of the risk of serious harm to the mother and daughter from AA is because they are women. The second principal issue is therefore answered in the affirmative.

CONCLUSION

[75] For the reasons mentioned above, the Authority finds that each of the appellants has a well-founded fear of being persecuted for a Convention reason. Each appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeals are allowed.

"B L Burson"
B L Burson
Chairperson