REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76106

AT AUCKLAND

Before:	A R Mackey (Chairperson) M L Robins (Member)
Counsel for the Appellant:	C Curtis
Appearing for the Department of Labour:	J Hopkins
Date of Hearing:	21 July 2008
Date of Decision:	12 August 2008

DECISION

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

JURISDICTIONAL ISSUES

[2] Pursuant to s129L(1)(b) of the Act, where recognition of a person as a refugee has been given by a refugee status officer and it appears such recognition may have been procured by fraud, false or misleading representation or concealment of relevant information (hereinafter referred to as fraud), a refugee status officer 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.

[3] When the Authority is considering an appeal against a decision of a refugee status officer under s129L(1)(b), there are two stages to the Authority's enquiry. First, it must be determined whether the refugee status of the appellant "may have been" procured by fraud. If so, it must be determined whether it is then

appropriate to "cease to recognise" the appellant as a refugee. This 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].

[4] As these are largely inquisitorial proceedings, it is not entirely appropriate to talk in terms of burden or onus of proof. Nonetheless, it is well recognised and accepted that, in cancellation proceedings, it is the responsibility of the DOL to present such evidence in its possession by which it can reasonably 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 that mere suspicion: *Refugee Appeal No 75563* (2 June 2006).

BACKGROUND

THE GRANT OF REFUGEE STATUS TO THE APPELLANT

[5] The appellant is an Iranian man now in his late 30s. He arrived in New Zealand on the first occasion in January 1999 and lodged his application for recognition as a refugee in early February 1999.

[6] In 1999, he was interviewed by the RSB in respect of his claim. In 2000, the RSB accepted his claim and granted him refugee status. He was later given permanent residence in New Zealand by Immigration New Zealand and, in early 2004, he was granted New Zealand citizenship and was then issued with a New Zealand passport.

[7] Whilst technically registered as a Muslim in Iran, the appellant had been brought up in the Christian (Roman Catholic) faith. He and his family encountered a number of minor problems and discrimination because of their Roman Catholic faith. The basis of his claim for refugee status was that, in 1997, after travelling to ZZ with a Christian friend, that friend, AA, was detained at the airport on return to Iran because of the activities AA had been undertaking in the hope of getting his own father released from detention in Iran. AA's father, BB, had been the leader of a small Roman Catholic group. Although the appellant was able to pass through Tehran airport on return from ZZ without incident, AA, who was a few

places behind him in the immigration queue, was detained. When the appellant confirmed the detention of his friend, it was decided he should go into hiding. The appellant's father was then questioned on several occasions about the appellant's trip to ZZ and BB, by the Iranian authorities.

[8] In 1996, the appellant married in a Christian ceremony, although they did not live together until after a formal Muslim ceremony the following year. During one of the visits to the family home, after AA and the appellant returned from ZZ, the authorities seized a video recording of the appellant's wedding ceremony.

[9] In late 1997, the family became aware that BB had died in prison. The appellant and his family thus became more concerned for his safety over the following year while he was in hiding. Eventually, after raising funds from the sale of a property, the appellant's father was able to arrange for the appellant to leave Iran legally. The appellant was unsure as to whether his name was on a blacklist as a result of his connection with AA and BB. However, during the processing of his refugee status application by the RSB, the appellant submitted a letter and copies of two summonses, dated 1998 and 1999, from the Islamic Revolutionary Court. These summonses required the appellant to attend at the Court with his original birth certificate and two photographs and advised that, if he did not attend, then a warrant for his arrest would be issued. The appellant's wife had been told that because of her husband's problems, she would not be issued an Iranian passport.

[10] The RSB, after analysing the appellant's case and the country information, and noting the authorities had questioned his family and initially refused his wife a passport, accepted the credibility of the appellant's claim and the two summonses that had been delivered to his family home. They therefore concluded that the appellant had a real chance of being persecuted on return to Iran for reasons of his religion.

CHANGE OF NAME

[11] In 2006, the appellant decided, it appears because he wanted to adopt a more western lifestyle, to change his name. He has since adopted a western name.

CANCELLATION PROCEEDINGS

[12] On 21 April 2006, a Notice of Intended Determination Concerning Loss of Refugee Status (the notice) was served on the appellant, in accordance with s129N of the Act and Reg 11 of the Immigration (Refugee Processing) Regulations 1999.

[13] In the notice, the RSB set out a preliminary view that the grant of refugee status conferred on the appellant was not properly made, that the basis of the refugee claim was false and that it may have been procured by fraud.

[14] The core allegations were:

(a) The appellant had legally returned to Iran on his own Iranian passport for approximately three weeks in 2004, two weeks in early 2005 and two and a half months in late 2005.

(b) The appellant had appeared in a hearing before this Authority in support of his brother, CC, when he made a refugee status appeal. In the Authority's decision, the appellant's account was found not to be credible.

[15] The RSB received a response to the notice from the appellant's representative in late April 2006 and a request for an interview. Interviews with the RSB concerning the possible loss of his refugee status took place on 16 June and 19 July 2006. Time was then sought for the appellant to obtain a neuropsychological report. That report was ultimately completed by Dr Barry Kirker, clinical psychologist, on 11 December 2006. It noted that the appellant's "attribution of memory difficulties due to brain damage [subsequent on being close to an explosion in 1994] was not supported by the results of neuropsychological evaluation". However, it was noted that the appellant was likely to have difficulties due to "below average intellectual functioning currently exacerbated by psychological/psychiatric factors …".

[16] The appellant travelled to Australia in December 2006 and remained there for some seven months. During that time, the assessment of the possible cancellation of his status continued to be processed by the RSB.

[17] On 11 June 2007, the RSB forwarded to the appellant's representatives a copy of a Japanese court decision relating to the appellant. On 12 June 2007, the appellant's representatives forwarded responses to the concerns relating to convictions for drug offences and the subsequent deportation of the appellant from Japan to Iran on 12 September 2005.

[18] On 28 June 2007, the RSB published a decision cancelling the grant of refugee status that had been conferred on 10 May 2000 on the basis that it may have been procured by fraud and, further, was improperly made.

[19] The appellant now appeals to this Authority against that decision.

PRELIMINARY MATTERS

[20] Delays in the hearing of this matter took place after it was discovered that the RSB had mistakenly copied and distributed to his representatives, and to this Authority's Secretariat, some possibly prejudicial information relating to the appellant. When it was discovered this had taken place, an immediate request, through the Authority, was made for the return of the offending documentation. Counsel co-operatively returned the pages concerned, giving an assurance that she had not read them. As one member of the Authority, who was scheduled to hear the case, had read them, he recused himself and issued a Minute on 9 April 2008 explaining the situation. It was then agreed that the matter should then proceed before the current panel who had not seen or read the possibly prejudicial documentation.

[21] An application was made by the appellant's counsel for the matter to be reconsidered by the RSB. This was refused by the Authority who pointed out that the appellant had validly exercised his appeal rights to this Authority. That appeal was to take place by way of a fresh, *de novo* hearing. This Authority has no power to remit matters. These explanations were accepted by both counsel and the matter then proceeded to hearing.

[22] Submissions from both counsel were received and have been fully considered by the Authority. The written memorandum from the appellant's counsel is dated 1 April 2008, and the submissions from the DOL are dated 9 April 2008. A post-hearing letter, including submissions, dated 31 July 2008 has also been noted and taken into account by the Authority.

THE DEPARTMENT OF LABOUR'S CASE

[23] Prior to the hearing, counsel for the DOL filed a memorandum of submissions and a written statement from the refugee status officer. This statement merely recorded that the refugee status officer was familiar with the file

and the decision to cancel the status of the appellant and was able to give any background to evidence in the processing of the appellant's claim and the cancellation.

[24] The nub of the DOL's case was that, based on the documents and evidence provided by the appellant and his subsequent returns to Iran, the Iranian regime had no real interest in the appellant and that the original grant of refugee status may have been procured by fraud. In support of this, they submit that the appellant's two returns to Iran in 2004 and 2005 proceeded without incident. In respect of the third return, when the appellant was deported from Japan after acquiring a conviction for drug use, they note, although he was stopped and questioned at the border and his passport held for two months, nothing further followed and he was able to return to New Zealand without incident.

[25] They submit that when the Japanese government offered the appellant the choice of being deported to either Iran or New Zealand (where he also held a valid passport), the appellant chose to return to Iran and a regime from whom he feared persecution and had claimed there were outstanding warrants for his arrest and detention.

[26] They also submit that the fact that he was able to come and go without actual sanction, apart from being questioned on one occasion, suggests that the Iranian authorities have not, nor have ever had, any real interest in him. This was further confirmed in their submission that he had freely advised the Iranian embassy, when applying for an Iranian passport in New Zealand, that he had obtained refugee status in New Zealand. However, the Iranian passport was renewed and issued to him and then followed up by a visit to Iran within a short period of time.

[27] On the totality of this evidence, they submit that the original grant of refugee status may have been procured by fraud.

[28] In respect of the second stage test, the same factual matrix is relied on. The evidence of his returning without significant incident and sanction is the basis upon which they claim the appellant is not facing a real chance of being persecuted should he return to Iran at this time.

THE APPELLANT'S CASE

[29] The appellant appeared. He did not present a statement and relied on the explanations and statements he had made in the lengthy interviews both at the time when he obtained status in 1999 and during the assessment of the cancellation case. Submissions supporting the appellant's claim that his status should not be cancelled were summarised in a written memorandum dated 1 April 2008 and presented by Ms Curtis. A summary of the evidence we have taken into account, which was presented to the Authority during the hearing, or referred to and confirmed by the appellant in interviews with the RSB, is set out below in paragraphs [32] to [62].

[30] Ms Curtis submitted that the Authority should not place weight on findings made in the decision relating to the appellant's brother, CC, in 2003, because there had been no waiver of privacy. She conceded, however, that it was valid for the Authority to rely on the actual statement the appellant had provided at that hearing in support of his brother's claim for refugee status, because the appellant did not resile from any of that. We confirmed that conclusions reached in the brother's appeal, before a differently constituted panel, would be treated with caution by the Authority, although of course we could rely on the statement this appellant presented at that time. In the circumstances, our findings have not required any reliance on the brother's appeal. We also, after hearing submissions from both parties, found it unnecessary to place any substantive reliance on an interview held with Customs and Immigration officials at the Auckland airport after the appellant returned to New Zealand from Iran in late 2005, which also caused concern to counsel.

[31] The Authority questioned the appellant extensively in relation to his three return journeys to Iran and his activities in Japan which led to the prosecution, conviction and deportation. We have also taken into account evidence given in examination and cross-examination on these issues.

[32] In his original application made in 1999, the appellant had outlined his father's conversion in 1964 to Christianity and the Roman Catholic faith after being influenced by an American bishop, who had lived and remained in Iran until 1979. That bishop had been forced to flee Iran following the 1979 Islamic Revolution. The bishop evidently travelled to Turkey and then on to ZZ. The appellant's family had kept a close association with the American bishop. After he left, church services were conducted by BB at his house and the appellant became friendly with BB's son, AA.

[33] The appellant, his brothers and AA had been involved in the distribution of pictures of Mary and Jesus in the mid-1980s. On one occasion, the appellant, after failing religious subjects at school, had been expelled. On another occasion, the appellant and his father were arrested when several items, including a video machine, tapes and satellite dish were found at their home. (No religious tapes were discovered.) The appellant's father was convicted on that occasion but the appellant was not. While at college in the late 1980s, the appellant managed to convert two fellow students to Christianity.

[34] During his military service in 1991/1992, he occasionally had problems with his failure to attend compulsory prayers and his service was extended by three months as punishment. In April 1994, he was unfortunately injured and affected by being close to a bomb blast which took place as a result of a *Mujahedin* attack in Tehran. He was hospitalised for 48 hours on this occasion and claimed that he has had difficulty with concentration and remembering things since that time, and also suffered from spasms and loss of sleep.

[35] He married in 1996 and renewed his Iranian passport at approximately the same time.

[36] As noted above, BB was arrested in late 1997 and his house was raided. No one else was questioned or arrested. Soon after that, his son, AA, asked the appellant to accompany him to ZZ to meet with the American bishop. Although AA did not advise the appellant during the trip to ZZ, the appellant understands that AA attempted to gain support and advice, for the release of his father, through consultations he had with the bishop. On return to Iran, AA and the appellant were separated at the immigration queue. The appellant passed through without incident but AA was detained. This led to the appellant going into hiding in YY. However, he did return to Tehran in late 1997 for the formal celebration of his marriage. After this ceremony, the appellant and his wife stayed with a maternal uncle in XX. Whilst he was in XX, the appellant's father was questioned on many occasions relating to the appellant's trip to ZZ and involvement with BB. As noted, in late 1997, BB died in prison.

[37] The combination of these events led to an apprehension, by the appellant, that he would be severely maltreated by the authorities. He thus decided to leave Iran. Approximately a year later, the appellant left Iran and ultimately made his way, via a number of countries, to New Zealand, arriving in this country on 23 January 1999. His son, DD, was born to his wife who had remained in Iran, in late

February 1999.

[38] During the course of his interviews with the RSB in 1999, the appellant received two faxed copies of summonses dated 1998 and 1999, which called for his attendance at the Islamic Revolutionary Court. The second of these stated that if he did not attend, a warrant of arrest would be issued.

[39] The appellant acknowledged that he had returned to Iran on three occasions. In addition to these three trips to Iran, the appellant had travelled around Asia extensively over the period 2004-2005. He visited Japan, Thailand and Hong Kong and was employed as a male model for a Thai company as well as selling mobile telephones and toiletries.

[40] He stated that all of his trips to Iran had been to see his son and/or in relation to his divorce.

[41] His first trip to Iran was for virtually a whole month in 2004. He could not recall much of what happened that time on his arrival at the airport in Tehran but confirmed that he had passed through the airport easily. He advised that prior to every trip to Iran, he had been in contact with his father who confirmed with him, on each occasion, that suitable arrangements had been made with the authorities at the airport for the appellant to pass through without incident. He stated that he relied on his father's assurances, which he agreed could have involved the payment of bribes to relevant officials.

[42] In respect of his father, the appellant explained that whilst he had been a follower of the Roman Catholic faith for many years and had suffered some discrimination, because he was a wealthy man, (he made his money through property development) he had not encountered significant problems with the authorities.

[43] During his first visit, he saw his estranged wife and son. He stated that he could not stay longer because he did not feel safe. After leaving Iran, he returned to Thailand and continued his work modelling and selling beauty products. He returned to Iran for the second time in early 2005. Again, he stated this was to see his son. On this occasion, he completed a formal divorce from his wife. He and his former wife had previously gone through a form of divorce in New Zealand with a Mullah based in Auckland. Again, he stated that he did not stay longer because he did not feel safe. He explained that he had lived in a western culture and

reasonably free open societies for some time and, for this reason, was not comfortable returning to Iran.

[44] His third return visit to Iran arose after he was deported from Japan on late 2005. The appellant explained that he had gone to Japan partly for business reasons and partly for a holiday. After arriving in mid-2005, he met an Iranian man in a night club who gave him a key to an apartment in Tokyo where the appellant decided he would base himself. He moved into the apartment. In the apartment there were a number of drugs including cocaine, marijuana and ecstasy. The owner of the apartment was not living there.

[45] Soon after moving in, the apartment was raided by a number of Japanese policemen. They arrested the appellant and found the drugs on the premises. The police arrived with a picture of the owner and tried to accuse the appellant of being the same person. He was taken to the Tokyo central police station where he was charged in relation to possession of the drugs in the apartment. He explained that under Japanese law, a period of 23 days was allowed for the police to assemble their evidence before pressing formal charges. As the mistaken identity was discovered during this 23 day period, the police withdrew the possession of drugs charges against the appellant and briefly released him.

[46] However, almost immediately thereafter, the appellant was charged with two other offences. The first was for consuming opium in English tea and the second was for consuming an illegal stimulant, also in English tea. The appellant admitted to these charges. Up until the time when the serious charges were dropped, in about mid-2005, the appellant still had a valid three month visitor's visa. With the imposition of the new charges, the appellant was then moved into immigration detention custody.

[47] The appellant had contacted and instructed a lawyer, at his own cost (which was ultimately paid by the appellant's father). His lawyer contacted, at the appellant's instructions, the New Zealand embassy in Tokyo who wrote to the appellant, advising him that they would assist him as much as they could and that this involved contacting relatives or assisting him with his return to New Zealand.

[48] The appellant explained the reason for the delay in the hearing of the two lesser charges (consumption of opium and stimulants) until after his immigration visa expired was because, in this way, he was able to avoid being convicted whilst still in Japan and sent to a Japanese prison. This was all arranged by the

Japanese lawyer. At a hearing, which took place in late 2005, he was convicted on both charges and sentenced to two years' imprisonment, suspended for four years. He explained that this meant that if he returned to Japan within the four years' suspension period, two years' imprisonment would be added on to the penalty he would suffer on any conviction. However, as his visa expired just before time of his conviction, he was told that he would be deported and could not return to Japan for a period of five years. This was all provided he paid for his own cost of removal. He was offered the choice of being removed to either New Zealand or Iran because he held citizenship in both countries. He chose to go to Iran, he claimed, so he could see his son. His father paid for the costs involved in the travel after being contacted by the appellant's Tokyo lawyer.

[49] The appellant explained that he was escorted to the plane by Japanese immigration officials who were handcuffed to him in a manner that was not obvious to the public. The immigration officers did not go on the plane, but arrangements were made with Iran Air for his passport to be given to the captain as part of the deportation process. He explained this had to happen because the plane transited in South Korea, so he was not allowed to have his passport. There were no other security arrangements for him on the plane.

[50] When he arrived in Tehran, he was detained. He knew, however, that his father had made arrangements for his arrival and that he would be waiting for him at the airport. His father had explained to him that he would get "a hard time" for the first few hours, but that this would be superficial, as the officials had to carry out "an act" so it was not obvious they had been bribed. However they would ultimately release the appellant. The appellant said he did not remember much of the questioning put to him, although there were both immigration officials and police involved in the interrogation.

[51] He informed the Authority that he had taken his New Zealand passport with him. He had been asked about it at the airport in Tehran, but that passport had never been taken from him. As part of "the act" of releasing him, his own Iranian passport was retained. He submitted that this was done so that senior officials in the Iranian immigration department and police would be aware that a thorough check was being made of the appellant before his case was finalised.

[52] He was accordingly released after some two or three hours and taken by his father to the family home and then to stay at a friend's place near the Caspian Sea. He remained in Iran for two and a half months while he waited to regain the

possession of his Iranian passport. His father took the necessary steps to obtain the return of the passport. During his time near the Caspian Sea, he was joined by his son for a period of two weeks. He was unable to recall the name of the town in which he stayed but suggested that it was some two to three hours' drive from the capital, Tehran. During the time that he was there, he surmised that there was a good chance his wife had found out about the troubles he had encountered in Japan and that, because of the poor relationship between them, she may use this information against him in the future.

[53] When asked whether there had been any questioning about the summonses or possible arrest warrants from the Iranian Revolutionary Court, the appellant stated that there had been some questioning on this issue but it had not been seriously pursued as he presumed it was just part of the act carried out by the officials who had been bribed by his father.

[54] The appellant agreed that now as his son was over the age of seven, the first right of custody would now fall to him as the father. At the time he returned to Iran in late 2005, his son was approximately six and a half years old. He was asked why he did not wait another six months so that he could gain full custody of his son and achieve his objective of being fully reunited with him, and assisting in the direction of his son's life. He stated, however, that two days after he had regained his Iranian passport, he left Iran, travelling to Malaysia and then, a few days later, on to New Zealand. He explained that he had not stayed on to exercise his priority rights to custody of his son as he would still have required his wife's consent to take his son out of the jurisdiction of Iran. He said he did not wish to cause the considerable upset that could have taken place if he had smuggled his son out of the country.

[55] He advised us that at the present time, however, he was planning a further trip to get his son to come to New Zealand, particularly as his wife was now, it appeared, planning to remarry and live with another man. The situation of having his son being brought up in the home of another man was particularly abhorrent to him.

[56] It was put to him that it appeared, given the case he had presented, that he had taken huge risks by returning to Iran, rather than to the safety of New Zealand, when he was being deported from Japan. He stated that he did not feel it was a huge risk as his father could handle everything.

[57] The Authority asked him what would happen if he returned to Iran at this time. He stated that in recent times he had been working as an actor in various New Zealand films and television programmes. He took apparently minor parts. On occasion this work involved him showing his semi-naked body and long flowing hair. This could cause serious problems for him if it became known in Iran. He also considered that his wife, who knew all about his past and who had a father who was even more powerful and rich than his own father, could cause problems for him. He considered that if one of the movies, where his body was shown, were seen in Iran, this would cause significant risks for him. A note from his employer in the films was provided post-hearing. This confirmed he had been an 'extra' in four films (two of them feature films) in 2007/2008.

[58] In addition to this, he stated that over recent times he had come to believe that there was no truth in any religion and he did not believe in God. He considered that as a Christian in Iran life was extremely difficult, but one could survive, like his father; however, as a complete non-believer, he would have bigger problems. He agreed, however, that his identity documentation in Iran did not describe him as a Christian but as a Muslim. In addition, he considered that he would have further problems because he had adopted the practice of wearing long hair and earrings. He admitted, however, that the purpose of doing this was not just for lifestyle reasons, but also assisted him in securing work in films and television productions.

[59] The appellant was asked whether he considered the summonses or arrest warrants, which might have flowed from the failure to attend the summonses, were genuine or ever existed. He stated that he simply believed that everything his father had told him or provided to him was genuine. He said even if his father had paid bribes to obtain documents or assist the appellant, his father would ultimately, perhaps after some time, have disclosed to him that bribes had been paid. In respect of these two summonses, he said his father had never told him that he had paid bribes to obtain them.

[60] He explained to us that when he came to leave Iran for the last time in late 2005, his father had also made arrangements for him and instructed him which counter to go to, so that he could depart with ease. He followed his father's instructions and never had any problem leaving the country at that time. He agreed that he had a multiple exit visa and, in addition, was going to Malaysia, where a formal exit visa was not required.

[61] The appellant was reminded that he had told the RSB that he considered his name may have been removed from the Iranian authorities' unsophisticated computer system. He agreed that this was a valid statement he had made and that, in addition, he was now sure that his father had paid bribes on every occasion for him to enter and depart. He also considered that, as it was now some 10 years since he had first left, based on advice from his father, summonses such as those sent to him in 1999 no longer had any effect as the authorities, noting that he had left the country for some time, simply gave up trying to enforce them.

[62] He stated, however, that the problem for him was that such information or evidence against him could easily be re-activated if he returned and that his wife may be a person who could be involved in such a process. He considered that such things could readily happen in Iran and it was not a similar culture to those in western countries.

SUBMISSIONS BY THE DOL

[63] Ms Hopkins relied on written submissions dated 9 April 2008 and oral submissions made at the heating.

[64] In respect of the first part of the two stage test (had his refugee status been obtained by fraud), it was submitted that the Authority should take into account several factors.

[65] Firstly, the appellant's own admission that he had returned on the first two occasions in 2004 and 2005 without incident. Ms Hopkins submitted that after hearing his evidence before us it was now apparent that there were credibility flaws in the appellant's evidence relating to these returns as in his initial evidence, relating to the first two return trips, there had been no mention of his father bribing officials. This gloss had now been added to his story. It was also submitted that his credibility was further weakened by vagueness and lack of detail provided, particularly in respect of the two and a half months he spent in Iran on the last occasion. Here the appellant could not even remember the town he had stayed in or provide any form of detail of the times he spent with his son, his family or the actual questioning carried out by the authorities on his return.

[66] Taking all of these into account, Ms Hopkins submitted that it was difficult to

comprehend why the appellant, when he was being deported from Japan and held both a valid Iranian and New Zealand passport, should choose to return to Iran. This is a regime where he claims his fears of persecution are still a live issue. Set against this, with a New Zealand passport, he could return to the country that has already given him protection. This defied logic.

[67] She further submitted that the manner in which he was able to return on all occasions did not indicate any serious or continuing interest in him by the Iranian authorities. The short detention and questioning following his deportation from Japan, having acquired a conviction for drug use, she submitted, was consistent with the questioning that would be carried out following a deportation for drug charges. Accordingly, the profile he submitted at the time of his claim for refugee status, including the documentation supplied in support of that, indicated that the required test: "may have been procured by fraud", has been met in this case.

[68] In respect of the second limb (a *de novo* assessment of the appellant's real chance of being persecuted on return at this time), Ms Hopkins submitted that largely for the same reasons, that he had been able to return without significant incident on three occasions, the DOL considered that the evidence indicated that this appellant was not a person of interest to the Iranian authorities. Thus he was not now a refugee.

SUBMISSIONS FROM THE APPELLANT

[69] Ms Curtis relied on written submissions dated 1 April 2008. She submitted that his evidence indicated that he had not falsely claimed refugee status and that in our consideration of this we should place it in the context of:

(a) his mental state;

(b) the explanation of the return to Iran in 2004;

(c) his detention on the third return to Iran in late 2005;

(d) his third departure from Iran in late 2005;

(e) the interview of Border Control in New Zealand;

(f) his wife's passport and her later return to Iran with their child; and

(g) findings of credibility in the brother's hearing.

[70] In respect of the mental state of the appellant, she referred us to the reports of Dr Pam Lowe and Dr Codyre which showed that the appellant "has below average intellectual functioning and suffers from anxiety, sleep disturbance and poor concentration with impaired intellectual functioning".

[71] On the first return in 2004, it was submitted the appellant was able to return without incident as there was no record of his name on the computer. This was because his father had paid a bribe to the immigration section at the airport. It was submitted that the bribe had kept his name from any computer list at the airport. Thus he was in a situation where, as it was highly unlikely his name was recorded at the airport, he had every right to return without problems to Iran.

[72] In respect of the return in late 2005, following the deportation from Japan, she claimed that it was not unusual for the appellant to consider he could safely return to Iran, given that the bribes paid in the past showed he could pass in and out without incident in 2004 and early 2005. Thus, it was submitted that it could be assumed by the appellant that either his father paid sufficient bribes to have the warrants removed against him or that, over the passage of time, those warrants had lapsed. She submitted that the check carried out on arrival later in 2005 was different and frightening and the appellant does not know the reason why the warrants were not reactivated. It was submitted that puzzled airport officials could not find details of a warrant and there is no information as to what the Iranian authorities did while they held his passport. She also submitted that the failure to find additional information about him was because of his father's efforts to keep his son safe while he was in Iran.

[73] The submissions made in respect of the third departure from Iran, in late 2005, again claimed that as the appellant's father had used his influence and indicated which particular check-in desk the appellant should go to, this readily explained why he was able to leave without incident.

[74] The submissions relating to the interview at the border on return from his third trip to Iran have been addressed earlier in this determination along with the findings from the Authority's hearing in the appellant's brother's case.

[75] A submission was raised in relation to the appellant's wife's passport and her return to Iran with their child. In this regard it was submitted that it was difficult

for the appellant to comment on how his wife managed to obtain an Iranian passport except that there was no apparent reason why she should not after she had her husband's signature.

[76] In summary, it was submitted that whilst it was accepted by the appellant that he had returned to Iran, he considered he was safe because of the assurances given by his father and what actually happened on the first two occasions. His only child remains in Iran and he is desperate to see and be part of that child's life. The visits therefore must be seen as part of his desire to see his son, as was a more recent visit to Australia which was made in the hope of seeing his son.

[77] However, she submitted that the appellant still fears detection because of his apostasy in Iran and because he has become westernised and more opposed to the Iranian government as a result of living in a western country.

[78] In her oral submissions, she added that the recent involvement of the appellant in films in New Zealand, where he appears in a state of undress and with long hair that would be completely repugnant and offensive to the Iranian authorities, now must put him at an added level of risk.

[79] Finally, she submitted that if there were some inconsistencies in his evidence these must assessed in the context of the medical evidence.

[80] At the conclusion of the hearing, the appellant stated that he had never presented any false evidence and that now, as a non-believer, he could not survive in Iran. Therefore he did not want to go back, despite loving his only son.

ASSESSMENT OF THE APPELLANT'S CASE

WAS REFUGEE RECOGNITION PROCURED BY FRAUD?

[81] Before determining this issue, it is necessary to make an assessment of the credibility of the appellant in the context of the evidence presented by him and the DOL. In reaching conclusions on his credibility, we have taken into account the medical evidence that he has a below average intellectual functioning but no organic brain injury. Before us the appellant gave clear and concise evidence, in English, and appeared reasonably relaxed and confident. His evidence was vague in some areas and, on several occasions, he stated he simply could not recall details. Ms Curtis, in her final submissions, stated that the appellant was well for

his interview and "we assume that his mix of medicine for his mental health issues is now at an appropriate level". She submitted that when he is not receiving medication, he lapses into a distressed situation described in the psychiatric reports. We are satisfied that the appellant, in giving his evidence to us, is not a person of significantly low intellect. He is a person who clearly does appreciate a relaxed western lifestyle at this time. We agree that there were some small credibility problems in the evidence he gave us, as submitted by the DOL. His inconsistency in relation to claims of his father bribing and making arrangements for his clear or uninterrupted entry and exit on the first two return visits to Iran must lead to the conclusion that he was able to enter and leave without incident and that little or nothing was done by his father to bribe officials or assist in the entry or exit. We are prepared to accept that his father may have been involved in some bribery or consultation with officials when the appellant returned on the third occasion. This is logical, given the father's involvement with the Japanese lawyers, the appellant's detention in Tokyo and then deportation from Japan.

[82] We do not, however, accept the credibility of the two "summonses" that were presented by the appellant in support of his initial application in 1999. We find that those documents were either contrived or fabricated by the appellant's father, in direct consultation with the appellant or with his acquiescence. If these two summonses were credible documents, then the strong assumption must be that, particularly noting the terms of the second summons, an arrest warrant would have been issued for the appellant after his failure to attend the Iranian Revolutionary Court. We do not accept the submissions that the summonses, or the potential arrest warrant, would simply melt away in the way that it is submitted by the appellant if these had indeed been genuine documents.

[83] The appellant, in his evidence to us, stated that he left everything to his father and relied on him because he was a wealthy and influential man. On the other hand, however, in his original claim he stated that he feared detention and serious maltreatment by the Iranian authorities because he had been involved in apparent apostasy and because he had travelled to ZZ with AA, where arrangements were discussed and agreed with the American bishop relating to the possible release of Mr BB. If the appellant is to be fully believed at that time, and to this date, in the Iranian context, he had been implicated, in the eyes of the Iranian authorities, in serious anti-state or anti-Muslim activities. The appellant's failure to attend a summons, and the strong likelihood that an arrest warrant would issue thereafter, were clearly relevant to the decision-making of the original

refugee status officer. For the appellant to then return on the first two occasions, without any incident, and without any significant involvement of his father with the Iranian officials, signifies several things - first, that the summonses may not have existed at all and had been fabricated to assist his claim in New Zealand; and secondly, that the appellant was aware that he was at little risk on return to Iran because he had little or no profile with the Iranian authorities. This means that the whole fabric of his initial claim may be fictitious.

[84] The third return, and all of the evidence surrounding it that we have now ascertained, confirms to us to a high level of satisfaction, that the original grant of refugee status may have been obtained by fraud and, in particular, by the provision of fraudulent documentation.

[85] It is noteworthy and significant that the appellant, when he became implicated in the drug offences in Japan, chose to return to Iran in preference to coming to New Zealand. From a fairly early stage in his arrest and processing by the Japanese police, he was offered assistance from the New Zealand embassy. Using a Japanese lawyer, at considerable cost no doubt, he entered into a reasonably complex set of arrangements to ensure he was deported to Iran and not New Zealand. Details of his return to Iran show that his passport was held by the captain of the Iran Air flight. The officials at the airport in Tehran were fully aware that this was an Iranian national returning to Iran after being involved in drug offences in Japan. We accept the DOL submission that the processing that then took place was one that was consistent with a person who has no profile or an insignificant one with the Iranian authorities, but who has been deported on drug charges. The appellant claims that his passport was held for a further two months while some form of investigation took place and that because his father had bribed officials, the whole process was somewhat of an “act”. Given the nature of the Iranian regime, we simply do not accept that a person who had come to the attention of the authorities following deportation for drug offences, would have past summonses and arrest warrants ignored or overlooked by the Iranian authorities, particularly when a period of more than two months was available for investigation. It is fanciful to suggest that the appellant’s father could bribe enough officials to overcome all the potential authorities at the airport, immigration and police, who could potentially be involved, if the appellant had the full profile he claimed when he made his application for refugee status.

[86] In this situation, we are satisfied that, at a standard of proof that is lower

than the balance of probabilities but higher than mere suspicion, the refugee status granted to this appellant in 2000 “may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information”.

STAGE TWO

WHETHER THE RESPONDENT SHOULD CEASE TO BE RECOGNISED AS A REFUGEE

[87] 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 now necessary for the Authority 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

[88] 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."

[89] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?

2. If the answer is yes, is there a Convention reason for that persecution?

[90] On the basis of the facts as found above, particularly the third return to Iran following two earlier returns that passed without incident, we are satisfied that this appellant does not have a real chance of being persecuted should he return to his country of nationality.

[91] We accept that he has come from a family who were involved with Roman Catholicism over a lengthy period of time. That, however, has clearly not caused his father any significant problems and it appears he continues to be a reasonably affluent, retired property developer in Iran. The appellant has been able to obtain a valid Iranian passport without problems. He has been able to return on three occasions to Iran. On the third occasion, whilst he was detained and investigated in a manner consistent with a person being deported on drug offences, that did not lead to any further questioning by or problems with the Iranian authorities because of his past behaviour. While a bribe may have been involved in this incident, if the Iranian authorities considered the appellant had any sort of profile that was a threat to the Iranian regime, or was implicated in an offence in the past which had led to the death and detention of others involved, we are satisfied that the opportunity to detain and question him would have been taken at that time. Clearly the Iranian authorities did not view the appellant as a threat.

[92] The appellant now claims that because of the western lifestyle he has adopted, including his involvement in various films as an extra in New Zealand, he will now be at risk on return. That risk could be heightened because of possibly spiteful or retaliatory actions his wife or her family would take against him, or report to the Iranian authorities.

[93] We do not accept these submissions. Firstly, the appellant's wife has had ample opportunity to make such complaints over the past three or four years since she returned to Iran and there was no evidence at all to suggest that this had happened, even in the two and a half months when the appellant was in Iran on the last occasion and was able to spend some two weeks with his son. The appellant's wife will, of course, be fully aware of the Iranian law that would give priority in custody of their son to him if the appellant returned to Iran. The appellant's son is now nine years of age and nothing has been done by her, since he turned seven, to cause problems for the appellant with the Iranian authorities.

[94] We therefore do not consider there is a real chance that the appellant's wife would take steps to put the appellant at any risk with the Iranian authorities. It is clear that as an "extra" in four films in New Zealand, he is not in a situation where there would be wide recognition, or indeed interest, in his acting activities or his state of dress. It is highly speculative that such films, pirated or not, would have come to the attention of the Iranian authorities. Even if they did, there is no evidence to suggest that the authorities would take any notice of them.

[95] The appellant, when asked by the Authority, stated that he had grown his hair for the purpose of obtaining film parts and that he liked to wear his hair long and wear earrings. The motivation for this appears to be as much driven by his desire to be a model or actor and no deeply held religious or other motivation that he should not be required to alter. In this situation, we do not consider that the appellant would place himself in a situation of real risk of being persecuted on return. Clearly on the past three occasions he has adopted a lifestyle that has not brought him to the attention of the authorities. We see no reason why he would not return to that same form of lifestyle on return, including his official acceptance in identity documents and elsewhere as being "Muslim" even if his true beliefs are as an atheist.

CONCLUSION

[96] The appellant's refugee status granted in 2000 may have been procured by fraud.

[97] On the totality of the evidence relating to the second stage of our assessment, we are satisfied that the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. There is no necessity in this case to go on to consider the second issue set out above. The appeal is dismissed.

"A R Mackey"
A R Mackey
Chairman