

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76445**

**AT AUCKLAND**

**Before:** C M Treadwell (Member)

**Counsel for the Appellant:** D Mansouri-Rad

**Appearing for the Department of Labour:** No Appearance

**Date of Hearing:** 19 January 2010

**Date of Decision:** 20 April 2010

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**DECISION**

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**INTRODUCTION**

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch of the Department of Labour, declining the grant of refugee status to the appellant, a national of Iran.

[2] This is the third time that the appellant has claimed refugee status in New Zealand.

[3] On 26 June 2006, the Authority (differently constituted) declined the appellant's first appeal – see *Refugee Appeal No 75800* (26 June 2006). It disbelieved his claim to have been detained and tortured in Iran as a political activist. It also rejected his claim that he had not completed his military service and found that, contrary to his assertion, he had left Iran legally. It gave him the benefit of the doubt that he had converted to Christianity in New Zealand but found that he did not have a well-founded fear of being persecuted for that reason.

[4] On 18 June 2009, the Authority (again differently constituted) declined the appellant's second appeal – see *Refugee Appeal No 76263* (18 June 2009). It

disbelieved his claim to have given the Iranian authorities an undertaking not to promote Christianity and to refrain from seeking asylum abroad and it rejected his claims that the authorities knew that he had applied for refugee status in New Zealand and that he had encouraged his sister in Iran to convert to Christianity. It found that his claimed conversion to Christianity was not genuine and that he would neither maintain nor openly express any Christian faith in Iran. Finally, it rejected his claim that certain features of his Iranian passport were a code to the authorities to arrest him on his return.

[5] The central issue on the third appeal is that, since the determination of his second claim, the appellant has taken part in public protests in New Zealand, following the June 2009 presidential elections in Iran and that he is now at risk of serious harm at the hands of the Iranian authorities. The fact of his participation in the protests not being in question, the primary issue is whether the appellant faces a real chance of serious harm as a result.

### **JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL**

[6] Second or subsequent refugee claims (including appeals to the Authority) are subject to jurisdictional limitations. Section 129O(1) of the Immigration Act 1987 (“the Act”) provides:

“A person whose claim or subsequent claim has been declined by a Refugee Status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that the circumstances in the claimant’s home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer’s decision.”

[7] It follows that it is necessary to consider the appellant's original claim and his further claim, as presented at the second appeal, with a view to determining:

- (a) whether, in terms of s129O(1) of the Act, the Authority has jurisdiction to hear the second appeal and, if so,
- (b) whether he is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

[8] Jurisdiction to hear and determine subsequent refugee claims under s129O(1) of the Act involves a comparison of the claims as asserted by the refugee claimant. In the absence of significant difference in the grounds upon

which the claims are based, there is no jurisdiction to consider the subsequent claim. See *Refugee Appeal No 75139* (18 November 2004).

[9] Where jurisdiction is established, the merits of the subsequent claim will be heard by the Authority. This hearing may be restricted by the findings of credibility or fact made by the Authority in relation to the previous claim. Section 129P(9) of the Act prohibits any challenge to a finding of fact or credibility made by the Authority in relation to a previous claim and gives the Authority a discretion as to whether to rely on any such finding.

### **THE APPELLANT'S FIRST CLAIM**

[10] What follows is a summary of the appellant's evidence at the first appeal hearing. It is recorded in detail in *Refugee Appeal No 75800* (26 June 2006).

[11] The appellant's first claim was based on his alleged political activities in Iran between 1996 and 1999 which, he said, had led to his detention and torture. He claimed to have then left Iran illegally because, not having undertaken his military service, he would not have been given an exit permit.

[12] The first claim also relied upon the appellant's claimed conversion to Christianity in Germany, where he said he had lived from 1999 to 2005. If his conversion was discovered by the Iranian authorities, he claimed, this would have aggravated his mistreatment.

[13] The Authority rejected the credibility of the appellant as to his political activities and found that he had no such profile in Iran. It also rejected his claim not to have undertaken military service and found that he had left Iran legally. It gave him the benefit of the doubt and accepted his claim to have converted to Christianity. However, it found that he did not have a well-founded fear of being persecuted in Iran for that reason.

### **THE APPELLANT'S SECOND CLAIM**

[14] What follows is a summary of the appellant's evidence at the second appeal hearing. It is recorded in detail in *Refugee Appeal No 76263* (18 June 2009).

[15] The second claim included the concession that aspects of his first claim had

been false. He had not been a political activist, nor had he been detained and tortured. He had undertaken military service and had left Iran legally.

[16] Instead, the appellant advanced the new claim that he had returned to Iran from Germany in 2004 for a year and, while there, had been detained and tortured for converting to Christianity and applying for asylum in Germany. He had been forced to sign an undertaking to renounce Christianity and not to seek asylum in any other country in the future. He was barred from leaving Iran for six months.

[17] After obtaining a new passport by way of “small bribes”, the appellant left Iran in June 2005, for New Zealand.

[18] The second claim asserted that, since the determination of the first claim, the Iranian authorities had learned that he had applied for refugee status in New Zealand and, further, that he had been encouraging his sister, MM, in Iran to convert to Christianity. Both actions breached the undertaking he gave in 2004 and therefore, he claimed, he was at risk of being detained and tortured in Iran.

[19] The second appeal panel concluded that the second claim was not credible. It found that the appellant had not been detained on his return from Germany, had not signed any undertaking and had not been identified as proselytising to his sister MM. It concluded that his conversion to Christianity was no more than a device to support a refugee claim and that, on return to Iran, “any vestige of Christian faith or practise will dissolve to nothing”.

[20] As to his passport, the Authority found that the lack of an exit permit and the notation “damaged” in it did not indicate that the authorities had any interest in him. The suggestion of a sinister meaning was no more than speculative and not supported by any evidence.

[21] The Authority found that the appellant had the characteristics of a returning Iranian national with a passport issued by an Iranian Embassy, who may be identified as having applied for refugee status in New Zealand. It accepted that he had lived in western countries for close to 10 years. It found that these characteristics did not expose him to a real chance of serious harm in Iran.

### **THE APPELLANT’S THIRD CLAIM**

[22] What follows is a summary of the appellant’s evidence at the third appeal

hearing. It is assessed later.

[23] The appellant lodged his third refugee claim on 23 June 2009, five days after the decline of his second appeal, claiming to have participated in public demonstrations in Auckland, commencing on 16 June 2009, protesting against the 12 June 2006 election results in Iran.

[24] The appellant says that he attended a protest on 16 June 2009 at Queen Elizabeth Square, at about 5pm, for about one and a half hours. There were some 200 protesters. Along with many others, the appellant held a placard and shouted slogans. The demonstration eventually marched up Queen Street to the Town Hall.

[25] Following the violent crackdown in Iran which began on 22 June 2009, the appellant attended further protests in Auckland on 22, 23, 25 and 26 June 2009, all near the Imax cinema complex in Queen Street. Again, he attended for about one to one and a half hours on each occasion, in the late afternoon. Along with many others, he held placards denouncing the Iranian government's actions and the election results.

[26] Since June, the appellant has attended some half a dozen more protests near the Town Hall, at the rate of perhaps one a month on average. He believes that Embassy spies or informers will have reported his presence to the Embassy and he will be detained as soon as he returns to Iran.

[27] The appellant also says that, when attempting to get a new passport in 2004-2005, he gave the Iranian authorities written undertakings on three discrete occasions, not to seek asylum in other countries. The first undertaking was given to the passport office's Special Investigations unit, a branch of the *Ettela'at*. The second was given to an office of the Presidential Organisation, in the same building. The third was given to the National Fingerprints Office.

[28] According to the appellant, the Iranian Embassy knows he has sought refugee status in New Zealand because he told them so when he applied for his passport in March/April 2008. He believes the Embassy will have informed the authorities of this in Iran.

[29] The appellant admits that key aspects of his second refugee claim were false. He says that he was not detained and tortured after returning to Iran in 2004 and that he was, in fact, detained for only one day at the airport, during which he

was not mistreated save for two slaps to his face.

## Documents

[30] Counsel has tendered written submissions dated 18 January 2010 and has submitted the following:

- (a) Statements by AA, BB and CC, all acquaintances of the appellant, who confirm his attendance at the Auckland protests;
- (b) Four photographs of the appellant, taken at the same protest in Auckland (AA believes it to have been in August 2009), depicting him in a line of protesters holding up placards;
- (c) Two November 2009 articles from the Farsi Christian News Network, "Mandatory Closure of the Central Assemblies of God Church in Tehran" and "Iran Continues Its Religious Crackdown";
- (d) A 4 December 2009 *Wall Street Journal* article, "Iranian Crackdown Goes Global";
- (e) A 5 November 2009 BBC article (translated from Farsi), "Military Authorities threaten the Supporters of 'Green Movement' Outside the Country";
- (f) A 15 October 2009 *Iran Emrooz* article (translated from Farsi), "The Iranian Government's Spying Abroad to Identify Its Opponents";
- (g) A 10 July 2009 extract from a website "Julia's Blog", repeating an Iranian blogger's posting at [www.tagesschau.de](http://www.tagesschau.de) (apparently translated from the German, which was apparently translated from Farsi), entitled "Mark the Faces of Your Friends".

[31] At the hearing, the Authority provided to the appellant a copy of the Canadian Immigration and Refugee Board's Response to Information Request IRN103327.E, entitled "Iran: Treatment by Iranian Authorities of Relatives of Persons Who Have Left Iran and Claimed Refugee Status...". Counsel's submissions thereon in his letter of 27 January 2010 are noted.

[32] Since the hearing, counsel has also provided, with his letter of 27 January 2010, a number of items of country information relating to the predicament of

Christian converts in Iran. For reasons which will become apparent, it is not necessary to enumerate those, though they have been read and considered.

### **CONCLUSION ON JURISDICTION**

[33] As noted in *Refugee Appeal No 75139* (18 November 2004):

“[51] Jurisdiction under s 129J(1) is determined by comparing the previous claim to refugee status against the subsequent claim. It is clear from the definitions in s129B(1) that the exercise requires the refugee status officer and the Authority to compare the claims **as asserted by the refugee claimant**, not the facts subsequently found by [the Refugee Status Branch] officer or the Authority.”

[34] The Authority is satisfied that, in the present case, the jurisdictional threshold is met.

[35] The third claim asserts that, since the second claim was determined, the appellant has engaged in anti-government protests which give rise to a risk of serious harm. That claim is one which has arisen since the decline of the second claim.

[36] It is not overlooked that the first protest attended by the appellant took place on 16 June 2009, two days *before* his second refugee appeal was declined. The reality, however, is that his subsequent protests, from 22 June onwards, happened in response to the violent crackdown on protesters in Iran, which began on 22 June 2009. The change in the response of the Iranian authorities to protestors on 22 June 2009 and the appellant's subsequent protests combine to create a changed circumstance which crosses the jurisdictional threshold.

[37] Given this, it is necessary to address the substance of the third refugee claim.

### **THE ISSUES**

[38] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:

"... owing to a 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."

[39] 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**

[40] It is necessary first to address the question of the appellant's credibility, including the findings of the previous panels on the first and second appeals.

#### **Whether to rely on findings of fact and credibility from first and second appeals**

[41] The Authority has a discretion to rely upon findings made in relation to an earlier claim or claims. Pursuant to s129P(9) of the Act:

"... the claimant may not challenge any finding of credibility or fact made by the Authority in relation to a previous claim, and the Authority may rely on any such finding."

[42] The findings of the Authority on the first appeal were largely superseded by the findings of the second appeal panel, for two reasons. First, because the appellant admitted to the second appeal panel that key aspects of his first appeal were false (as the first appeal panel had concluded) and, second, because the second appeal panel declined to give the appellant the benefit of the doubt as to his claim to be a genuine Christian convert.

[43] The findings of fact and credibility made by the second appeal panel and the findings of fact and credibility made by the first appeal panel (save for its acceptance, by way of the benefit of the doubt, of his Christianity) are cogent and persuasive. The Authority determines to rely on those findings.



### **Credibility of the third appeal**

[44] A number of aspects of the third claim are disbelieved, for the following reasons.

#### *The three undertakings*

[45] The appellant claims to have given three written undertakings in Iran, in 2004-2005, not to seek asylum in any other country in the future. The undertakings were given, he says, to the passport office, the Presidential Organisation and the National Fingerprints office. All three undertakings were given in the course of applying for a new passport.

[46] It will be recalled that an undertaking of this nature had formed part of the appellant's second refugee claim – disbelieved by the Authority. In his second claim, the appellant had pretended to have been detained and tortured on his return to Iran in 2004, and to have been released only on giving an undertaking to abandon Christianity and never to seek asylum overseas again. He now admits that those assertions were untrue.

[47] Asked, at the third appeal hearing, why he had not told the second appeal panel of the three undertakings he had given when obtaining a passport in Iran, the appellant had no sensible answer. Initially, he blamed stress and pressure before claiming that Immigration New Zealand had given him only half an hour to talk. When reminded that he had been through the lengthy steps of a second refugee application, a statement, a Refugee Status Branch interview, an interview report (on which he could comment as extensively as he wished) and an appeal hearing, the appellant merely asserted that his new account of having given three undertakings in the course of obtaining a passport, is true. The primary difficulty with the late emergence of the account is that the false story (being detained and tortured and giving various undertakings at that time) in no way precluded him from disclosing the undertakings he now says he made later in the course of the passport application, if true. Ultimately, the appellant has not provided any sensible explanation for having failed to tell the second appeal panel of information which, if true, would have been directly relevant to his claim.

*Disclosure to the embassy*

[48] The appellant claims that, in the course of applying for a passport, he told the Iranian Embassy in March 2008 that he had applied for refugee status in New Zealand. Given that both his second and third refugee claims have included assertions of written undertakings to the Iranian authorities not to claim refugee status in other countries, it defies belief that he would have made such an admission to the Embassy.

[49] The appellant initially stated that he did so because the Embassy already knew. Pressed to explain how they knew, he stated that he had had to be honest in giving his address in New Zealand (being the street address of a hostel used by Immigration New Zealand for refugee claimants). Further, he had no temporary permit to be here. The Embassy would know, he said, from these details. Therefore, he had told them that he had claimed refugee status both in Germany and here.

[50] Asked to explain why he did not withhold all information which might lead to discovery of his refugee claim, including his address, the appellant changed tack and claimed that he was not, in fact, concerned about disclosing his refugee status because, at that time, he intended to go to Malaysia and not to return to Iran.

[51] As to why he did not simply tell the Embassy that he was an overstayer in New Zealand, the appellant said that, if he had done so, they would not have given him a passport. That is implausible. If the Embassy was willing to issue a passport to a national who had admitted seeking refugee status overseas, it is difficult to comprehend why they would not issue one to a regular traveller who had departed Iran legally and whose only fault was to have become an overstayer.

[52] Further doubt is cast on the appellant's credibility on this point by his failure to mention the supposed disclosure of his refugee status to the Embassy during his second refugee claim. The appellant applied for his passport in March/April 2008. Surprisingly, his second refugee claim, which was lodged only a few weeks later (on 17 April 2008), failed to make any mention of his disclosure to the Embassy. Nor was any mention of it made to the Refugee Status Branch when he was then interviewed on the second claim, nor in commenting on the interview report. It was not until the second appeal hearing that he asserted for the first time that the Embassy was aware of his refugee claim. Even then, it does not appear from the decision of the Authority that the appellant gave any information as to

how they knew. The written opening submissions (16 January 2009) and closing submissions (10 February 2009) from Mr Mansouri-Rad to the second appeal panel were silent on the point. Clearly, it was a late addition to the second claim. Given the importance he now places on it, it is incomprehensible (if true) that he did not raise it from the outset of his second claim.

[53] The appellant's explanation for the late emergence of this evidence is that he did not think he had to mention it because Immigration New Zealand was holding his passport. Such reasoning defies logic. Even if it were explicable that he would leave such an important point to be gleaned implicitly (which it is not), nothing about the passport could have signalled to the Refugee Status Branch that he had expressly told the Embassy of his refugee claim.

[54] The evidence does not disclose that the Embassy is aware of the existence of any of the appellant's refugee claims.

#### *Conclusion on credibility*

[55] These concerns lead the Authority to conclude that aspects of the appellant's third claim are untrue. It disbelieves his claim to have given three undertakings to the Iranian authorities and it disbelieves his claim to have informed the Iranian Embassy that he had made a refugee claim in New Zealand.

[56] It is accepted that the appellant is a single Iranian national who has spent some ten years living outside Iran, in Germany and here. It is also accepted that he took part in demonstrations in Auckland in June 2009, and infrequently since then, protesting against the June 2009 presidential election results and the mistreatment of Iranian protesters in Iran thereafter.

[57] Given these characteristics, it is necessary to address the issues raised by the Convention.

#### **Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Iran?**

[58] "Being persecuted" comprises two elements – serious harm and the failure of state protection; see *Refugee Appeal No 71427/99* (16 August 2000) at [67]. Further, the appropriate standard is a sustained or systemic violation of core human rights. See in this regard *The Law of Refugee Status*, J C Hathaway

(Butterworths, Toronto, 1993) at p108 and *Refugee Appeal No 2039/93* (12 February 1996).

[59] The fact that the appellant is a single Iranian national who has spent some ten years living outside Iran, in Germany is not a matter which, of itself, would bring him to the adverse attention of the Iranian authorities. The Iranian diaspora has grown to vast proportions since the 1979 revolution (estimated at more than three million by [www.payvand.com](http://www.payvand.com)) and the number who have lived outside Iran for many years is significant. Many return to Iran routinely to visit family, to conduct business and to re-engage periodically with their cultural roots. The fact that the appellant might return to Iran again after some years in New Zealand will not, of itself, excite any interest in either the border officials or in the Iranian authorities generally. Indeed, even if he had told the Embassy that he had sought refugee status in New Zealand (which he did not), there is no evidence that such disclosure would put him at risk of harm. See, in this regard, *Refugee Appeal No 71012* (3 June 1999), at p13, for example.

[60] As to the appellant's participation in the June 2009 (and later) Auckland protests, the response of the Iranian authorities to such activity was considered recently in *Refugee Appeal No 76454* (8 March 2010), in which Mr Mansouri-Rad appeared as counsel, at [41]-[59]. It is not intended to repeat the analysis of country information at length but the conclusions reached are discussed at [60]-[63] and can be summarised as follows:

- (a) There is a documented history of serious human rights abuses against detainees in Iran, including against some persons detained after engaging in Iran in peaceful public protest after the 2009 elections. There is, however, no direct evidence as to the predicament of persons (other than those who have an ability to subsequently leave Iran and resume "living abroad") who have been returned to Iran from other countries after having engaged in some form of public protest overseas in response to the 2009 election. An email of 27 January 2010, from the Iran Human Rights Document Centre, cited at [57] of *Refugee Appeal No 76454* (8 March 2010), illustrates the point.
- (b) TVNZ broadcasts and YouTube video clips of the Auckland protests are available on the Internet. With the regime's increasing awareness of new media in terms of intelligence gathering, there is

an increased likelihood that these have been viewed by embassy staff and some participants identified;

- (c) The broadcast by VOA of some TVNZ and YouTube footage into Iran also increases the chance that some participants may be identified by the Iranian authorities;
- (d) A person exhibiting a leadership or organisational role in such protests (perhaps by standing at the front and/or leading other protestors in shouting anti-government slogans) may be viewed with greater antipathy by the authorities than someone who appears only at the margins of a demonstration;

[61] In *Refugee Appeal No 76454* (8 March 2010), the appellant was found to have had a high profile during the protests, notably “standing on his own at the front of the group leading other protestors shouting slogans”. Applying the benefit of the doubt, the Authority found “by a narrow margin” that there was a real chance of him suffering serious harm if returned to Iran.

[62] In contrast, the appellant on the present appeal was not prominent. On each occasion, he attended protests for approximately an hour and a half only. He held a placard and shouted slogans, but not as a leader of such activities. Indeed, footage of the protests from 16 June 2009 onwards shows that many, if not most, protestors held placards and virtually all shouted slogans in response to a leader with a megaphone or a dominant voice. Such activities as he undertook did not distinguish the appellant as a leader or organiser. He does not feature prominently in any of the video clips to which the Authority has been referred. He does not appear to be anything other than an ordinary protestor.

[63] The lack of interest in the appellant by the Iranian authorities is reinforced by the reality that his relatives in Iran have not reported to him any visits by the authorities or any pressure being placed on them to have him cease his protest activity. This must be viewed in the context of the Canadian Immigration and Refugee Board’s Response to Information Request IRN103327.E, which reports:

**“Post-election protesters**

The Director of the [International Campaign for Human Rights in Iran] stated that ‘[t]he relatives of post-election protesters have been heavily targeted, [including] those of persons residing inside Iran, those who have left and are seeking asylum, and those who were already abroad and engaged in protests outside Iran’ (ICHRI 9 Dec. 2009)....”

[64] Counsel submits that this carries the inference that the Iranian authorities are interested in protesters outside Iran. It is accepted that it evinces interest in *some* protesters outside Iran, but that is already evident from the bulk of the country information. The real issue is whether any particular appellant is a person in whom the authorities are interested. While caution may need to be exercised in respect of any person who might be taken as having had a leadership or organisational role, the country information does not establish that ordinary protesters, such as the appellant, are at risk of serious harm. Even if they are detained briefly and questioned on return, such actions would fall well short of constituting serious harm.

[65] For the foregoing reasons, the appellant does not face a real chance of serious harm on return to Iran. He does not have a well-founded fear of being persecuted. It follows that the second issue raised by the Convention, that of the reason for any such persecution, does not arise for consideration.

### **CONCLUSION**

[66] It is concluded:

- (a) The Authority has jurisdiction to consider this third appeal.
- (b) For the above reasons, the appellant is not a refugee within the meaning of Article 1A(2) of the Convention.

[67] Recognition of refugee status is declined. The appeal is dismissed.

"C M Treadwell"

C M Treadwell  
Member