

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

AT AUCKLAND

Application No 76079

IN THE MATTER OF

An application pursuant to s129L of the Immigration Act 1987 to cease to recognise a person as a refugee

BETWEEN

A refugee status officer of the Department of Labour

APPLICANT

AND

RESPONDENT

BEFORE

C M Treadwell (Member)

Counsel for the Applicant:

S Blick

Counsel for the Respondent:

D Mansouri-Rad

Dates of Hearing:

9 June, 27 and 28 August 2008

Date of Decision:

6 January 2009

DECISION

INTRODUCTION

[1] This is an application by a refugee status officer, in accordance with s129L(1)(f)(ii) of the Immigration Act 1987 ("the Act"), for a determination that the Authority should cease to recognise the respondent, a man in his late forties from Iran, as a refugee on the ground that recognition may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information (hereafter referred to collectively as "fraud", for convenience).

PROCEDURAL HISTORY OF THE REFUGEE CLAIM

[2] The respondent arrived in New Zealand in June 1998. He applied for refugee status on arrival and was interviewed by a refugee status officer on 12 January 1999. His application was declined on 16 March 1999.

[3] The respondent's appeal was heard by the Authority (a different panel) on 5 July 1999. A decision granting him refugee status was delivered on 30 July 1999. See *Refugee Appeal No 71390* (30 July 1999).

[4] In reliance on the grant of refugee status to him, the respondent subsequently applied for permanent residence in New Zealand. It was granted to him on 29 May 2000.

[5] A refugee status officer made the present application to the Authority on 18 June 2007, some seven years after the respondent was recognised as a refugee. It was served on the respondent on 22 August 2007.

[6] Before setting out the grounds upon which the respondent was granted refugee status and addressing the grounds of this application, it is appropriate to explain the jurisdiction of the Authority in respect of such applications.

JURISDICTION

[7] A refugee status officer may apply to the Authority, under s129L(1)(f)(ii) of the Act, for a determination as to whether the Authority should cease to recognise a person as a refugee where that status may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information.

[8] The jurisdiction of the Authority to hear such applications is set out in s129R(b) of the Act:

"In addition to the function of hearing appeals from decisions of refugee status officers in relation to refugee status, the Authority also has the function of determining applications made by refugee status officers under s129L(1)(f) as to whether –

- (a) ...
- (b) The Authority should cease to recognise a person as a refugee, in any case where the earlier recognition by the Authority of the person as a refugee may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information; or
- (c) ..."

[9] It is a two-stage test. The Authority must first determine whether the refugee status of the subject of the application “may have been procured” by fraud. If so, it must then determine whether to “cease to recognise” the person as a refugee. That latter consideration (in effect, whether to cancel the recognition of refugee status) does not automatically follow, since it will depend on whether the person currently meets the criteria for refugee status. This second stage is the Authority’s orthodox forward-looking enquiry into whether a claimant – at the date of the fresh determination – meets the terms of the Refugee Convention. See ss129P(1) and 129S(b) of the Act and *Refugee Appeal No 75392* (7 December 2005) at [10]-[12].

[10] As to the first limb – whether refugee status “may have been” procured by fraud – responsibility for adducing the evidence to support such a finding rests with the Department. See, for example, *Refugee Appeal No 75989* (14 May 2007), at [6] and also *Refugee Application No 75891* [16 April 2007], at [7].

[11] Against this procedural background, it is now necessary to address the facts of the respondent’s claim to refugee status and the present application.

THE RESPONDENT’S REFUGEE CLAIM

[12] The account given by the respondent at his appeal hearing in July 1999 is set out in the decision of the Authority in *Refugee Appeal No 71390* (30 July 1999) at pp 1 - 11, of which the following is a summary.

[13] The respondent was born and raised in Western Azerbaijan province, to a Turkish mother and a Kurdish father, both non-religious. He regards himself as ethnically Azerbaijani. He studied electrical engineering at university in the late 1970s, where he became involved with communist student groups, who generally supported the self-determination of Kurds and Azerbaijanis.

[14] Following the 1979 revolution, the respondent became involved with the communist *Fedayeen Khalq*, for whom he ran a library/bookshop on campus. He was also was in charge of some village cells of the organisation.

[15] By 1980, the respondent had become a supporter of the communist Tudeh Party and, within a short time, joined the party’s youth wing committee in his home town. In all, he was in charge of three cells, each of three individuals.

[16] In early 1983, Tudeh Party members began to be arrested and the respondent went into hiding. After several months, he returned to his university but was arrested within a few days. He was interrogated while blind-folded and was insulted, pushed, slapped and deprived of food. He saw other members of the party, who had been tortured, walking with the help of sticks.

[17] The respondent was released as he was not a high profile member. Further, the Tudeh Party announced its disbandment at this time and this likely played a part in his release. He undertook to avoid any further political activities and was required to report to the authorities once a week.

[18] The respondent abandoned all political activity from 1984 to 1996. Even so, he continued to have difficulties with the university and was finally expelled in 1992. Further, when he went to Tehran for two years, to complete his training in a particular medical field, he was refused a licence to practice. The official reason was that he was employing incompetent staff (among them, a Baha'i) but he believes that the real reason was his well-known leftist views.

[19] After many years of political inactivity, the respondent found himself in a changed political climate in 1996/97, when Ayatollah Khatami began discussing freedom and democracy. Khatami even expressed the view, on television, that some non-Islamic groups in Iran should be entitled to express their ideas and that, despite not being Muslims, such individuals loved their country. The respondent also supported Khatami's opposition to the notion of a theocracy.

[20] At this time, the respondent was friends with one XX who had formerly been in charge of the Tudeh Party in his home town and had spent 10 years in prison after the 1983 crackdown. The respondent had first met XX in prison and resumed their friendship on his release in 1993, when he opened a shop near the respondent's home. They would meet there to talk.

[21] XX introduced the respondent to a new political group, the Iranian Leftist Democratic Union (ILDU). Together with three others, they founded a local chapter of the ILDU. The respondent's activities involved meeting regularly with other members for political discussions and reading books and newsletters. On three occasions, he distributed pamphlets in town.

[22] Although Mr Khatami was successful in the elections he was not given control of the armed forces and the authorities clamped down on political activists, contrary to the expectations of the respondent and his associates. The ILDU was

uncovered and the leader, Pirouz Davani, was detained and murdered. XX fled the country.

[23] On 18 March 1998, the respondent was arrested. At his home, the security forces found a pamphlet about Ayatollah Montazeri, alcohol, video tapes and a satellite dish. His wife attempted to obstruct the officials but was pushed aside and fell, hitting her head. The respondent produced a medical certificate confirming that she had been treated for head trauma and scalp laceration and had received stitches and advice in relation to concussion.

[24] The respondent was detained for a month. The authorities told him that they had arrested his associates, including XX, who had implicated him. He knew, however, that they had no evidence and that XX had already left Iran so he made no admissions. As to the Montazeri pamphlet, he claimed XX had given it to him and that he himself disliked Montazeri. His denials were accepted and he was released on an undertaking to avoid further political activity. He was told to report every Thursday.

[25] Following his release, the respondent was visited one morning by a member of the ILDU, KK, who informed him that NN (KK's cousin), another ILDU member, had been arrested. The respondent went into hiding for ten days. Learning that officials wanted to re-arrest him, he decided to leave Iran. He was smuggled over the border into Turkey and, from there, he travelled on a false passport, with the assistance of an 'agent', to New Zealand.

[26] The respondent arrived in New Zealand on 1 June 1998. Shortly afterwards, he learned that his uncle had been detained for two days over a guarantee he had given when the respondent was released from custody. The respondent's wife also informed him that in about April 1999 she saw NN's wife who had received no news of NN and appeared distraught.

[27] The respondent also obtained a letter dated 28 April 1999 from XX, by then in Germany, confirming the core of the respondent's account and that he (XX) had been granted refugee status in Germany.

The decision of the Authority

[28] The Authority allowed the appeal. After finding the account of the respondent to have been credible, it held that he faced a real chance of being persecuted in Iran. Such persecution, it found, would be for the Convention

reason of political opinion.

[29] Against this history of the respondent's refugee claim, it is now necessary to set out the grounds of the present application.

APPLICATION IN RELATION TO LOSS OF REFUGEE STATUS

[30] The Department applies for an order that the respondent cease to be recognised as a refugee, on the ground that such recognition may have been procured by fraud. The crux of the application is that, since he was granted refugee status the respondent:

- (a) appears to have departed Iran legally in 1998, not illegally as he had claimed;
- (b) has obtained an Iranian passport from the Iranian Embassy in New Zealand; and
- (c) has returned to Iran on two occasions, in 2003 and 2005, without incident.

[31] In essence, the Department submits that it is implausible that a man at risk of being detained as a political activist should be able to leave without arrest, to later obtain a passport and to return to his home country without being apprehended.

[32] In support of the application, evidence was given orally and by way of a written statement dated 3 June 2008 by a refugee status officer, Matthew James Barlow.

THE CASE FOR THE RESPONDENT

[33] The respondent says that the core of his refugee claim in 1999 was truthful. As to the concerns at [30] above, he says:

- (a) He admits that he did not tell the truth about his manner of departing from Iran in 1998 and concedes that he did, in fact, depart legally, on an Iranian passport issued to him in 1994;

- (b) He did obtain a passport from the Iranian Embassy in 2003;
- (c) He did return to Iran in 2003 and 2005, but did so for compelling reasons on each occasion, after ensuring that he could safely do so; and
- (d) The Iranian authorities still hold an adverse view of him, as evidenced by the recent obstruction of his attempt to give his sister a power of attorney.

Evidence of the respondent

[34] The respondent says that his evidence to the Refugee Status Branch and to the Authority in 1999 was correct in all respects, save two. He admits that he concealed the fact that he departed Iran legally and he also volunteers the information that the medical certificate he produced in 1999, attesting to his wife's injuries when knocked down by the security forces in March 1998, exaggerated the extent of her injuries. She did not suffer a laceration to her head, only bruising and the respondent regrets that he exaggerated this and then found himself needing to get his family to procure a certificate which corroborated the lie.

Legal departure

[35] The respondent says that he also regrets having misled the New Zealand authorities about his legal departure from Iran in 1998.

[36] According to the respondent, he first received an Iranian passport in 1993, after he had completed his military service. He used it to travel to Azerbaijan in 1996, where he met with other pro-independence activists in the lead-up to demonstrations which were brutally quashed. He used the passport again in 1995, to travel to Germany to undertake medical study. He still had the passport when he found himself needing to leave the country in 1998.

[37] Initially, the respondent planned to leave Iran by crossing the border into Turkey. His sister, however, told him that she could ensure his safe passage by air. She is a lawyer in Tehran, married to another lawyer who is, himself, highly influential. After having him send his passport to her by a friend, she persuaded her husband to use his contacts to ensure the respondent could safely depart by air. Finding that he could, she relayed this to the respondent and arranged a safe-house for him overnight, pending his departure.

[38] En route to New Zealand, the respondent spent time in Malaysia, while an 'agent' arranged his travel via Argentina, on a false passport. He told the respondent to get rid of his Iranian passport and not to tell the New Zealand authorities that he had departed Iran legally because, if he did so, they would return him to Iran. The respondent says that he did not know what to do and accepted what the agent had told him to do. He left the passport with the agent, who later mailed it to him in New Zealand.

[39] In New Zealand, the respondent was joined by his wife and daughter, once his refugee status had been recognised. They arrived in September 1999.

[40] The respondent's wife struggled for a long time to adapt to life here. She knew no-one, could speak no English, suffered from depression and blamed the respondent for their difficulties and separation from their families. Their relationship deteriorated to the point that they separated and had their marriage dissolved in 2003. After some time, they reconciled and resumed living together, but have never remarried.

Travels to Iran

[41] The respondent's first return to Iran was in August 2003. By that time, he had been in New Zealand for five years. He got in touch with XX, still living in Germany, and with other Marxist friends who were still in Iran. From them, he learned that a number of their colleagues in Iran had been released from custody as a result of the more liberal regime under Ayatollah Khatami. The respondent knew from a number of sources, including the BBC and the Iranian community, that the Khatami government was actively encouraging Iranians to return to the country, without fear of reprisal. XX and the respondent's friends there also agreed that it would be safe for him to return.

[42] Still unsure, the respondent contacted his sister, who also told him that it was safe and so he resolved to visit his family and friends, particularly his widowed mother who had been pressuring him to return for some years. His wife would not, however, allow him to take the children, out of her fear for their safety.

[43] The respondent had no difficulty in re-entering Iran. Once there, he stayed with his sister for a short while, before staying with a friend. His family and friends came to visit him there and he did not return to his home town at all. On leaving the country, he again experienced no difficulty.

[44] In 2005, the respondent learned that his sister was dying of a terminal

illness (she later died). At the same time, he was homesick and his marriage was in difficulties. He returned to Iran again, this time staying with a friend in a village on the Caspian Sea. Because his sister could not come to him, the respondent dressed in Kurdish style, with a turban, and went to his home town to see her in hospital. He avoided contact with the authorities while there and experienced no difficulties. Again, he was able to leave the country without hindrance.

Current interest in the respondent

[45] The respondent has had little to do with the Iranian authorities since his return to New Zealand in 2005. On one occasion, however, in 2007, he asked his sister to act as his power of attorney in relation to the sale of a family property which required his signature.

[46] To her surprise, the respondent's sister was questioned when she tried to register the power of attorney with the Land Registry office. She engaged an agent who was eventually told that the respondent had anti-revolutionary views and should present himself if he wanted the document registered. The agent through which the registration had been attempted, one Ibrahim, informed her that the ruling had come from the Revolutionary Court after protracted delays.

Evidence of the respondent's partner

[47] The Authority also heard evidence from the respondent's partner, AA. AA is an Iranian national. Her family is historically Sunni, though she grew up with parents who were not religious, either in outlook or in practice.

[48] Being Sunni, in the eyes of the Shi'ite majority in Iran, led to much discrimination during AA's early life, including her failure to gain university admission because she was not considered to act or dress appropriately for a woman. She did not attend the mosque and did not wear the hijab unless forced to do so by the *basij*.

[49] AA confirms the respondent's account of events prior to his departure for New Zealand, including the discussions with the respondent's sister prior to his departure, to ensure that there was no entry on any black list which would prevent him leaving the country.

[50] As to her life here after she joined the respondent in 1999, she confirms that she found it very difficult to adjust to life here and that the strain led to a serious breakdown in their relationship.

[51] After their marriage had been dissolved, however, she and the respondent realised that they still cared deeply for each other and resolved to rebuild their relationship. They have lived together ever since, but have not remarried and AA appreciates the freedom which enables her to choose.

[52] Living in New Zealand for nine years has led her to see the role of women in society in a new light. She believes strongly in the equality of women and is committed to the principles of an open, secular society in which women's issues such as health, contraception, the right to choose whether to have children and how many, and how she might want to enjoy and exercise her sexuality are not only issues of free choice for women but are matters calling for informed public discussion.

[53] AA is now employed here and works and socialises with other women in a way which she could not in Iran, including drinking alcohol. She describes herself as liberal and happy. Her sons have both excelled in their education – the eldest is now a musician who lives with his girlfriend and is completely westernised.

Evidence of XX

[54] XX gave evidence to the Authority by way of telephone link from Germany. Now in his 60s, he confirmed and reiterated the evidence he gave to the Authority by way of statement in 1999.

[55] According to XX, he first met the respondent in the early 1980s, when they were both involved in the Tudeh Party. They met again in prison, when the respondent was detained for a short time. XX himself spent ten years in prison.

[56] On his release, XX renewed his acquaintance with the respondent and, from 1995/1996, worked with him in their political activities for the unification of left wing parties in Iran, the ULDI. XX was responsible for receiving and passing on publications of the party and would forward them to the respondent for distribution.

[57] When XX learned of the arrest of Pirouz Davani, the leader of the party, he feared that Davani would reveal his own name under interrogation and that he too, under interrogation, would reveal the names of others, including the respondent. He therefore rang a contact in the party and warned the others that the regime may well come after them.

[58] XX left Iran and went to Germany, where he was granted refugee status. Thereafter, he lost touch with the respondent, until he was contacted by him in

1999, in relation to the respondent's refugee claim.

[59] As to the respondent's ability to leave Iran in 1998, XX was not surprised. It is his understanding that exit bans have to be issued by the Court, which would not generally issue one "for a person who has been to prison for a month". XX himself departed lawfully through Mehrabad airport. He had suffered a three year exit ban after his release from prison in the late 1980s but that had expired by 1998.

[60] In 2003, the respondent telephoned XX in Germany and discussed with him the risks of returning to Iran. XX advised him that it was probably safe to return, given that the killing of Mr Davani had effectively shut down the party some years earlier. At that time, the political situation in Iran was "better", under the Khatami regime.

Documents

[61] In support of his explanation, the respondent produces a number of documents.

Identity documents and official records

- (a) The respondent's Iranian passport, issued in 1993.
- (b) The respondent's Iranian passport, issued in 2003.
- (c) The respondent's wife's Iranian passport, issued in 1998.
- (d) May 1999 medical certificate for his wife's head wound;
- (e) 26 September 2003 dissolution of marriage certificate, between the respondent and his wife;
- (f) August 2006 death certificate for the respondent's sister BB;
- (g) Medical certificate dated 22 May 2008 from Dr Denise Brown, recording the respondent's treatment for depression since September 2000, including recurring bouts in 2005, 2006 and 2007;
- (h) Power of Attorney dated February 2007, from the respondent to his sister CC;
- (i) Various photographs of the respondent's older son;

Third party statements and related documents

- (j) Statement by ZZ, a New Zealand law enforcement officer. She says she has known the respondent for four years, recalls him receiving news of his sister's illness in 2005 and discussed with him "at some length" his need to return to see her and the risk in doing so. Based on many conversations with the respondent over the years, ZZ confirms his interest in the Azerbaijani independence movement and in Marxism.
- (k) Statement by YY, an Iranian pharmacist living in New Zealand who has known the respondent for four years. He confirms that the respondent believes strongly in Azeri rights and has held meetings to that end with other Azeris at his home.
- (l) Translation of transcript of part telephone conversation between the respondent and his sister CC, as follows:
- Respondent:** Hello [CC] how are you doing? I heard from [AA] that my letter of authority I have sent to you did not work. I am asking you to explain it to me what was the problem.
- [CC]:** Yes... we took it to the Revolutionary Court in [a certain place]. Finally we were told that there is no way until he comes to Iran himself. Because of his political activities we require him to present himself."
- (m) Translation of transcript of part telephone conversation between the respondent and one WW, as follows:
- Respondent:** Hello, I am [the respondent] calling from New Zealand. I heard from [AA] that you had difficulties with the letter of authority I have sent to my sister. Just calling to ask you to explain what happened. Maybe I can do something about it from here.
- Ibrahim:** Yes, the letter of authority that you sent to [your sister]... we took it to the registry office. There we were told that this should be confirmed by the Revolutionary Court. Then I took it there myself. They told me that they should send it to the intelligence services office and also to somewhere else to be searched and it will take time. After following it up over ten days finally they told me that it's not confirmed because of [the respondent's] anti-revolutionary activities in past and they require you to present yourself."
- (n) Email dated 3 September 2007 from the respondent's sister AA in Iran, attaching copies of numerous documents;
- (o) Practising certificates for the respondent's sister AA and her husband;
- (p) Letter dated 2 September 2007 from the respondent's sister AA, stating:

I... Attorney at Law... of [address] hereby testify that my brother [the respondent], who due to his political activities was of interest to the intelligence official, decided to leave Iran by illegal means. I however insisted my brother not to depart the country illegally because of the risks involved.

I, together with my husband..., also an Attorney at Law... in [address], with the help of my husband's connections including some famous higher ranking officials in [a certain place], assisted my brother and arranged for him to eventually depart Iran safely from Tehran Mehrabad airport."

- (q) Copy of 2007 German passport of XX;
- (r) Statement dated 2 September 2007 from XX;
- (s) Iranian birth certificate for DD;
- (t) Undated letter from a friend in Iran, DD to the respondent, relevantly stating:

[My friend], both times you have visited us we have had such great times and you know you are always welcome back to our home. I still keep your traditional Kurdish clothes. Oh yes, you were so good in them! I hope by now, you have got over the pain of your sister's illness and death, hope you never have such sad moments again...."

Country Information

- (u) 2003 article by Amnesty International entitled "Day of the Disappeared", referring to the arrest and disappearance of Pirooz (or Pirouz) Davani, known to have "disappeared" in August 1998;
 - (v) Undated article from www.greenleft.org.au entitled "Pirooz Davani";
 - (w) Various articles relating to the Azerbaijani independence movement in Iran in 1995, the treatment of Azeris there and the World Azerbaijanis Congress.
- [62] The applicant has provided the Authority with:
- (x) Tabulated bundle of documents numbered 1 – 26;
 - (y) Translation of extracts from the respondent's passport, issued in 1998;
 - (z) Extract from United States Department of State Country reports on Human Rights Practices: Iran (February 1999), as to travel restrictions in Iran, including exit permit requirements;

[63] The Authority itself located a number of relevant documents on its file in respect of the respondent's original appeal and has provided copies of the same

to both parties. Those documents were considered by it at the time it granted refugee status to the respondent. Most relevantly, they include:

- (a) the respondent's statement and his "additional" statement;
- (b) 1984 notice of detention of the respondent for supporting the Tudeh Party;
- (c) February 1992 letter from a university, refusing him further enrolment;
- (d) his 1994 medical qualifications;
- (e) 1994 official letter concerning the respondent's employment of "incompetent staff"; and
- (f) April 1999 statement of XX.

SUBMISSIONS

[64] For the applicant, Ms Blick has submitted opening submissions dated 3 June 2008 and closing submissions dated 18 September 2008. For the respondent, Mr Mansouri Rad has tendered opening submissions dated 26 August 2008 and closing submissions dated 6 October 2008.

ASSESSMENT

[65] The first issue to be addressed is whether the refugee status of the respondent may have been procured by fraud.

The "may have been procured by fraud" threshold

[66] "May have been" does not require the Authority to find that refugee status was procured by fraud. As observed in *Refugee Appeal No 75563* (2 June 2006), at [20]:

"...the term 'may have been' signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion. Beyond that it is not realistic to define an expression that is deliberately imprecise."

[67] As to what amounts to "the concealment of relevant information", in *Refugee Appeal No 76094* (30 June 2008) the Authority held, at [71]-[72], that the

information must be such that it would have had some potential utility in terms of assisting the decision-maker to determine the claim.

[68] Further, the Authority need not be satisfied that the decision-maker *would* have come to a different conclusion, only that the concealed information *may* have caused the decision-maker to reach a different conclusion. It must be remembered that the “may have been procured by fraud” step of the enquiry is no more than a jurisdictional threshold. It serves no function (if it is established) other than to engage the jurisdiction of the Authority to look afresh at whether the person ought to be recognised as a refugee.

[69] Sometimes, on enquiry, the facts as found establish that refugee status was not procured by fraud. It might be established, for example, that a person in a position akin to that of the respondent did depart illegally, as originally claimed. In such cases, the fact that fraud is positively discounted will enable a finding that the “may have been” threshold is not reached.

[70] In other cases, however, where there is an admission that relevant information was concealed, it is important that the Authority does not embark upon the further step of attempting to second-guess what the view of the determining body would have been, at the time of the original decision, had it known the concealed information. There is a superficial attraction in the notion that, if it can be established that the concealed information would have made no difference to the outcome, then the enquiry can be halted at the jurisdictional threshold because “may have been” is discounted by a finding of ‘was not’.

[71] Such reasoning is, however, flawed. To attempt to determine whether a person should have been recognised as a refugee at a much earlier point – sometimes more than a decade earlier – compels the decision-maker to engage in unwarranted speculation. In the intervening years, much is likely to have changed in the country of origin and there will have been developments in jurisprudence, in knowledge and in understanding. For the Authority to endeavour to divine what another decision-maker would have decided on a different set of facts, at a fixed point in the past, on an estimate of the decision-maker’s knowledge of the facts, the country conditions and the jurisprudence, is a task fraught with the possibility of error. It risks significant unfairness to the refugee.

[72] Further, it confuses the Authority’s two functions – the jurisdictional threshold enquiry and the further enquiry (if necessary) into whether the person ought to continue to be recognised as a refugee.

[73] In short, once the concealment of information is acknowledged, its relevance to the ‘may have been’ enquiry is whether it would have had potential utility in assisting the decision-maker to determine the claim, in that it *may* have caused the decision-maker to reach a different conclusion.

[74] With this in mind, it is possible to return to the facts of the present case.

[75] In claims involving states with sophisticated security services and bureaucracies, the legality or otherwise of a claimant’s departure may well be relevant to both credibility (the plausibility of a fugitive passing through airport security systems unchallenged) and the wellfoundedness of the claimed persecution (it may indicate a lack of interest in the claimant). In the Iranian context, see for example *Refugee Appeal No 75802* (23 January 2007) at [57] and *Refugee Appeal No 75989* (14 June 2007) at [57]-[59]. In both instances, the fact that a claimant’s lawful departure was concealed sufficed to establish that refugee status may have been procured by fraud.

[76] That is also the finding here. The respondent’s failure to disclose to the Authority in 1999 that he had departed Iran lawfully prevented it from inquiring into the incongruity of a ‘wanted’ man being able to pass through the security checkpoints at Mehrabad airport and prevented it from weighing the apparent lack of interest in the respondent when assessing the well-foundedness of the claim. “May have been procured by fraud” is established.

[77] The threshold having been established, it is now necessary to consider whether the Authority should cease to recognise the respondent as a refugee. As already explained, that requires the Authority to undertake its orthodox enquiry into whether or not the respondent is, today, a refugee.

THE ISSUES

[78] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly 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.”

[79] 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 respondent 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 RESPONDENT'S CASE

[80] In order that the two issues raised by the Convention can be addressed, it is first necessary to address the question of the respondent's credibility.

Credibility

[81] The respondent admits to having told two lies to the Refugee Status Branch at the time of his refugee claim. First, he lied as to the manner by which he departed Iran. Second, he lied about the injuries suffered by his wife when she was assaulted by security officers after he had departed. The second lie included the presentation of a medical certificate which he knew to exaggerate her injuries.

[82] These lies have caused the Authority to approach the respondent's evidence with circumspection. At the same time, it is necessary to remind oneself that the telling of some lies does not mean that everything a claimant says is untrue. Nor must the Authority base its decisions on the morality of truthfulness. The Authority's primary function is to recognise people who have a well-founded fear of being persecuted, not to make findings according to a value-judgment scale of honesty.

[83] Having seen and heard the respondent, the Authority is satisfied that his evidence is credible. It is accepted that, barring the manner of departure and the injuries to his wife, the account given by the respondent to the Refugee Status Branch and to the Authority in 1999 was truthful.

[84] In recording this conclusion, it may be helpful to comment on a number of features of the evidence.

[85] First, the evidence of the respondent was substantially corroborated by his wife and by XX. Both impressed as candid and frank. XX, in particular, has no interest in the outcome of the proceedings save that the respondent was a friend

many years ago and the degree to which his evidence diverged on peripheral detail strongly suggests there had not been any collaboration.

[86] Second, the respondent's explanation for his ability to depart Iran lawfully in 1998 and his efforts to ensure it was safe to do so are corroborated by his sister in Iran, whose husband's contacts as a lawyer might well have facilitated such enquiries. The respondent is frank that he does not know what, if anything, was done to facilitate his departure, or whether his brother-in-law simply made discreet enquiries which established that his name was not on the 'black list'.

[87] Third, as to the exaggeration of the injuries suffered by the respondent's wife and the medical certificate falsely asserting that she had required stitches, the respondent volunteered this admission. It did not form part of the grounds on which the Department brought this application and it would likely have passed without comment if the respondent had not raised it himself, presumably in a desire to be fully forthcoming. He is due some small credit for that.

[88] Fourth, the respondent's claim is supported by a substantial quantity of documentation and corroborative evidence. The statement by the New Zealand law enforcement officer ZZ, for example, confirms not only that the respondent did have a compelling reason to return to Iran in 2005 but also his trepidation and concern for his safety. Such concern, expressed to a third party when there was no need to feign the existence of a risk, suggests a genuinely held belief by the respondent that such risk existed.

[89] Accepting, as the Authority does, that the respondent's account in 1999 was truthful as to his involvement with leftist political groups and the adverse interest in him by the authorities, it is now possible to turn to the issues raised by the Convention.

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

[90] In short, the claim is that the respondent is at risk of further detention, interrogation and maltreatment by the Iranian authorities because of his political views and his ethnicity.

[91] The significant issue in terms of whether the respondent faces a real chance of being persecuted *today*, is his proven ability to return safely to Iran. On its face, his ability to enter and depart from the country on two occasions since

being granted refugee status suggests that, even though he was of adverse interest in 1998, he is no longer of interest now.

[92] There are several points which undermine this assumption, however.

[93] First, if the respondent's name was not on any list at the airport in 1998, and his sister assured him it was not, it is perhaps not surprising that it continued not to be on the list in 2003 and 2005 and, if so, no amount of travel back and forth is cause for concern. As to the involvement of the respondent's sister and her husband, the sister's letter of 2 September 2007 makes it clear that they were, at the very least, able to check with contacts in 1998 to see whether his name was subject to an exit ban at Mehrabad airport. And it must be remembered that the respondent says that he did not return to Iran without checking with his sister that it would still be safe to pass through the airport.

[94] Second, the respondent comes from a town over 500 kilometres from Tehran. The Danish *Report on Fact-Finding Mission to Iran*, 9-17 September 2000, noted, at p14, that there were only five centres outside Tehran which had the ability to update the 'exit-ban' records on Mehrabad's computer system. The respondent's home town, ranking well outside the six largest Iranian population centres in the 1996 and 2006 censuses and being less than one tenth the size of Tehran (see www.citypopulation.de), is unlikely to have been one of them.

[95] Third, and perhaps most significantly, there is recent evidence that the respondent is still regarded in an adverse light by the authorities in his home town. His recent efforts to register a power of attorney in favour of one of his sisters was refused, according to the respondent's agent Ibrahim, on the grounds that the Revolutionary Court had noted his "anti-revolutionary activities in past".

[96] Even if the respondent were to settle in a region of Iran well away from his home town, it is inevitable that he will have to interact with bureaucracy in some form sooner or later. Given that the routine act of registration of a power of attorney brought him to the attention of the Revolutionary Court, there is a real chance that some equally mundane contact with officialdom in the future will have a similar outcome, wherever he is. The renewal of interest in him appears to have included an interest in detaining and questioning him. Such interrogation in Iran is notorious for involving arbitrary detention, a lack of due process and serious physical mistreatment, including extra-judicial execution. See, for example, the United States Department of State's *Country reports on Human Rights Practices: Iran* (February 2008) which provides a useful summary thus:

“The [Iranian] government's poor human rights record worsened, and it continued to commit numerous, serious abuses. The government severely limited citizens' right to change their government peacefully through free and fair elections. There were reports of unjust executions after unfair trials. Security forces committed acts of politically motivated abductions; torture and severe officially-sanctioned punishments, including death by stoning; amputation; flogging; and excessive use of force against and imprisonment of demonstrators. Vigilante groups with ties to the government committed acts of violence. Prison conditions remained poor. Security forces arbitrarily arrested and detained individuals and held political prisoners and women's rights activists. There was a lack of judicial independence and of fair public trials. The government severely restricted civil liberties, including freedoms of speech, press, assembly, association, movement, and privacy.”

[97] The Authority is satisfied that the respondent faces a real chance of being persecuted, should he return to Iran.

Convention reason

[98] Clearly, any harm suffered by the respondent would be for the reason of political opinion.

CONCLUSION

[99] It is concluded that:

- (a) the evidence establishes that the grant of refugee status to the respondent in *Refugee Appeal No 71390* (30 July 1999) may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information; but nevertheless
- (b) his refugee status should continue to be recognised.

[100] The application is dismissed.

“C M Treadwell”
C M Treadwell
Member