

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

AT AUCKLAND

APPLICATION NO 76113

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 A N Molloy (Member)

Counsel for the Applicant: K Howard

Counsel for the Respondent: D Mansouri-Rad

Dates of Hearing: 17 & 19 September 2008

Date of Decision: 6 April 2009

DECISION

[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 national of Iran, as a refugee. The application is brought upon the basis that his refugee status “may

have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information” (subsequently referred to as “fraud or the like”).

PROCEDURAL HISTORY OF THE RESPONDENT’S REFUGEE CLAIM

[2] The respondent arrived in New Zealand in early 2001 and claimed refugee status upon his arrival. After interviewing the respondent in August 2001, an officer of the Refugee Status Branch (RSB) declined his claim in its decision dated 4 March 2002. The respondent’s appeal was heard by a different panel of this Authority (the first Authority panel) in June and July 2002. The Authority allowed the appeal and recognised the respondent as a refugee. The account given by the respondent is summarised below. It is set out in more detail in the decision of the first Authority panel, *Refugee Appeal No 73626* (24 December 2002).

[3] The present application was made to the Authority by a refugee status officer of the Department of Labour (DOL) on 10 July 2007. It was served upon the respondent in June 2008.

[4] Before outlining respectively the basis upon which the respondent was recognised as a refugee and the grounds upon which this application was made, it is appropriate to examine the Authority’s jurisdiction to determine such an application.

JURISDICTION

[5] The Authority comes to determine an application of this nature by virtue of s129R(b) of the Act, which provides that:

"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."

[6] There are two stages to the Authority’s enquiry.

[7] It must first determine whether the refugee status of the respondent may have been procured by fraud or the like. If not, the application must be dismissed.

[8] However, even if the Authority determines affirmatively that refugee status may have been procured by fraud or the like, that in itself will not automatically result in the loss of refugee status. It simply means that the Authority is then required to determine whether it is appropriate to “cease to recognise” the respondent as a refugee. To that end, the Authority must decide whether the respondent currently meets the criteria for refugee status. This second stage is the Authority’s orthodox forward-looking enquiry into whether an asylum seeker satisfies the definition of a refugee set out in the Refugee Convention; see *Refugee Appeal No 75392* (7 December 2005) [10]-[12].

[9] In connection with the first stage of the enquiry, Mr Mansouri-Rad submits that the DOL bears the burden of proving that the grant of refugee status may have been procured by fraud or the like. However, the Authority has found in the past that the use of terms such as “burden of proof”, apt in the context of civil or criminal litigation, is simply out of place in the context of an enquiry of this nature. The Authority finds rather that the DOL has a responsibility to present such evidence by which it could be found that the grant of refugee status may have been procured by fraud or the like; *Refugee Appeal No 75989* (14 May 2007) at [6], and *Refugee Application No 75891* (16 April 2007) at [7]. The Authority will then consider that evidence, and any evidence the respondent may produce, in addressing the issues to be determined.

[10] In that context, it is necessary to set out the basis upon which the respondent obtained refugee status, and then the grounds upon which the DOL has made this application.

THE RESPONDENT’S REFUGEE CLAIM

[11] The respondent claimed that he had been unwittingly caught in the aftermath of a student protest which took place in Tehran in July 1999. He had been talking to a friend in the friend’s shop one evening when several students entered the shop in an attempt to avoid capture by members of the Iranian security forces. While trying to escape the ensuing mêlée, the respondent hit a member of the Iranian security forces with an iron bar. In the course of doing so, the respondent lost his wallet. It contained various items that enabled the security forces to identify him.

[12] Fearing that he would be pursued, the respondent immediately left Tehran. He spent approximately 19 months in hiding with relatives in a remote rural village.

[13] Members of the Iranian security forces made several approaches to the respondent's family during that time. On one occasion they interrogated his aging father. The father subsequently died after suffering a heart attack which may have been aggravated by his experience. The respondent did not learn of this until after he left Iran in early 2001.

[14] Eventually an agent was engaged, at considerable cost, to obtain a false passport which the respondent used to leave Iran and travel to Spain. He remained there for about three months until another agent eventually obtained a further passport which the respondent used to travel to New Zealand.

THE DECISION OF THE FIRST AUTHORITY PANEL

[15] The first Authority panel found the respondent to be a credible witness and accepted his account. It found that, while neither the respondent nor his family members had any prior political profile of any significance, the Iranian authorities had expressed an ongoing interest in him. It also accepted the respondent's evidence that he did not have a valid Iranian passport and that he had left Iran illegally. Accordingly, it accepted that his return to Iran may attract the attention of the Iranian authorities which may in turn bring to light his past transgressions.

[16] The first Authority panel also found that, irrespective of his lack of any previous political profile, there was a real chance that the respondent would be detained, interrogated and mistreated by the Iranian authorities because he was perceived to be involved in the student protest. If so he would face serious harm for reason of an imputed political opinion. The respondent was therefore recognised as a refugee.

[17] The respondent applied for New Zealand citizenship, which he obtained in late 2004. He then obtained a New Zealand passport in December 2004.

APPLICATION IN RELATION TO LOSS OF REFUGEE STATUS

[18] On 10 July 2007, the Department of Labour (DOL) forwarded an application to the Authority pursuant to s129L of the Act and Reg 16(1) of the Immigration

(Refugee Processing) Regulations 1999 (the Regulations). The application sought a determination that the respondent cease to be recognised as a refugee on the ground that his recognition may have been procured by fraud or the like.

[19] At that time the respondent was outside New Zealand. The Authority engaged an agent to locate and affect service of the application upon him. This took some time, although there is no suggestion that the respondent was trying to avoid service. Eventually contact was established with the respondent and he was served in early June 2008. The documents included a Notice of Application for Determination Concerning Loss of Refugee Status (the Notice).

[20] The respondent instructed Mr Mansouri-Rad, who wrote to the Authority on 23 July 2008 to advise that he was acting for the respondent.

Content of the Notice

[21] The Notice asserts that the respondent may have procured the grant of refugee status by making false or misleading representations and/or concealing relevant information at his hearing with the Authority in 2002. It identifies various matters which, in the opinion of the refugee status officer, support that view, including the following:

- (a) After being granted refugee status in New Zealand, the respondent obtained an Iranian passport through the Iranian Embassy in Wellington. The passport contains stamps which indicate that the respondent departed Iran legally in August 1999, using his own Iranian passport. This is contrary to two assertions made by the respondent during his appeal before the Authority: that he had never had a passport and that he had been forced to leave Iran illegally using a false passport.
- (b) The respondent's Iranian passport bears a record of his date of departure which indicates that he left Iran some 17 months earlier than he claimed for the purposes of his appeal to the Authority in 2002. It contradicts his claim to have been in hiding in Iran from August 1999 to January 2001.
- (c) The respondent has returned to Iran on no fewer than six occasions since the grant of refugee status.

[22] The refugee status officer also contends that, on the face of it, the respondent's willingness to apply for a passport and his willingness to return to

Iran may be inconsistent with his claim that to be at risk of serious harm in Iran.

CASE PRESENTED ON BEHALF OF APPLICANT AT HEARING

[23] The applicant's case consisted mainly of documentary evidence contained within a comprehensive bundle of documents provided for the purposes of the application. The bundle includes the respondent's original claim for refugee status and his supporting statement dated 9 August 2001, copies of his driver's licence and the certificate confirming the death of his father towards the end of 2000, notes relating to the RSB interview conducted in August 2001, the interview report subsequently provided by the RSB, the respondent's response to that report, a copy of the RSB decision and a copy of the decision of the Authority dated 24 December 2002.

[24] The bundle also contains various other documents created after the respondent was granted refugee status. These include copies of various documents relating to the respondent's subsequent application for residence in New Zealand, a copy of the respondent's application for New Zealand citizenship, dated 29 April 2004 together with his application for a New Zealand passport (made on an urgent basis) dated 7 December 2004, a copy of selected pages from the respondent's Iranian passport issued on 28 October 2004, a copy of the respondent's New Zealand passport, issued on 9 December 2004 and copies of New Zealand Passenger Arrival Cards relating to the respondent, dated 2 November 2005 and 14 April 2007.

[25] The applicant forwarded a brief of evidence of Matthew Barlow on 20 August 2008, and lodged opening submissions under cover of a letter dated 12 September 2008. Additional documents were lodged on the first morning of the hearing of the application, including a chronology of events from 1977 to 2008, translations of selected pages from the respondent's Iranian passport and a print-out of various documents obtained from the website of the embassy of the Islamic Republic of Iran in Wellington relating to the issue of passports to Iranian citizens.

[26] Counsel provided further written submissions and handed up various supporting documents in closing on 25 September 2008, and forwarded supplementary submissions under cover of a letter dated 9 October 2008.

[27] One witness gave evidence for the applicant. He is a refugee status officer,

Matthew James Barlow, who confirmed the applicant's view that the respondent may have obtained the grant of refugee status in December 2002 by fraud or the like for reasons already outlined.

[28] Mr Barlow also drew attention to a Passenger Arrival Card completed by the respondent on his return to New Zealand in November 2005. The card required the respondent to identify the country in which he had spent the most time while overseas. His recorded answer is "Spain". The correct answer was Iran. Mr Barlow invited the Authority to infer from that incorrect answer that the respondent had sought to hide the fact that he had returned to Iran.

[29] The DOL submits that the cumulative effect of all of these matters lead to a finding that the original grant of refugee status may have been procured by fraud or the like.

CASE PRESENTED ON BEHALF OF RESPONDENT

[30] The respondent maintains that the claim which he presented to the first Authority panel was truthful. He admits that he obtained an Iranian passport in New Zealand and acknowledges that it bears a stamp which indicates that he departed Iran lawfully in 1999. However he claims that he obtained the passport only because a significant bribe was paid to falsify the relevant records in Iran. He says that the passport and stamp is evidence not of the falsity of his original claim, but of the payment of a bribe to secure a passport which he could not otherwise safely obtain.

[31] The respondent also admits returning to Iran. He says that he did so only because his mother was gravely ill. The respondent claims that his ability to return safely is not evidence of the falsity of his refugee claim. Rather, he says it was possible because he obtained a genuine passport by bribery and because his mother's illness led to him being willing to accept the risk inherent in his return.

[32] The respondent gave evidence on his own behalf. Evidence was also given by XY on the second day of the hearing. A summary of the testimony given by each is outlined below.

Evidence given by the respondent

[33] The account which follows is a summary of the evidence provided on behalf of the respondent. It is assessed later.

[34] The respondent confirmed the content of his statement dated 1 September 2008 and asserted that the account he had given before the Authority in 2002 was truthful in every respect. He says that he remained in hiding after leaving Tehran, and finally escaped from Iran by air, using a false passport, in early 2001.

[35] What the respondent did not know at the time he left Iran was that his father had died in November 2000, while the respondent was in hiding. He learnt of this only after leaving Iran. The respondent's family had not told him earlier because they were worried that he might try to attend his father's funeral, a course of action which they regarded as extremely dangerous.

[36] The respondent was deeply affected both by his father's death itself and by his inability to attend the memorial services. This forms a crucial context for his decision to return to Iran despite the risk to his safety.

[37] In early 2004 the respondent learned that his mother's health had deteriorated. It became apparent that she would need to undergo surgery. The respondent had not seen his mother since he had been forced to go into hiding in July 1999, and wished to see her again. That desire was magnified by her illness, particularly in light of the fact that his father died during his absence from Tehran. In addition, the respondent admitted that he had struggled to integrate into the foreign society in which he had been given asylum.

[38] Faced with the possibility that his mother may be seriously ill, the respondent decided that he had to find a way to see her again. She was too unwell to travel to a third country, so the respondent sought the help of his brother AB, who tried to discourage him from returning to Iran. However the respondent was determined to return and ignored AB's warning that it was not safe for him to go back.

[39] In due course AB found an agent who was willing to help "solve my problem". This cost a substantial sum of money, which was paid by the respondent's mother. AB contacted the respondent about two months later and told him to send a passport application to the Iranian Embassy in Wellington.

[40] The respondent was told to apply for a passport using the standard form provided by the embassy in respect of lost or damaged passports. He was given

an explanation to provide to the embassy if asked to produce his previous passport, in order to circumvent the need to produce a non-existent document.

[41] The respondent submitted his application to the embassy in September 2004. He had been told by his brother that the embassy would seek confirmation about the contents of the application from Iran. Arrangements were made to forward a facsimile to the embassy in New Zealand, confirming a (false) exit date on which the respondent had last left Iran. That date later appeared in the passport, which the respondent received in November 2004. The passport also bore a multiple exit visa which enabled the respondent to leave Iran again. He purchased a ticket for Iran later that month.

[42] The respondent subsequently applied for a New Zealand passport on an urgent basis in early December 2004. It was issued two days later and the respondent left New Zealand later that month to return to Iran.

[43] Despite having the passports the respondent was apprehensive about returning to Iran. He took whatever basic precautions he could, and was careful to ensure that only a few people were aware of his intended return. These included his mother, his brother AB, and his oldest sister, FG, with whom he stayed at her home outside Tehran.

[44] At the time he left New Zealand the respondent was in a relationship with XY, a New Zealand citizen of Iranian descent. Prior to leaving New Zealand he and XY identified telephone numbers and contact details for the New Zealand embassies in Tehran and the United Arab Emirates. The arrangement was that if XY did not hear from the respondent within a few days, she was to contact the embassies from New Zealand to enlist their aid.

[45] In fact the respondent's return to Iran was uneventful. He was able to proceed through the airport on arrival without being questioned, and he made his way to his sister's dwelling outside Tehran. He was joined there by his mother.

[46] The respondent kept a low profile at first. He also experienced some problems reintegrating into his family. Some of his siblings expressed resentment over his part in the events which led to the death of their father in 2000. However the respondent was relieved to see his mother again and he was able to accompany her when she underwent surgery towards the end of 2005. The Authority was provided with documents relating to the mother's medical condition

and to the procedure which she underwent.

[47] The respondent's Iranian passport contained a multiple exit permit which enabled him to leave and return to Iran. As a result he has subsequently travelled back and forward between New Zealand and Iran without difficulty. The respondent's brothers have established a successful business, in which the respondent participates. Prior to being served with the Notice the respondent had not returned to New Zealand since early 2007.

[48] The respondent claims however that he has been told that when the time comes to renew his passport he must do so through the Iranian embassy in New Zealand. He was told that it would be dangerous to attempt this from Iran because there is a residual risk that his past will come to light together with the fact that he has paid bribes to obtain a passport.

Evidence of XY

[49] XY is a New Zealand citizen who came to New Zealand from Iran with her family during the late 1990s. She confirmed that she and the respondent had been in a relationship on and off from around 2002. This had come to an end when she spent a period of time outside Auckland, but had resumed in the second half of 2004.

[50] She had previously provided an affidavit which was before the first Authority panel in 2002, in which she confirmed that the respondent had taken an overdose of pills in 2002, before the hearing of his appeal before the first Authority panel. She had taken him to the hospital. At that time the respondent blamed himself for the death of his father.

[51] XY said that when she resumed her relationship with the respondent in 2004 he was worried about his mother, who was ill and facing a serious surgical procedure. The respondent was desperate to see his mother, despite being afraid for his safety in Iran because of the circumstances in which he had left. He was determined to go to Iran and obtained help with getting an Iranian passport, although XY did not discuss with him what he had done or how he had gone about this.

[52] XY confirmed that before the respondent left New Zealand he agreed to contact her within a short period of his scheduled return. If he did not, she was to

contact the New Zealand embassies in Iran and Dubai, for which she had obtained telephone numbers as a precaution.

MATERIAL PROVIDED BY THE RESPONDENT

[53] On the morning of the first day of the hearing, 17 September 2008, counsel for the respondent lodged written submissions on his behalf. He had earlier forwarded various documents under cover of a letter dated 2 September 2008 which included statements by the respondent and XY (each dated 1 September 2008), copies of medical reports relating to the respondent's mental health prior to the hearing of his appeal before the first Authority panel in 2002, copies of clinical notes from 2003, copies of his New Zealand and Iranian passports and copies of documents relating to his mother's medical conditions and procedures which she had undergone in 2005.

[54] On the first morning of the hearing, Mr Mansouri-Rad provided copies of statements sworn by the respondent on 5 June 2002, and by XY on 7 June 2002. Both had been in evidence before the first Authority panel when it considered the respondent's appeal in 2002, but neither was contained on the file compiled by the DOL for the purposes of the hearing. No criticism of the DOL is to be inferred from the absence of these documents in the file prepared for the purposes of this application. The statements in question were placed before the first Authority panel, and were therefore on the Authority's files, to which the DOL did not have access.

[55] Following the conclusion of the hearing, Mr Mansouri-Rad provided additional submissions and country information under cover of letters dated 26 September and 18 October 2008.

ASSESSMENT OF THE APPLICATION

[56] The Authority must first determine whether the grant of refugee status to the respondent "may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information". That term does not require the Authority to find that refugee status was procured by fraud or the like. Rather, 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.”

THE RESPONDENT’S IRANIAN PASSPORT

[57] The DOL case rests in part on the fact that the Iranian authorities have seen fit to issue the respondent with an Iranian passport containing various entries which appear to contradict key aspects of the account given by the respondent during his appeal before the first Authority panel in 2002.

[58] Entries in the passport indicate that the respondent has previously been issued with an Iranian passport, which he has always denied. The passport contains an entry which indicates that he used an earlier passport to leave Iran lawfully, which is inconsistent with the respondent’s claim that he left Iran unlawfully using a false passport. The departure date which appears in the passport indicates that he left Iran in 1999. That contradicts his claim to have been in hiding in the north of Iran for some eighteen months before he left. It is also inconsistent with the respondent’s claim that he was being sought by the Iranian authorities at the time he left Iran.

[59] In short, the content of the Iranian passport contradicts the basis upon which the respondent was recognized as a refugee. In the absence of any explanation from the respondent, that would provide a sufficient basis for a finding that the respondent may have obtained his original grant of refugee status by fraud or the like. In that context it is necessary to consider the respondent’s explanation, and the evidence which he has supplied in support of that explanation.

How the passport was obtained

[60] The respondent claims that he was able to obtain the passport only because a bribe was paid to bring this about. There was an exchange of submissions from counsel for both parties as to the practicalities of such a course of action. However it is clear from country information that such is possible, even if difficult, and therefore the respondent’s explanation cannot immediately be dismissed as implausible: see the United Kingdom Home Office *Country Report: Iran* (4 May 2007) at 18.01 *et seq* and *Refugee Appeal No 76014* (30 May 2007) [85]-[86].

[61] Counsel for the DOL submitted that the respondent had failed to provide any evidence to corroborate his claim that a bribe had been paid. For example, no statement had been obtained from his brother, when it would be reasonable to

expect that the respondent and his legal advisers would anticipate that his ability to obtain a passport and the payment of the bribe was going to be a matter of central importance in the hearing of this application.

[62] In answer, the respondent says that he is unable to provide corroboration because he knows nothing of what was done on his behalf, and his brother did not know any details either. In addition, Mr Mansouri-Rad submitted that such statements can sometimes be ascribed little weight because the authors are unavailable for questioning. While that can be true, it is not automatically so and a strategy that ignores the provision of evidence on the basis that its veracity might not be accepted is fraught with risk.

[63] What tips the balance in respect of this application is the corroborative testimony given by XY. She supports the respondent's testimony that he was intent upon returning to Iran because of the illness of his mother. According to her it was his mother's illness which provided the imperative for the respondent to return. He wanted to see his mother, whose ailing health put him in mind of his deceased father.

[64] XY could not directly corroborate the respondent's claim that a bribe was paid to facilitate the issuing of a false passport. However she did corroborate the respondent's claim that he was scared about returning to Iran in 2004. Even then, she said, he anticipated that there was some residual risk. However he was prepared to accept that risk as the price of seeing his mother again. It was because of the respondent's concern for his safety that he and XY arranged for XY to contact New Zealand embassies if she did not hear from the respondent after his scheduled arrival in Iran.

[65] It is not clear that this step would have had any real practical effect if anything had gone wrong. However the point is that XY corroborates the respondent's claim that he needed to take precautions before returning to Iran because of the experience he had had in the past. In that sense her evidence is consistent with his claim to have been at risk of being persecuted in Iran.

OTHER CONCERNS

[66] Counsel for the DOL provided a thorough analysis of various aspects of the respondent's evidence, apart from the issue of the Iranian passport, which it was submitted also established that the respondent's refugee status may have been

procured by fraud or the like.

[67] For example, when he returned to New Zealand in 2005, the respondent completed an arrival card in which he incorrectly represented that the country in which he had spent most time out of New Zealand was Spain, when in fact he had spent considerably more time in Iran. The DOL submit that the respondent was clearly trying to conceal the fact that he had returned to Iran.

[68] However the INZ file also contains evidence which runs counter to that hypothesis. For example, it contains a copy of a New Zealand arrival card completed by the respondent on a subsequent occasion, in which he clearly stated that he spent most of his time in Iran. The Authority also notes that entries on the INZ files confirm that the respondent took his newly issued Iranian passport to INZ offices before returning to Iran for the first time, in order to have his New Zealand residence permit endorsed in his Iranian passport.

[69] The DOL also refers to the fact that the respondent has left and returned to Iran on numerous subsequent occasions without any difficulty. However, it is one thing to find that the risk to the respondent has dissipated, as it clearly has given that he has spent protracted periods of time living openly and without restriction in Tehran during the last four or five years. It is quite another to find that the risk never existed in the first place, which is what the applicant effectively asserts.

[70] The events in question which lead to the respondent's predicament took place in mid-1999. The first Authority panel found that at the time he left Iran in 2001 the respondent was a person who had no profile other than that created by the incident in 1999, when he was in the wrong place at the wrong time. The respondent returned to Iran for the first time more than five years later, at the end of 2004. In the circumstances the fact that the Iranian authorities were no longer actively looking for him when he returned in 2004 is not significant.

[71] In that regard Mr Mansouri-Rad referred the Authority to *Refugee Appeal No 76160* (11 September 2008), in which the Authority noted "clear country information that, during the 2001-2005 period when Ayatollah Khatami was in power, his more liberal and tolerant regime actively promoted the safe return of exiled Iranians" (see [52]-[55]).

[72] Given the fact that the respondent was able to return safely on the first occasion, and in light of the fact that he was able to remain for a period of time

without difficulty, it is also unsurprising that the respondent has been prepared to return to Iran again, and to spend significant periods of time there.

CONCLUSIONS ON “MAY HAVE BEEN”

[73] The DOL also identified aspects of the respondent’s account which were inconsistent in some respects. However, standing back and considering all of the evidence available, the Authority finds that there are no more than the inconsistencies inevitable in evidence spanning nearly ten years. The respondent has always maintained the truth of his first account. He has provided an explanation for his ability to return to Iran and has explained why he was prepared to assume the risk of doing so. His explanation is accepted as truthful.

[74] The Authority is satisfied that refugee status was not procured by fraud, forgery, false or misleading representation, or concealment of relevant information. Given that finding, the Authority has no jurisdiction to consider the second limb of the test, namely whether it is appropriate to cease to recognise the respondent as a refugee.

CONCLUSION

[75] The following determinations are made:

- (a) The evidence does not establish that the grant of refugee status to the respondent may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information.
- (b) It is not appropriate to cease to recognise the respondent as a refugee.

[76] The application is therefore denied.

“A N Molloy”
A N Molloy
Member