

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

AT AUCKLAND

REFUGEE APPEAL NO 76014

<u>Before:</u>	C M Treadwell (Chair) S Murphy (Member)
<u>Counsel for Appellant:</u>	C Curtis
<u>Appearing for INZ:</u>	P McCarthy
<u>Date of Hearing:</u>	3 and 4 April 2007
<u>Date of Decision:</u>	30 May 2007

DECISION

INTRODUCTION

[1] This is an appeal by an Iranian man in his late thirties, against a decision of a refugee status officer under s129L(1)(b)) of the Immigration Act 1987 (the Act), ceasing to recognise the grant of refugee status to him, following a finding that the recognition of him as a refugee may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information (hereafter referred to collectively as “fraud”).

[2] The crux of the present proceedings is that, since being granted refugee status in September 2000, the appellant has been issued with an Iranian passport by the Iranian Embassy in Wellington and has made three trips to Iran. Further, the passport indicates on its face that the appellant left Iran legally in 1992, not illegally in 1998 as he had claimed in the course of his application for refugee status.

[3] These circumstances led the Refugee Status Branch to instigate ‘cancellation’ proceedings, for which it interviewed the appellant. It concluded that his refugee status may have been procured by fraud. Following that finding, it then held that it should cease to recognise the appellant as a refugee.

[4] The appellant acknowledges that he has obtained an Iranian passport from the Embassy and that he has made three trips to Iran since being granted refugee status in New Zealand. What he says in explanation is that the reference to a 'legal departure' in his passport arose from Iranian immigration records which are incorrect and that his ability to thrice return to Iran was made possible only by bribes being paid by his father to facilitate his passage through Mehrabad airport.

THE 'CANCELLATION' JURISDICTION

[5] Section 129L(1)(b) of the Act provides that the functions of refugee status officers include:

"...determining whether a decision to recognise a person as a refugee was properly made, in any case where it appears that the recognition given by a refugee status officer (but not by the Authority) may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information and determining to cease to recognise the person as a refugee in such a case if appropriate."

[6] Thus, a refugee status officer has a duty to determine whether to cease to recognise a person as a refugee if it appears that the original grant of refugee status by the Refugee Status Branch may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information.

[7] Where a refugee status officer ceases to recognise a person's refugee status, that person may appeal to the Authority against that decision. See s129O(2) of the Act, which provides:

"A person who is dissatisfied with a decision of a refugee status officer on any of the matters referred to in section 129L(1)(a) to (e) and (2) in relation to that person may appeal to the Refugee Status Appeals Authority against the officer's decision."

[8] There are thus two elements to the enquiry. The Authority must first determine whether the grant of refugee status may have been procured by fraud – recognised to be a low threshold. If so, it must then determine whether the person should cease to be recognised as a refugee. That determination is, in effect, the Authority's usual forward-looking enquiry as to whether, on current circumstances, the appellant faces a real chance of being persecuted for a Convention reason on return. That second stage of the enquiry is engaged, however, only if the first element – that the grant of refugee status may have been procured by fraud – is established.

[9] To contextualise the present appeal, it is necessary to record:

- (a) the appellant's refugee claim;
- (b) the granting of refugee status;
- (c) the subsequent 'notice of intended determination concerning loss of refugee status'; and
- (d) the cancellation jurisdiction of the Refugee Status Branch and the Authority.

THE APPELLANT'S REFUGEE CLAIM

[10] The account which follows is a summary of the evidence given by the appellant to the Refugee Status Branch in 2000, upon which refugee status was granted.

[11] By ethnicity, the appellant's mother and father are Turk and Persian respectively. Until his retirement, the appellant's father had worked for nearly thirty years for the police department in a specialised, forensic capacity. As with many of his colleagues, the appellant's father had survived the Revolution by being discreet about his monarchist sympathies.

[12] The appellant's own upbringing was imbued with his father's anti-regime sentiments, feelings which were reinforced in the appellant by numerous incidents of harassment and intimidation by *basij* or *Hezbollah* officials who would prevent the appellant and his friends playing sport. The appellant excelled at one particular team sport – games of which would frequently end in physical attacks by carloads of *basij*. Eventually, one such attack in the mid-1980s led to the appellant being arrested and detained by the *Komiteh* for three days. He was detained on a second occasion about a year later, this time for five days. On each occasion, the appellant's father had to intercede to secure his release.

[13] Following completion of his military service in the early 1990s, the appellant found work at the printing business of a friend, one AA. He left that employment for several years in the mid-1990s to try his hand elsewhere, but returned to it in 1997 because it offered better prospects.

[14] In mid-1998, the business was raided by *Hezbollah* officers, looking for AA. The appellant was in sole charge of the business at the time and was harshly interrogated as to the business, AA's whereabouts and his own activities.

[15] The appellant left a message with AA's wife, advising him of the men's visit. AA did not come to the business for two days. When he did so, the appellant informed him in person of the visit.

[16] As they were counting the day's takings, four men burst in and attacked AA. The appellant went to comfort AA's young daughter but was struck on the face by one of the men, causing a serious wound to his forehead. The appellant managed to run from the premises and evaded a number of *Sepah* officers waiting by a car outside. A shot was fired but missed him.

[17] The appellant ran until he felt he was no longer being pursued and then made his way to a sports complex he knew, where he hid for some time. After several hours there, he made his way to an uncle's house, where he learned that the officials had visited his family home, looking for him.

[18] The following day, the appellant's father came to see him and it was resolved that the appellant should go to a distant town where his grandparents lived. He duly travelled there by bus and kept in contact with his family by telephoning his uncle. Through him, the appellant learned that several more visits were made by the authorities to the family home.

[19] After ten days, the appellant's father came to see him again and told him that they had learned that AA had been using the printing business to print anti-regime pamphlets and newsletters. Because he was an employee, the appellant was suspected of being an associate in such activities.

[20] After discussion with his father and his uncle, it was decided that the appellant should leave Iran and an 'agent' was found who could smuggle the appellant into Turkey, for a fee of US\$10,000.

[21] The necessary funds were found by the appellant's father and, within a few days, the appellant had been smuggled across the border into Turkey. Although he had an Iranian passport, he did not bother to take it with him because, having been issued in 1992, it had long since expired.

[22] Instead, the agent gave the appellant a false Greek passport, on which he travelled to Japan in late June 1998.

[23] The appellant remained in Japan for approximately a year. He kept in touch with his family by telephone and learned that his father had been detained and interrogated for several days after his departure. His sister was also detained and interrogated and several summonses were served on the family, requiring the appellant to surrender himself.

[24] In mid-1999, an 'overstayer' campaign by immigration officials in Japan caused the appellant to fear being apprehended and returned to Iran. In consequence, he obtained a false Maltese passport and travelled to New Zealand, arriving in mid-August 1999. He applied for refugee status on arrival at the airport.

GRANT OF REFUGEE STATUS

[25] The appellant was interviewed by the Refugee Status Branch on 14 February 2000 in respect of his application and a decision granting him refugee status was issued seven months later, on 4 September 2000.

[26] The appellant lodged an application for permanent residence on 18 September 2000. That application was approved on 19 February 2001 and he was granted permanent residence on 31 May 2001.

[27] On 28 September 2006, over five years later, a refugee status officer issued a 'notice of intended determination concerning loss of refugee status' to the appellant, commencing what are known colloquially as 'cancellation' proceedings.

NOTICE OF INTENDED DETERMINATION CONCERNING LOSS OF REFUGEE STATUS

[28] In brief, the notice advised the appellant that the refugee status officer intended making a determination which might result in the loss of his refugee status. The grounds relied upon were, in essence, that it had been discovered that:

- (a) the appellant had obtained an Iranian passport from the Iranian Embassy in New Zealand in April 2001;

- (b) that passport stated that the appellant had departed Iran lawfully through Tehran's Mehrabad airport in 1992, in contradiction to his claim to have left illegally by land, to Turkey.
- (c) the appellant had returned to Iran on three occasions, first from September to November 2001, then from May to September 2004 and, finally, from June to September 2006; and
- (d) while in Iran in 2006, the appellant had married and had registered that fact with the Iranian authorities.

[29] Viewed against his claimed fear of being persecuted by the Iranian authorities, the refugee status officer intended to determine whether or not the refugee status of the appellant may have been obtained by fraud and, if so, whether it should be cancelled.

LOSS OF REFUGEE STATUS

[30] On 21 November 2006, the appellant attended a 'cancellation' interview with the refugee status officer.

[31] Following that interview, the refugee status officer issued a decision on 30 January 2007, concluding that:

- (a) the appellant's refugee status may have been procured by fraud; and
- (b) he ought to cease to recognise the appellant's refugee status.

[32] A decision was duly delivered to that effect, against which the appellant now appeals.

APPELLANT'S CASE ON APPEAL

[33] The account which follows is a summary of the evidence given by the appellant, at the appeal hearing. It is assessed later.

[34] The appellant maintains that the account he gave in respect of his original claim to refugee status was truthful. He rejects the suggestion that his claim was in any way procured by fraud. He does, however, concede that:

- (a) he was issued an Iranian passport by the Iranian embassy in Wellington in April 2001;
- (b) he returned to Iran on three occasions, as alleged;
- (c) his marriage to his wife in Iran in 2006 was registered.

[35] The appellant says, however, that none of these facts establish, singly or cumulatively, that his refugee status “may have been procured” by fraud because there is a satisfactory explanation for each concern.

Passports

[36] According to the appellant, he has had three passports issued to him by the Iranian authorities. The first was issued to him in about 1991. It was never used by him and disappeared when a bag containing his wallet, passport and other items was stolen in Iran in late 1991 or early 1992. The theft was reported to the police but neither the bag nor any of its contents was ever recovered.

[37] In February 1992, the appellant obtained a second passport in replacement for the first. It was issued for a period of three years. Again, that passport was never used by the appellant. At the time he fled Iran in 1998, it had, in fact, long expired and he saw no reason to take it.

[38] The third passport obtained by the appellant was the one which he obtained from the Iranian embassy in Wellington in 2001. It is this passport which records the appellant as having departed Iran legally, through Mehrabad airport, on a given day in April 1992.

[39] The appellant’s explanation for the third passport bearing such an endorsement is that it records the departure of a third party from Iran, using his stolen first passport. In support of this explanation, the appellant produced to the Authority a colour scan of the whole of his second passport (which had been issued a clear two months before the apparent date of departure in April) and points to the complete absence in it of any customs or immigration stamp from any country. If he had departed Iran through Mehrabad airport in April 1992, the appellant asserts, the freshly-issued passport would disclose that.

[40] The only logical explanation the appellant says he can find for the April 1992 departure date appearing in his third passport is that the use of his stolen

passport by a third party must have resulted in a record being created of a legal departure in April 1992, as now noted in the third passport.

[41] As to how the appellant obtained his third passport, he says that he initially approached the Iranian Embassy in 2001, with some trepidation. One of the questions he was asked was the date of his departure from Iran. Not knowing what to answer, the appellant indicated that he would have to get back to them with this information and telephoned his father in Iran, to ask his advice.

[42] A few days later, the appellant's father called him back and told him that the records in fact showed a legal departure in April 1992. The appellant was initially mystified at this, until his father reminded him of the stolen first passport and conjectured that the thief must have made use of it.

[43] The appellant thereupon gave the April 1992 date to the Embassy and the third passport was issued to him without further difficulty.

The first trip to Iran – September 2001

[44] The reason for the appellant's first trip to Iran (and the reason for obtaining the third passport) was that his mother had suffered a heart attack. On hearing this news, the appellant told his father by telephone that he wished to return to Iran to see his mother. His father was opposed to such a trip, on the grounds of the appellant's safety but the appellant persisted and his father agreed to discuss the matter with one of the appellant's uncles, a man who was in a position to pay bribes to ensure the appellant's safety.

[45] After a few days, the uncle informed the appellant's father that the necessary arrangements had been made. The appellant followed his father's instructions to fly to Iran via Thailand. On arrival at the airport in Iran, the appellant boarded the shuttle bus which transported the passengers from the aircraft to the terminal. On alighting from the bus, however, he was taken aside by a man who checked his identity and told him he had been sent to meet him on behalf of his uncle. The appellant was taken to a car which drove him to another building, where he met his father and uncle. His passport was taken from him, so that entry stamps could be added to it, and he was driven to his family house.

[46] The appellant remained in Iran for approximately a month, during which time he kept indoors and avoided any contact with officials.

[47] While he was in Iran, the appellant's uncle made further arrangements by way of bribes, to have the appellant's name removed from the 'blacklist' on the airport records. After attending to this, he informed the appellant that it would be safe for him to exit the country in the normal manner. The appellant duly did so at the end of his visit, without any difficulty, and returned to New Zealand.

The second and third trips to Iran - May 2004 and June 2006

[48] The appellant's name having been removed from the 'blacklist', he encountered no difficulty in using the third passport again, to make two further short trips to Iran in May 2004 and June 2006. The purpose of those trips was to seek the hand of his wife in marriage and, on the last trip, to attend the wedding ceremony.

[49] The appellant had first come to know his future wife in New Zealand. She and her family had been living here at that time and the couple had grown close. Against their wishes, however, the wife had been compelled to return to Iran with her parents when they had decided to return there to live.

[50] The appellant found the separation caused him great emotional hardship. He describes life in New Zealand as being full of loneliness and lack of opportunity for him. He is emphatic that he would not live here, far from his own family and culture, if he were not compelled to do so.

[51] Marriage, accordingly, has loomed large in the appellant's mind and his second trip to Iran was made for the purpose of obtaining the approval of his wife's parents to their marriage. In fact, the wife's mother proved to be intractably opposed to the marriage, having intended to marry off her daughter to an older, wealthy man in Iran. She became abusive towards the appellant and his family.

[52] The impasse between the wife (who wished to marry the appellant) and her mother caused such friction that the wife left her family home, to live with her grandmother.

[53] The appellant returned to New Zealand in a state of misery and depression. His mental health suffered and he attempted suicide by going to a cemetery where he cut his wrists. He was found, however, and taken to hospital where he had a mental breakdown, culminating in several months of treatment.

[54] More than a year after his release from hospital, the appellant's ongoing contact with his wife culminated in him making arrangements for their wedding without the wife's mother's approval. He duly returned to Iran and the couple were married in a ceremony held without the mother's presence or consent.

[55] Following the marriage, the appellant's wife lodged a visitor's visa application with Immigration New Zealand and the appellant returned to New Zealand to await her arrival. The visa application has not been finalised, however, pending these cancellation proceedings. In the meantime, the wife has suffered several instances of physical abuse at the hands of her mother, who wishes her to divorce the appellant and marry the man chosen by her mother.

Documents and submissions

[56] In support of his appeal, the appellant submits to the Authority:

- (a) a statement (and translation) by his wife;
- (b) two statements (and translations) by his father;
- (c) his medical and ACC records between March 2004 and November 2006, recording his attempted suicide and subsequent treatment, and his concerns expressed to his doctor about the physical abuse being suffered by his wife in Iran; and
- (d) a colour scan of his 1992 Iranian passport, sent to him by email by his father;
- (e) 13 photographs of the appellant's wedding;
- (f) a letter dated 7 February 2007 by Dr Ganesh, of the Rosebank Medical Centre;
- (g) a letter dated 13 March 2007 by Corinna Friebel, psychotherapist, who confirms that the appellant has been in the care of the Auckland District Health Board's Mental Health Services since October 2006;
- (h) a draft report dated 20 March 2007 by Jock Matthews, clinical psychologist, in respect of the appellant;
- (i) various items of country information.

[57] Both counsel have made oral submissions and have tendered both opening and closing submissions in writing.

ASSESSMENT

Whether recognition as a refugee may have been procured by fraud

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

[59] “May have been” does not require the Authority to find that refugee status was procured by fraud. We respectfully agree with the observation in *Refugee Appeal No 75563* (2 June 2006), at [20], that:

“...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.”

[60] It will be recalled that the circumstances which gave rise to the issue of a ‘notice of intended determination concerning loss of refugee status’ and the subsequent cancellation of the appellant’s refugee status were, in summary:

- (a) the obtaining of an Iranian passport from the Iranian government in spite of outstanding summonses against him;
- (b) the notation by the Iranian Embassy in the passport, to the effect that he departed in 1992, through Mehrabad airport, in contradiction of his claim to have left illegally in 1998, by land into Turkey;
- (c) the return by the appellant to Iran in 2001, without the Iranian authorities showing any interest in him;
- (d) the return by the appellant to Iran in 2004, without the Iranian authorities showing any interest in him;
- (e) the return by the appellant to Iran in 2006, without the Iranian authorities showing any interest in him;
- (f) The official registration of the appellant’s marriage, by a regime he says is wanting to detain and interrogate him out of suspicion that he was involved in anti-regime activity.

[61] One concern – the ‘legal departure’ date in the 2001 passport – was directly inconsistent with the appellant’s original refugee claim because, if the appellant had in fact left Iran in April 1992, then his account of his personal circumstances there between that date and 1998 is irreconcilable. Other concerns raised by the refugee status officer – the returns and the registration of his marriage – suggested actions on his part since the grant of refugee status that were, *prima facie*, surprising for a man at risk of being persecuted by the Iranian authorities.

[62] As to the ‘legal departure’ date in the 2001 passport, one item of evidence was not before the refugee status officer and did not come to light until the appeal hearing – namely the copy of the appellant’s 1992 passport.

[63] If that document is genuine, it tends to corroborate the appellant’s explanation for the ‘legal departure’ date in the 2001 passport. Put simply, if it was the appellant who departed Iran lawfully in April 1992, then it is surprising that the passport issued to him in February 1992, two months earlier, is completely blank. Put another way, the pristine state of the 1992 passport is consistent with the April 1992 departure having been made on a different passport in the appellant’s name. Yet, if the appellant had had possession of another passport, it is difficult to imagine circumstances in which he would have bothered to obtain a second passport just two months before travel. In 1992, he can hardly have predicted the course of these proceedings 15 years in the future.

[64] Counsel for the respondent raises two points about the appellant’s ‘lost passport’ explanation which must be addressed.

[65] First, Mr McCarthy contends that the ‘lost passport’ explanation for the record of a lawful departure from Iran, in the appellant’s name, in April 1992, has only been given by the appellant at the appeal hearing. Indeed, counsel suggests that evidence given by the appellant at the interview with the refugee status officer is inconsistent. In so submitting, counsel relies on the following passage, taken from the officer’s handwritten notes. Extracts in bold are the Authority’s own reading of parts which counsel could not decipher:

“Q: When did you acquire your first ever Iranian passport?

A: After I finished my army service I got my first Iranian passport.

Q: When was that?

A: 1370 I think (1991/1992).

....

Q: Did you ever have that passport renewed?

A: No, never.

Q: When did you next obtain your next Iranian passport?

A: It was in New Zealand.

Q: Where is the original Iranian passport?

A: That particular one - fortunately or unfortunately I lost it along with my other documents shortly afterwards.

Q: Are you saying that you lost it shortly after you acquired it?

A: A short while, I think some months?

Q: At your interview on 14/2/2000 you were asked about your original passport. You were asked "have you ever obtained an original Iranian passport?", you answered "yes" to that question. You were then asked "where is that passport now?" and you answered "in Iran – it is expired". It seems to me that this is a different explanation to the one you are giving me now?

A: Forgive me if I am under **severe stress** and my explanations are **hazy**. I will try to correct them. I can hear my own heart beat. After I lost my passport I applied for a second passport **and I could get that and also** because all my other documents were lost.

Q: Are you saying that after you had your passport lost you were able to obtain a replacement?

A: Yes.

Q: **I asked you, only a few minutes ago**, when you obtained your next Iranian passport and you said the next passport you obtained was the one in New Zealand?

A: Sorry **it was the distress. It was true**. I understood the question as being the passport I actually used."

[66] Counsel submits that these answers amount to evidence from the appellant that he only ever had two passports – one in 1991/1992 and then one in 2001. We do not agree. All the ingredients of the account being given now by the appellant were present, including the loss of the first passport and its immediate replacement. Further, a second passport obtained 10 years later does not sensibly fit the description of one that is obtained "after I lost my passport....".

[67] The only potentially discordant note in the above passage was the answer "It was in New Zealand", to the question "When did you next obtain your next Iranian passport?". But the appellant explained his misunderstanding a few answers later, when he responded that he had thought the officer had been asking about the passport he had actually used to return to Iran. We take into account the imperfect English of the appellant, the fact that multiple passports were under discussion – dating back nearly fifteen years – and that the concept of a "replacement" passport for one which had been owned for only a short time and which had never been used might well cause the owner to regard each as his first passport, depending on the context, especially when being compared with a further passport obtained 10 years later. In that light, the passage above is

sufficiently equivocal that one cannot read it as counsel invites with any confidence.

[68] As a corollary, counsel also submits that the evidence given to the Authority by the appellant is unreliable because, in contrast to his evidence to the refugee status officer that he understood his “first ever Iranian passport” to be the one which had been stolen, he later suggested to the Authority that, since the loss of his first passport, he has not thought about it since, regarding the first passport as the replacement he obtained in 1992.

[69] The passage of evidence at [62] above, however, well-illustrates the lack of clarity in both the questions put to the appellant at first instance about his passport and his answers. It is simply not possible to discern with any confidence what was meant.

[70] Ultimately, there is no doubt that the appellant told the refugee status officer of a ‘lost’ passport, a ‘replacement’ passport and a passport obtained in New Zealand. We do not agree that his evidence of having had his first passport stolen did not emerge until the appeal hearing.

[71] Counsel’s second submission in respect of the passports is, in essence, that the appellant has not produced the original of the 1992 passport and the scan may have been doctored to remove evidence of immigration stamps.

[72] The appellant’s explanation for not producing the original passport is that his father will not send it to him. He says that he has asked him to but, according to the appellant, he is afraid to do so because it is illegal to send passports through the post in Iran. Hence, his father was only willing to send a scan of the passport by email. Ms Curtis produces, in support of this, a letter dated 10 April 2007 from a New Zealand immigration consultant Ann-Maree Duxfield, who advises that many of her Iranian clients in the past have had great difficulty in sending original passports from Iran because of restrictions on couriering them. She provides a “Visitor Visa Application Checklist – a guide for applicants from Pakistan and Iran”, issued by Immigration New Zealand, which states:

“Please note that in some countries, including Pakistan and Iran, there are restrictions on sending documents by courier. Please ensure that you have checked your local laws before deciding to send your passport by courier.”

[73] The illegality of mailing passports in Iran is neither denied by, nor challenged by, any evidence adduced by the respondent. Nor have we located

any other source of country information which discusses the point. In the circumstances, the appellant must be given the benefit of the doubt.

[74] In his written closing submissions, lodged after the appeal hearing, counsel for the respondent submits that the appellant could have had the passport taken to the New Zealand Embassy in Tehran for certification of the scan as a true copy. That suggestion, however, has simply never been put to the appellant.

[75] As to the copy of the passport, it has been scanned in colour at a high resolution (300 to 600 dpi), with each double page of the passport two-thirds filling an A4 sheet. The smallest detail of the 'wavy-lined' background is clearly visible on every page. There is no visible trace of doctoring or modification of any aspect of the passport. Further:

- (d) the passport is clearly the older style of Iranian passport, in use in the early 1990s, not the smaller, modern style with sophisticated security features;
- (e) the photograph of the appellant in the passport is appropriately aged, both as to his youth and the aging of the photograph itself; and
- (f) there is no visible wear to any part of the passport, consistent with the claim that it was never used.

[76] On the evidence before us, the passport has every appearance of being genuine and in its pristine state. The suggestion that it might be forged or doctored is speculative only. Absent evidence to the contrary, we conclude that the passport is genuine.

[77] The corollary of that finding is that the passport provides corroborative evidence that the appellant's account of having left Iran illegally in 1998, not legally in 1992, is truthful. The respondent does not advance any other evidence which would explain why a passport in the appellant's name, issued in February 1992, would be silent as to a legal departure in his name in April 1992, two months later.

The return trips to Iran

[78] Returning to a country from which one has sought refuge raises obvious questions as to whether, at the time of return, a risk of being persecuted exists.

That, in turn, can incorporate the question whether such a risk in fact existed at the time refugee status was granted.

[79] The permutations are, however, manifold. It cannot be assumed from the mere fact of return that refugee status was incorrectly recognised, let alone that fraud was an ingredient. It might be, for example:

- (a) that the risk of being persecuted existed at the time refugee status was granted but has diminished, or been extinguished;
- (b) That the risk did not exist at the time refugee status was granted but the grant was not procured by fraud; or
- (c) that the risk existed and continues to exist, yet the refugee elects to return in spite of it. In that regard, it must be remembered that the 'real chance' threshold for refugee status is a low one, appropriately categorised as being, on occasion, as low as a one in ten chance. Refugee status is simply not predicated upon a *certainty* of being persecuted. Nor is the harm assumed to occur immediately upon return. Given these parameters, a refugee with strong reasons to return for a short period may well adjudge the risk to be one which he or she should take. Every case will turn on its own facts.

[80] We are satisfied on the evidence that the appellant's returns to Iran were not merely acts of preference or whim on his part. The medical evidence makes it clear that his mother was in serious ill-health at the time of his first return and her death within hours of his arrival is confirmed by the death certificate.

[81] As to the second and third trips, we have regard to the evidence of the appellant's mental health when considering the degree of compulsion he felt towards his marriage. Not only is his strong commitment to his wife evident from the marked deterioration in his mental well-being during the difficulties experienced with his mother-in-law and subsequent to the suspension of his wife's visa application, but there is a clear record of the appellant's discussion of those difficulties with different health professionals in New Zealand at the time of his suicide attempt, well before these 'cancellation' proceedings were commenced. We are satisfied that the appellant's account of his loneliness in New Zealand, his heartache at the separation from his wife and his persistence in securing their marriage, in the face of her mother's opposition, was as he has described.

[82] We have read with care the other reasons advanced by counsel for the respondent for the submission that the appellant's returns to Iran should be viewed with suspicion. We do not intend any discourtesy in not recounting them *in extenso*. They are speculative and do not raise the question of fraud to the level of "may have been".

[83] We do however, wish to record our views on three points.

The 'agent'

[84] The submission that it is suspicious that the appellant would trust the 'agent' to help him circumnavigate the airport on arrival in Iran in 2001 does not take into account the appellant's plausible evidence that the 'agent' was arranged by his father and uncle – two people whom he would be likely to trust.

Bribery of officials

[85] The assertion that the bribery of airport officials is extremely difficult ignores the fact that the appellant does not assert that he went through normal arrival procedures on his first return. To the contrary, he says that his uncle was able to arrange for him to bypass them altogether. Further, the country information cited by the respondent does not state that it is impossible to bribe airport officials, merely that it is "extremely" difficult to do so. The respondent relies upon, for example, Information Request Report IRN3879.E from the Research Directorate of the Canadian Immigration and Refugee Board, *Iran: Reports of individuals bribing authorities at Mehrabad airport to exit Iran with an authentic passport*. That report, asserts that it is difficult to bypass security at the airport, and adds:

"... although the degree is hard to assess, corruption certainly exists and in individual cases people may be able to bribe their way out of the airport."

[86] This is reinforced by the Research Directorate's more recent (3 April 2006) Information Request Report IRN101052.E, *Iran: Exit and entry procedures at airports and land borders, particularly at Mehrabad International airport*, which states:

"Based on consultations with UNHCR's office in Tehran, a UNHCR official provided the following information in 31 March 2006 correspondence:

'It may happen in practice that individuals who have fraudulent travel documents, or outstanding financial, military or legal obligations, or who are sought or under suspicion by the government for political reasons resort to pay[ing] bribes to the Iranian border officials to pass through the control system unharmed. The higher the risk, the more they pay.'

[87] Further, the appellant's account of his arrival in Iran and the manner by which he was able to avoid normal immigration procedures, was related in forthright and convincing detail.

[88] As to the appellant's subsequent departure from Iran and his two later trips there, the events which he says caused him to leave Iran in 1998 were some years in the past by 2001 and he was not the central focus of interest at the time AA was arrested, in any event. The degree of interest in him would have been likely to be small by 2001 and any bribe paid to clear his name from the blacklist would presumably have been commensurately low.

Section 129V

[89] Finally, the submission is made that, because the appellant left New Zealand temporarily for a third country while this appeal was pending, s129V of the Act operates and the appeal must be treated as withdrawn. That submission is rejected. As was held in *Refugee Appeals No 75815 and 75816* (19 December 2006) at [9] – [13], s129V of the Act applies only to persons who are "claimants". A person appealing a decision to cease to recognise his or her refugee status is not a claimant. Section 129V does not apply.

Registration of the marriage

[90] No evidence has been put before us to suggest that marriage registration records in Iran are routinely available to the relevant security forces or that any 'alert' system exists which would bring the recent marriage of a wanted person to their attention. It is speculative to assume that records held by one government department in Iran is necessarily searchable by security forces, let alone that they routinely do so. A degree of realism must be brought to bear. The cross-fertilisation of routine biographical information between all government departments in a country as populous and widespread as Iran would be an undertaking of significant proportions. If such a level of sophisticated information management existed, we have no doubt that, in the course of the many thousands of Iranian refugee claims in western countries in the past two decades, it would be well-documented. Our own research has not unearthed any such information.

[91] Further, it is difficult to imagine that marriage records would hold much interest for the security forces, in terms of tracking the whereabouts of wanted

persons. The number of people fleeing the Iranian regime, or in hiding from them, who take time out to get married, must be low.

[92] The appellant also agrees, with candour, that the interest in him by the Iranian authorities was now a long time ago and was, even then, simply tangential to their interest in AA. The appellant does not resile from his refugee claim, but neither does he consider that a high level of interest in him will have remained indefinitely. We agree with that assessment and have regard to the reality that, over the years, the Iranian regime has even occasionally offered amnesties to persons overseas of modest or low interest, in an effort to encourage young Iranians to return home.

Conclusion on whether ‘may have been’ is established

[93] We find that the evidence now before us, not all of which was before the refugee status officer, provides plausible explanations for the concerns raised by the officer. We remind ourselves that ‘may have been’ signals a standard of proof that is, while lower than the balance of probabilities, nevertheless a standard higher than mere suspicion. We are satisfied that that threshold is not met on the particular facts of this case.

CONCLUSION

[94] In view of the foregoing, the following determinations are made:

- (a) The evidence does not establish that the grant of refugee status to the appellant may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information;
- (b) the appellant is to continue to be recognised as a refugee.

[95] Consequent upon those findings, the Authority continues to recognise the appellant as a refugee. The appeal is allowed.

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C M Treadwell
Member